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Modern Political Thought from Hobbes to Maritain

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PREFACE

This collection of texts is an alternative to many contemporary source books in modern political thought and political philosophy.

Perhaps the first and most important difference is that this book includes material from several authors not usually included in anthologies of modern political thought. Many texts move from J.S. Mill or Marx to the mid- or late twentieth century, overlooking the contributions of figures such as Herbert Spencer, T.H. Green, Bernard Bosanquet, and Jacques Maritain, despite all having had a significant impact not only on political philosophy, but on the politics and social and public policy of their time. Spencer had a major influence on British and, particularly, American political thought – an influence that continues to this day in libertarianism; Green and Bosanquet contributed to progressive liberalism in Britain and its Empire as well as to the creation of the Labour Party in Britain – and held views that are close to contemporary communitarianism; and Maritain was not only influential in political philosophy and in political and social movements in countries where Catholicism was strong, but also had a significant role in the development of the 1948 Universal Declaration of Human Rights.

A second difference from most contemporary anthologies is that each chapter of the present volume consists of selections from one or more of the key works of the author, preceded by a lengthy introduction. Standard textbooks of political thought provide introductions that are either so brief that they give virtually no guidance and orientation to the student, or simply repetitions or summaries of the selection from the author. In this book, however, each introduction contains a brief biography and a summary of the main principles of the political and philosophical views of the author, along with questions that should help students in focussing their reading of the selection that follows. The readings chosen are also sufficiently substantive that students will be able to appreciate the author's style and argument at first hand. Finally, each chapter contains a bibliography of the principal primary works of the author and to relevant secondary works.

A further distinctive characteristic of this volume is that it provides texts that focus on key concepts and ideas of modern political thought and emphasises the importance of the recognition of the development of these concepts. In both the general introduction and in the introductions to the individual authors, there is an insistence on not only clarifying key concepts but on being attentive to evolution or shift in meaning. This serves to remind the student to avoid assumptions of similarity and consistency of meaning across authors, to be aware of the multiple meanings of key terms, and to recognize that even the most basic concepts of political philosophy rest on presuppositions that need to be examined.

INTRODUCTION

Preliminary Remarks

One could not provide an adequate description of political and social life in the last hundred years without using such terms as law, rights, authority, freedom, sovereignty, democracy, and the like. Of course, these terms have their origins far back in time, but it is only relatively recently that they have come to have the place they do in political and social thought.

The purpose of this volume of readings is to help to trace the stages or steps in the articulation of themes characteristic of modern political thought. This requires an analysis of a number of key concepts, such as 'law' (including 'natural law' and the 'rule of law'), 'liberty' or 'freedom,' 'authority' and 'sovereignty,' 'right' or 'rights' and 'democracy,' and 'political obligation.' These concepts, and the arguments in which they play a role, have been used to describe the views of, or have been employed by, a number of authors, such as Thomas Hobbes, John Locke, Jean-Jacques Rousseau, Immanuel Kant, Jeremy Bentham, John Stuart Mill, Mary Wollstonecraft, Herbert Spencer, T.H. Green, Bernard Bosanquet, and Jacques Maritain. They are, however, also fundamental to understanding much of contemporary political philosophy, such as the work of John Rawls, Robert Nozick, A.I. Melden, Ronald Dworkin, Alan Gewirth, Joseph Raz, Charles Taylor, and Jürgen Habermas. The texts in this volume will, ideally, enable the reader to discern some of the key concepts and themes of modern political thought, to identify several problems that have arisen in the various attempts to articulate them, and to indicate the importance of the presuppositions and 'social ontology' that underlie them.

Cautions in Identifying and Applying Themes

Many of the terms we use today – liberal, conservative, radical, democratic, and the like – have their roots in early modern political thought, and they have often been used to describe the views of the key figures. But such terms have to be used with great care: to use them at all, in fact, may impose a distinction or apply a description that simply would be anachronistic or inappropriate in the particular context.

For example, the term 'liberal,' even within the context of political philosophy and political theory, is rather vague; it is only in the early part of the nineteenth century that the terms 'liberal' and 'liberalism' began to be clearly defined in political discussion, and it was only then, as well, that one sees particular social and economic policies being described as distinctively 'liberal' (e.g., in opposition to wide-scale nationalisation of land and industry, advocacy of free trade, and the insistence on a 'non-interventionist' role for the state).[1] Describing a philosopher or political theorist as a 'liberal,' particularly when it concerns someone who lived prior to the nineteenth

century, then, runs the risk of not only being anachronistic but question begging.

Again, like 'liberal,' the notion of 'rights' has often been used with imprecision. While some authors have argued that this concept has its roots in mediaeval or even classical Greek thought, it was not until the seventeenth century (with Hugo Grotius [1583-1645] in *The Rights of War and Peace* [1625]) that the term began to be clearly articulated, and not until Thomas Hobbes (1588-1679) that it came to have an important role in political philosophy. Some have argued that 'rights' include rights to life, to political association, to be free from discrimination or abuse, to education, and so on, but it seems clear that, even if there are 'rights' to such, they are not all on a par with one another. Early discussions of 'rights' understood them to be primarily 'natural rights' – and they are still frequently seen in this way. But there are different 'traditions' of natural rights; the way in which the term is used by Hobbes is quite distinct from the way it is employed by Locke, Bosanquet, Maritain, or Rawls. Moreover, there continues to be a wide debate on what it means to say that a right is 'natural,' about to whom or what such rights may be ascribed, what their limits are, what their relation is to political authority, whether they are alienable, and whether the notion is, in fact, useful or even a coherent one. Finally, it is not often clear whether something claimed as a right *is* a natural right, or a right accruing to individuals as *social* beings, or simply a power given a person in a particular society or state.

Key Concepts

In this volume, readers will encounter a number of terms or concepts that have come to have key roles in political, social, and economic thought. While the precise meanings of these terms vary and have changed, and while the descriptions are sometimes highly contested, it is useful to have a provisional understanding of what these terms are generally understood to mean.

Law, Natural Law, and the Rule of Law

Law

People generally speak of law as something commanded by an authority, such as the criminal laws which exist in states. In the context of political philosophy, the classical definition of law is "an ordinance of reason for the common good, made by one who has care for the community, and is promulgated."[2] Specifically, a 'law' is an ordinance – a command, not advice, counsel or a suggestion – of reason (and so consistent with all other law), for the common good (i.e., for the community as a whole, or else it is only a command), that is issued by the person or persons who govern that community (i.e., whoever or whatever it is that has authority), and which is promulgated (i.e., thereby known to, or knowable by, all).

Natural law

In political philosophy, reference is sometimes made to the 'natural law.' Theories of natural law are likely the oldest theories in ethical and political thought, and they continue to be influential world-wide, though less so in the Anglo-American traditions. Versions of these theories can be found in the work of the Greek tragedian, Sophocles (496-406 BCE, particularly in his tragedy, *Antigone*), in the writings of the Stoics (third century BCE to the second century CE), Cicero, Thomas Aquinas, and John Locke, as well as, most recently, in figures such as Jacques Maritain, Germain Grizez, and John Finnis.[3] Natural law theories can also be found in Islam (e.g., ibn Khaldun), Confucianism, Buddhism, and Hinduism.

The natural law is said to be descriptive; it is a set of objective, fundamental principles and prescriptions concerning right and wrong, based upon a description of human nature, and characteristic of all human beings simply because they are human beings. (We can find out what is "natural" to humans by means of observation and reason.) But the natural law is also prescriptive – i.e., it tells us what a being *ought* to do or how it *ought* to act.

A further characteristic of natural law theories is that they hold that all civil and political laws, including international law, must be consistent with and not violate the natural law. In this way the natural law has both a legal and a moral character. A legal statute or judgement which violates the natural (moral) law may have the might of the state to enforce it, but it is not, on this account, strictly speaking lawful. For example, following the Second World War, it was argued that certain laws found in Nazi Germany were not genuine laws at all, because they violated the natural law. Natural law, then, also determines what the civil law should (or must) be; it provides a standard of justice.

Theories of natural law have been criticized. The chief objections to them are: the underlying conception of nature is based on a physics and cosmology that are outdated; there is no such thing as human nature and, therefore, there is no such thing as a natural law; natural law is too vague a standard, and cannot tell a person what, specifically, their duty is; and knowing what *is* (i.e., natural) does not entail that it *ought* to be done. Nevertheless, recent accounts of natural law theory have attempted to respond to such critiques.

The rule of law

Though formulated only fairly recently[4], the notion of 'the rule of law' has its roots in ancient jurisprudence, and one finds anticipations of it throughout history. For example, the Magna Carta of England (1215), signed by King John, aimed at placing the King and his successors under the control of the law. The notion of the rule of law is generally understood to be distinct from 'rule by law' or 'by the ruler', which can be arbitrary, which may leave much to the discretion of the authorities, and which can

place certain people, such as the ruler, above the law. The basic principle of the rule of law is that all are subject to the law – that there is "equality before the law, or the equal subjection of all classes [social, economic, or political] to the ordinary law of the land."[5] The late 19th century British constitutional theorist, A.V. Dicey adds that "a man may … be punished for a breach of law, but he can be punished for nothing else" – and a proof of such a breach must normally take place within a judicial process. The notion of 'the rule of law' also reflects the view that the law must be stable, and to ensure that the law is stable, there need to be clear rules and procedures for making laws. Laws must also be publicly promulgated and must be prospective rather than retroactive. Finally, law should be administered impartially by a body which is independent of political authority and influence (i.e., the judiciary).

Liberty, Freedom, and Liberalism

A central theme in modern political thought is that of liberty, and some have argued that there are at least two principal understandings of the term (though this has itself been a matter of much debate[6]), and that they can be distinguished by examining their respective views on the nature of the individual and the relation of individuals to the state.

Negative liberty

One sense of liberty is associated with individualism[7] and holds that the good of individual self-determination requires that there should be as few limits as possible on what one can do. This sense of liberty is found from the time of Hobbes,[8] but can also be attributed to Locke, Adam Smith, Jeremy Bentham, J.S. Mill and Herbert Spencer – and, in our own day, to Robert Nozick and Tibor Machan.

On this view, following Hobbes, liberty is "the absence of... external impediments of motion," and one is free when "in those things, which by his strength and wit he is able to do, [he] is not hindered to do what he has a will to do"[9]; thus, for example, "[t]he liberties of subjects depend on the silence of the laws." The notion of liberty present in this liberalism is what is now often referred to as 'negative' liberty – freedom from external restraint on, or compulsion or coercion of, the individual. (This position has frequently been referred to as 'liberal individualism.') Bentham employs a similar conception of liberty in his discussion of government and law.[10] Only to the extent that one is not hindered in the pursuit of the good by others does one have liberty and is 'free.'

Correlative with this account of liberty, law is seen as a limit on one's freedom; law, according to Hobbes, "determineth and bindeth" and is "inconsistent" with liberty.[11] Thus, while law is, as Bentham saw, necessary to social order,[12] and while good laws are clearly essential to good government, by its very nature law is a restriction of liberty and is painful to

those whose freedom is restricted.[13] Liberty, therefore, involves an independence from the control of the state and government regulation. For proponents of negative liberty, the function of the state is to ensure that individuals are protected from interference by others in their legitimate pursuit of their own goods; the state cannot legitimately and ought not do anything more than this. In short, according to that current of thought that holds that negative liberty is a central value, 'the best government is that which governs least.' It is not surprising that this understanding of liberty has often been associated with an economic doctrine of *laissez faire*.

Positive liberty

A second major current in modern political thought is one that holds that genuine liberty requires not just (or not primarily) *freedom from* external interference, but also *freedom to* attain some goal or result – specifically, the development of oneself as a person. This is 'positive' liberty. Thus, we cannot be free unless we have the power to choose, and have access to, those things that allow us some control over our lives. Liberty, then, involves more than ensuring that others do not illegitimately interfere in one's pursuit of the good. It requires that one have the opportunity and the means to acquiring certain goods. Liberty or 'being free,' then, involves taking account of what is the nature or characteristic of the being concerned, and discerning and providing what is essential to its growth.

Defenders of positive liberty acknowledge the value and importance of a number of negative liberties. Nevertheless, they insist that there are certain basic goods that all human beings, as human beings, do or should seek, and these must be guaranteed, even if this involves limiting the exercise of activities by (other) individuals. Thus, the state or public authority has a *positive* role – not merely as the guarantor of negative liberties (e.g., providing protection from the interference of others), but as providing individuals with access to the necessities of life (e.g., material needs – such as food, clothing and shelter – and intellectual and moral needs – such as education and training, and giving individuals the opportunity to develop themselves through the exercise of certain responsibilities). Only then, it is argued, will people have not only a genuine choice to pursue or not to pursue 'goods' that are essential to their well-being, but the possibility of acting as responsible moral agents who can contribute to the well-being of society. The presence of a system of law and interventionist policies by the state concerning a variety of matters affecting social life are, then, essential to social and individual well-being.

Liberalism

Liberalism is a philosophical view that:

a. places an emphasis on human freedom – especially the freedom to set one's own goals and to determine one's own good (i.e., self-determination).

These goals and goods, then, may be pursued without restriction, provided the actions involved do not interfere with the freedom of others to do likewise. Among the most important of the freedoms emphasised by liberals are freedom of conscience or of thought (e.g., toleration of divergent political and religious beliefs). The nature of this freedom can, however, be understood in different ways, and one will see frequent reference to the distinction between positive and negative freedom.

b. places an emphasis on the value of the individual human person. Generally, liberals hold that there is something of value in persons that is a *sina qua non* of morality and which therefore serves as a limitation on the licit actions of others. There is also a belief in the moral equality of individuals, and thus liberalism is generally associated with a democratic view (e.g., the political equality of individuals). The importance of the individual is usually expressed by the ascription of certain 'human rights.'

c. recognises (as distinct from anarchism) the necessity of the existence of some form of institution or common enforcement mechanism (often 'the state'), whose object is to preserve and protect the well-being of individuals, and which is involved in the administration of activity within the community, and the enforcement of law and punishment.

d. holds that the legitimacy of the state (i.e., its justified claim to rule) is in some sense derived from the will of those governed by it.

e. holds that moral principles are immanent (i.e., in the human person or in nature), and not purely external or transcendent (e.g., in the command of God), and that they can be discovered by rational reflection on phenomena knowable by all individuals. Frequently, these moral principles are held to be articulations or features of 'natural law.'

f. (frequently) holds that individuals are rational beings and that their actions are generally or always motivated by a principle of rational self interest. (One should note that this is a psychological, not an ethical, claim.)

The State of Nature, Society, and the State

Many philosophers have held that it was important to ground their political philosophy in 'nature.' What this means is often ambiguous; 'nature' could mean, for example, the supposed anthropological condition of human beings before the existence of organised communities, laws, or the state, but it might also be more of a heuristic notion – what one could imagine one would find if the functions of the state were removed – or even a methodological device or 'thought experiment' as a basis to determine what one might choose and do if one did not have a stake in the matter under discussion. (John Rawls adopts this latter kind of approach in his discussion of an 'original position' wherein a person is to form or select basic principles of justice for social life.) Presumably, if a society or political community was founded on 'nature' or a 'state of nature' or 'natural condition,' it would thereby be justified or legitimate. Nevertheless, in many cases it is unclear whether a 'state of

nature' was supposed to have actually existed and, even so, it was generally practically irrelevant to the argument founded upon it.

Society is the most comprehensive natural grouping of human beings (i.e., more comprehensive than the family, associations of those living in proximity, tribes, and so on), described by continuing contact over time or inhabiting the same territory, that falls short of the system of laws, order and hierarchy, and especially enforcement, characteristic of the state. Interaction may be organized and coordinated, but it is based on individual, voluntary choice. 'Civil society,' which is formally independent of the state, is the sum of those organizations (e.g., clubs, community organisations, political and religious groups, trade unions, and non-governmental organisations) which depend on uncoerced will rather than on force, and which seek some kind of common good or interest.

Society and social institutions, many argue, require 'external apparatus,' and social interaction and coordination of activities can become too complex, so that order cannot be guaranteed if voluntary assent or choice is always required. The term 'state,' then, is usually to describe that social institution (or set of institutions) which is organized, concerned with – and which has a monopoly on – law and force, and governs; in some figures, such as Hegel, however, it appears to be used to refer to an ideal of what a political community should be like. Political theories are largely divided on whether, on the one hand, the state is something 'natural' or which has always existed or, on the other, artificial or the product of individual wills, and (merely) a means towards achieving the good(s) of individuals.

Generally, when people talk about the state they mean the 'nation state'; this is commonly said to be a consequence of The Thirty Years' War (1618–1648) and the subsequent 'Peace of Westphalia' (1648), which resulted in the recognition of new notions of territorial integrity, independence, and sovereignty. Thus, a state is an entity that has territory, a distinctive history and development, as well as an organization that lawfully exercises force; normally, those within the (nation) state see themselves as sharing a common identity. Such a state has, as its task, to carry out certain public functions: to govern, to legislate and enforce laws, to recognize and administer contracts, to judge and resolve conflicts and disputes, to recognize and defend rights, to hinder certain kinds of activity, to protect individuals and institutions from internal and external threat, to regulate economic activity, to enforce obedience, and to punish and sanction. In addition, some argue that the role of the state also requires it to provide order, to guard or enforce morality, to promote individual well-being, and to function as a principle of social unity.

Rights

The term 'rights' has been used in a variety of senses. Broadly speaking, 'rights' are freedoms or powers (or claims to powers) that persons have to engage in activities, with correlative obligations on others (at the very least)

not to interfere and, more broadly, to ensure that those concerned can, in fact, engage in these activities. Because rights involve obligations on others, they are 'social' – that is, they exist where individuals are not alone, and where they can and do interact with others. Generally, when people employ the term 'rights' or 'human rights,' they mean some or all of the following:

Natural rights

These are rights that individuals possess in virtue of the kinds of beings they are – that is, 'essentially' (e.g., *qua* persons or *qua* rational beings). (Sometimes other conditions for having rights are added, such as being free, autonomous, capable of having or identifying one's own good, capable of articulating and acting on a plan of life, or possessing or having the potential to possess such characteristics.) In other words, these rights are not held by individuals in virtue of some 'incidental' characteristic – e.g., being a member of a certain class or race, having a particular position or function in society, and so on. Natural rights are also generally held to be primarily rights of individuals, not of collectivities.

Natural rights are sometimes said to be discovered by reason in nature or in the natural law – i.e., reason 'sees' that certain beings must have certain rights in order for them to act as the kind of beings they are. Because such rights can be naturally known by all, all must respect them. Rights are also sometimes said to be 'natural' in the sense that they would exist in a state of nature, if there ever were such a place. Again, because they are 'natural' and ascribed to persons, they are also inalienable without the right-holder's consent. Examples of these rights would be the right to life and to preserve one's life, the right to pursue (one's own conception of) the good, freedom of conscience, and the right to be treated as a person.

Frequently, natural rights are held to be basic – that is, they do not depend on any pre-existing duties or responsibilities. Thus, rather than being derived from or subject to a particular conception of the good, they are taken by some to serve as the standard of right and wrong.

Natural rights are held to be antecedent to, and independent of, the state in general, and of any government or political regime. As natural and ascribed to persons in virtue of their being persons, natural tights are moral claims that must be respected, and serve as limits or preconditions or "trumps" on what others – even the state – can do. Thus, they have not only moral but legal force.

Civil rights

These are rights that individuals possess as members of political communities in general. These should – though, in fact, they may not, like natural rights – be respected within every particular political community. Traditional examples of such rights are rights to participate in one's own government, to political association, and to free expression and discussion.

Positive or *purely legal rights*

These are the rights that one has simply in virtue of conventions, agreements, customs or laws peculiar to a particular state or community. These may depend on the very specific functions or activities a person may have – or simply on state *fiat* – e.g., having a right to drive an automobile, to vote as a member of a legislative body, to receive certain social goods, to detain and arrest persons suspected of law-breaking, and so on. Such rights are granted by the government and can be extended or alienated by it as well – for example, in view of overall social well-being or a common good. There is some debate, however, whether one may have a positive or legal right to do something or engage in an activity that is immoral or is inconsistent with one's civil or natural rights.

Summary

Whether a particular claim to a power is a claim to a natural, or a civil, or a purely legal right is a matter of continuing debate, as is the question of whether there are any rights other than legal rights. Bentham, for example, held that "[n]atural *rights* is simple nonsense: natural and imprescriptible rights, rhetorical nonsense, —nonsense upon stilts,"[14] and his view is still shared by many. Again, there has been much debate about who or what can have rights – whether only individual human beings can have natural rights, whether there can be 'collectively' held natural rights (e.g., language rights), whether nations might have certain 'natural' rights – but also whether all human beings have natural rights, and whether some non-human animals also have them.

Political Obligation, Authority, and Disobedience

Political obligation

A central question of modern political thought is why one should obey the laws of one's country or state. One answer is that people do so out of fear or because of (the threat of) force. Another answer, however, is that people have a *moral* obligation to do so.

The major reasons given for such an obligation are i) that the state preserves people's basic rights and liberties, i.e., since people are obligated to respect basic rights and liberties, and since the state is the most effective means for ensuring this, then they are obligated to obey the state; ii) that it is based on a natural duty (of justice or of gratitude); and iii) that it is based on consent – explicit (i.e., one explicitly consents to this through some kind of agreement with the state) or implicit (e.g., there is a tacit consent, or it is one's 'real will') or hypothetical (i.e., that one would have accepted the arrangement had one been consulted[15]).

Related questions here include: How far are people obligated to obey the law or thec state? Does this obligation always apply?

Authority

A related concept here is 'authority.' Law or the state is said to have authority – and, hence, a person has an obligation to obey it. Not surprisingly, authority has been understood in different ways, and recent writing on the topic has been extensive.[16] According to Hobbes, authority is "the right of doing any action"; individuals, in the first place, have authority because they are authors – "he that owns his words and actions is the author" – but they can transfer or lay down this 'right' (or authority) to or in favour of others.

According to the sociologist Max Weber (1864-1920), authority [*Herrschaft*] exists in a person or persons in power when there is the probability that people will voluntarily obey them[17]; Weber writes that it is "the situation in which the manifested will (command) of the ruler or rulers is meant to influence the conduct of one or more others (the ruled) and actually does influence it in such a way that their conduct to a socially relevant degree occurs as if the ruled had made the content the command the maxim of their conduct for its very own sake."[18]

Most political philosophers (such as Hobbes, Rousseau, Kant, and Hegel)[19] distinguish authority from power.[20] At the very least, authority carries with it the sense that it is legitimate in some way; power does not. This legitimacy, ultimately, tends to have its source in morality – that it is, for example, a necessary or natural means to a good.[21] Thus, Jacques Maritain holds that authority requires right and justice, and an orientation to a common good; by itself, power is simply the use of 'might,' which says nothing about 'right.'[22]

Disobedience and resistance

When may one challenge an authority or question one's political obligation? This introduces the issue of civil disobedience; examples of civil disobedience may include sit-ins in public offices, occupation of nuclear sites, forming human chains around abortion offices. Some authors, such as John Rawls, have defined civil disobedience as "a public, non-violent, conscientious political act contrary to law usually done with the aim of bringing about a change in the law or policies of the government"[23]; this change, however, is not to the state or the law as a whole, and the person still recognizes that there are other series of obligations concerning how to act. Civil disobedience in this sense is distinguished from conscientious refusal (e.g., pacifism, refusal to pay taxes, refusal to take oaths) which does not claim that the laws or policies are illegitimate, on the one hand, and "militant action and organized resistance" (e.g., political assassination, bombings) which rejects the legitimacy of the state altogether, on the other.

What is presupposed in this notion of civil disobedience and in the distinctions from other forms of rejection of political obligation, are matters of some debate.

Arguably, the grounds for civil disobedience exist when the conditions for political obligation are not met – for example, when the state does not protect one's rights and liberties or, more broadly, when it does not fulfill its obligations (e.g., does not provide basic goods, ceases to be representative, or aims at a private, not a common, good). Another basis for disobedience is when obedience conflicts with other obligatioms that one may have (e.g., to non-state authorities: the community, one's language or ethnic group, one's church, and so on).

Sovereignty and Democracy

Sovereignty

Sovereignty is the possession of supreme power or authority in a community or state and, therefore, the reflects the right to govern: it is part of what makes a state a state. (One of the key texts here is *Les Six Livres de la République* (*The Six Books of the Republic*) of 1576, by the French jurist and philosopher Jean Bodin (1530–96).) According to Thomas Hobbes, for example, sovereignty is absolute and exclusive, and so the sovereign needs to be absolute and indivisible. In mediaeval and some early modern authors, sovereignty was a quality of a king or emperor; with the early modern period, however, following Francisco Suárez (1548–1617), sovereignty began to be seen as popular – "in the people." (It is a debated question whether sovereignty may be transferable. Hobbes thought that while authority was a characteristic of the 'sovereign power,' and it could be transferred or lost; Rousseau thought that it inhered in the people and was inalienable.) Some make a distinction between *internal* sovereignty (the power to manage the internal affairs of the state) and *external* sovereignty (power over all relations with other states, and being free from foreign control or domination).

Democracy

A standard lexical definition of 'democracy' is that it is "a system of government by the whole population or all the eligible members of a state."[24] It may have several forms, 'direct' and 'indirect' (e.g., representative) being the two most common. In a direct democracy, all eligible members participate in decision-making on matters of government action. Where democracy is indirect – particularly in large communities and states – representatives may be chosen through elections (i.e., electoral democracy); these representatives, in turn, legislate and govern. Democracy, however, does not have an explicit requirement that there be a separation of powers (i.e., executive, legislative, and judicial), or that there be limits on the state's powers (e.g., the respect of human dignity, individual liberties, minority rights, etc.). The justification for

democracy has sometimes been instrumental – i.e., it is a means to achieving or ensuring certain greater goods (such as individual liberty, the interests and personal development of the governed, more effective decision-making, the reduction of social disadvantage, the reduction of recourse to violence, and economic efficiency). Sometimes, however, democracy is justified as the consequence of some principle(s), such as popular sovereignty, human beings having basic rights and liberties to self-determination, individual autonomy, and the equality and equal consideration given to citizens.

Republicanism and self-government

'Democracy' should not be confused with the existence of a republic or with 'self-government.' A republic is a form of government which 'mediates' democratic rule though a separation of powers and a recognition of the rule of law (often described in a constitution) – and, traditionally, it emphasises the presence and development of civic virtue. 'Self-government,' following Aristotle, means 'acting autonomously' or 'acting reasonably.' Thus, according to the idealist philosopher A.R. Lord, 'self-government' means "government by that higher self in which all the varied interests of humanity are at one, ample scope for each being provided by the systematization and organization of them all."[25] While this suggests the key value of the development of citizens, it entails nothing, however, about the form of government (e.g., whether it should be a direct or indirect democracy), or even that it be democratic.

Human Nature

Most of the authors presented in this volume, unlike many today, would acknowledge a close connexion between what human beings are, and how they ought to live together in the state. Underlying the preceding terms and concepts, then, is the question of how the authors understood human nature, and what implications this may have for their political thought.

How human nature is defined, varies. Some authors take a basic, descriptive approach – namely, that human nature is simply what one finds if looks at mature examples of the species. Others take a more metaphysical approach. They would argue that human nature has a teleological character – that is, a description of what human beings are must state not only how they appear and act, but what goals or purposes or 'ends' they seek. For some, these ends are ultimately individual and personal; others speak of their being one end for all human beings, a 'common good.'

The specific character of human beings is also the subject of much debate. As noted above, for some, human nature involves being free, rational, and self-interested; others would say that more needs to be added to this list. There is no disputing that human beings possess the basic physical functions, but also the instincts and passions, of animals. Some, however, would argue that there are morally significant qualitative differences distinguishing

humans, such as their capacity for freedom (understood as the capacity for free choice or free will), moral personality, and moral and intellectual – and spiritual – development. This raises the question of whether a naturalistic or materialistic account of the person is appropriate or adequate. It also raises questions of whether human beings should be understood as primarily beings of reason or of desire (motivated primarily by pleasure and pain, with reason having a primarily instrumental function), and whether morality is natural or conventional and contractual.

A central issue for political philosophy is whether human nature is 'individualist' or 'social.' Individualists hold that human beings are self-interested and self-directing (or 'free'), with a capacity for rational and moral thought; are significantly and relevantly distinct from one another; serve as the basis for value; and that their distinctiveness is an important part of that value. Those who hold that human nature is basically 'social' do not altogether deny many of the preceding characteristics, but nevertheless claim that these characteristics would not exist (or be present in the way they are) if individuals did not live in community. One also finds the claim that human beings have a natural concern or sympathy for others, and are not exclusively self-interested. The emphasis here is that not only does one need a social context if human individuality is to be significant, and that human characteristics are acquired and developed only within a social context, but that this social context is essential or necessary to one's being a human person.

Whether human beings are essential social bears on the question of whether the state is 'natural' and required by human nature, or whether it is something 'artificial' and constructed. While the state is not the same thing as society or the community, it has often been argued that society is not possible, or cannot exist for long, without the apparatus of law and sanction that is characteristic of the state. As we have seen, what the state is (or what the term 'state' means), whether it is necessary, and how it is organised are, of course, key questions.

Problems

Although the notions of (the rule of) law, liberty and rights, democracy, and the like are frequently appealed to, particularly in the last century, there have been a number of criticisms of them all.

Some have objected that those currents of modern political thought that presuppose such notions do not go far enough to satisfy the demands of justice – that they are unsatisfactory from a moral point of view, and that they fail to recognise fully, and even contribute to, the suffering of marginalized groups. Some argue that such concepts and the political philosophies in which they have a key role reflect a gender-specific and gender-dominant view of the person and of social relations; this is a critique that has been advanced by a number of feminist theorists. Critics, particularly from developing countries, hold that the notion of the rule of law and the discourse of human rights are

characteristic of 'western' ideologies that arose in a specific culture in a relatively recent epoch, and that they have no relevance to (and in fact conflict with) the equally-legitimate values and traditions of other cultures. Indeed, some have argued that the discourse of universal human rights is a tool of nations (particularly, the United States) to carry out a self-interested political agenda. In a pluralistic and culturally diverse world, these critics argue, it does not make any sense to speak of (universal) human rights, the rule of law, western style democracy, popular sovereignty, and so on.

More recently, those defending 'green' politics have maintained that modern political thought and its attendant notions reflect outdated views – that, in a world undergoing ecological crisis, these theories neither do nor can serve to provide instruments to address threats to life on a world-wide scale.

Again, some argue that, despite the historical relation among them, human flourishing is quite distinct from notions of democracy, rights, and the rule of law; that such ideas are vague and useless – if not altogether dangerous; and that there is nothing intrinsically valuable to be gained by an appeal to them.

Nevertheless, appeals to these notions, and the political philosophies in which they appear, continue to be made. If they are to be retained and defended, however, one must ask on what basis they can be justified, or whether any justification is necessary or possible. If they are to be abandoned, are there other moral and political notions that will serve to address the same issues and that can avoid the criticisms raised above? The texts included in this volume should allow the reader to go some way in responding to such questions.

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NOTES

[1] James Crimmins, citing Fred Rosen's *Bentham, Byron and Greece: Constitutionalism, Nationalism, and Early Liberal Political Thought*, (Oxford: Clarendon Press, 1992, p. 5), notes that "the terms 'liberal' and 'liberalism'... gained ideological purchase in England only in the second quarter of the nineteenth century." See James E. Crimmins, "Contending Interpretations of Bentham's Utilitarianism," *Canadian Journal of Political Science / Revue canadienne de science politique*, 29 (1996): 751-777, at p. 754, n. 13.

[2] Aquinas, *Summa theologiae* (ST) I-II, q. 90, a. 4.

[3] See, for example, Jacques Maritain, *Natural Law: reflections on theory and practice*, ed. William Sweet (South Bend, IN: St Augustine's Press, 2001); John Finnis, *Fundamentals of Ethics* (Georgetown University Press and Oxford University Press 1983); *Natural Law and Natural Rights* (Oxford University Press 1980; 9th impression. 1997).

[4] Importantly, by A.V. Dicey, in his *Introduction to the Study of the Law of the Constitution* (1885), 8th ed. (London: Macmillan, 1915).

[5] See Dicey, *Introduction to the Study of the Law of the Constitution*, ch. 4 (8th ed. 1915).

[6] See Isaiah Berlin, "Two Concepts of Liberty," in his *Four Essays on Liberty* (Oxford: Oxford University Press, 1969), pp. 118-72.

[7] Like the term 'liberal', the term 'individualism' seemed to gain ideological purchase only in the mid-nineteenth century (see Michael Taylor, *Men versus the State: Herbert Spencer and Late Victorian Individualism* [Oxford: Clarendon Press, 1992], pp. 2-4).

[8] See Berlin, op. cit. Berlin contrasts this with the notion of 'positive liberty' that he attributes to T.H. Green. For Green's use of this or allied notions, see his "Liberal Legislation and Freedom of Contract" (1881), *The Works of Thomas Hill Green*, ed. R.L. Nettleship, 3 vols. (London, 1885-1888), Vol. III, pp. 365-386 (reprinted in *The Political Theory of T.H. Green*, ed. John R. Rodman [New York: Appleton, Century, Crofts, 1964], and in *T.H. Green: Lectures on the Principles of Political Obligation, and other writings*, ed. Paul Harris and John Morrow [Cambridge: Cambridge University Press, 1986], pp. 194-212), "On the Different Senses of 'Freedom'" (1879), in *Works*, Vol. II, pp. 307-333 (reprinted in Harris and Morrow, pp. 228-249) and *Prolegomena to Ethics* (1883), 5th ed., ed. A.C.

Bradley (Oxford: Oxford University Press, 1906), §97-100.

[9] Thomas Hobbes, *Leviathan*, ed. Michael Oakeshott (New York: Collier Books, 1962), Ch. 21, p. 159.

[10] Bentham says that "[l]iberty is the absence of restraint" (Bentham mss, University College, London, Box 9, Folder 6, p. 142; cited in D.J. Manning, *The Mind of Jeremy Bentham* [London: Longmans, 1968], p. 87).

[11] *Leviathan*, Ch. 14, p. 103.

[12] See Mill's essay, "Bentham," (1838), in *Essays on Ethics, Religion and Society*, *Collected Works of John Stuart Mill*, ed. J. M. Robson, Vol. X, pp. 75-115 (Toronto: University of Toronto Press, 1969), p. 97.

[13] According to Bentham, "[t]he evil of... restraint [is]... the pain which it gives a man not to be able to do the act." See his *An Introduction to the Principles of Morals and Legislation*, in *The Works of Jeremy Bentham*, ed. John Bowring (London, 1838-1843; reprinted New York, 1962), Ch. 13, sec. 14, Vol. I, pp. 1-154, p. 85; Cf. *An Introduction to the Principles of Morals and Legislation*, Eds. J.H. Burns and H.L.A. Hart (London, Athlone Press, 1970), p. 163.

[14] Jeremy Bentham. *Anarchical Fallacies*, in *The Works of Jeremy Bentham*, ed. John Bowring (London, 1838-1843), Vol. IV, p. 501.

[15] See, for example, John Rawls or Stephen DeLue. According to DeLue, the "state provides a benefit so essential to sustaining basic liberal values that no liberal citizen who shares these values could argue against having a (strong) obligation without appearing to be unreasonable or lacking in common sense" (*Political Obligation in a Liberal State* [Albany: State University of New York Press, 1989], p. 11).

[16] For a summary of such work, see, for example, E.D. Watt, *Authority* (London: Croom Helm, 1982).

[17] For more on definitions see Anthony T. Kronman, *Max Weber* (London: Edward Arnold, 1983); See also Peter Hamilton (ed.), *Max Weber: Critical Assessments*. 4 vols. (London: Routledge, 1992). Weber's term 'Herrschaft' is sometimes translated as 'domination.'

[18] See Weber's *Wirtschaft und Gesellschaft* (Tübingen: J. C. B. Mohr (Paul Siebeck), 1922), Vol. 2, p. 122; translated as *Economy and Society: an outline of interpretive sociology*, ed. G. Roth and C. Wittich (Berkeley: University of California Press, 1978), Vol. 2, p. 946.

[19] See, for example, Thomas Hobbes, *Leviathan*, ch. 15; Jean-Jacques Rousseau, *Contrat social*, Book I, ch. 8; Immanuel Kant, *Die Metaphysischen Anfangsgründe der Rechtslehre*, Pt 1, ch. 1, para 2; G.W.F. Hegel, *Grundlinien der Philosophie des Rechts*, sect 45.

[20] Weber, *Wirtschaft und Gesellschaft*, definition 16, p. 28.

[21] According to the first edition of the *Catholic Encyclopedia*, the end of civil authority, according to Francisco Suárez (in *De legibus*, LII, xi, 7), is "the natural happiness of the perfect, or self-sufficient, human community, and the happiness of individuals as they are members of such a community, that they may live therein peaceably and justly, with a sufficiency of goods for the

preservation and comfort of their bodily life, and with so much moral rectitude as is necessary for this external peace and happiness." Joseph Rickaby, "Civil Authority," *The Catholic Encyclopedia* (New York: Robert Appleton Company, 1907), Vol. 2.

[22] See Maritain, *Man and the State* (Chicago: University of Chicago Press, 1951), pp. 126-127.

[23] Rawls, *A Theory of Justice* (1971), p. 364.

[24] *Oxford English Dictionary*

[25] This is the view of Arthur Ritchie Lord. See his *The Principles of Politics by Arthur Ritchie Lord together with a critical assessment*, ed. William Sweet and E.E. Harris (Lewiston, NY: Edwin Mellen Press, 2006), p. 131.

CHAPTER I

THOMAS HOBBES (1588-1679)

Biographical information

Though now perhaps best known for his contributions to political thought, Thomas Hobbes was one of the major figures in seventeenth century western philosophy. Born in Malmesbury, England, in 1588, Hobbes' life spanned one of the most tumultuous – but also one of the most intellectually dynamic – periods in European history. At his birth, Elizabeth was Queen of England, and her nation was at war with Spain. Hobbes was, he wrote, born prematurely when his mother heard the news of the approach of the Spanish Armada; in his verse autobiography, he says that "hereupon it was my mother dear,/Did bring forth twins at once, both me and fear."[1] Indeed, Hobbes' life was spent in circumstances far from secure, and the role of fear in his political philosophy is not insignificant. As a youth, he found himself raised by a wealthy uncle after his father, a country vicar, struck another person at the church door and fled the parish, and Hobbes' adult life was spent in an environment of particular political instability.

After finishing his studies at Oxford in 1608 – during which he had abandoned 'Aristotelian philosophy' – he served as an advisor and tutor to William Cavendish, later Earl of Devonshire. This gave him the opportunity both to meet a number of influential figures and to travel. In the course of his duties he met, or corresponded with, Francis Bacon, René Descartes, and Galileo.

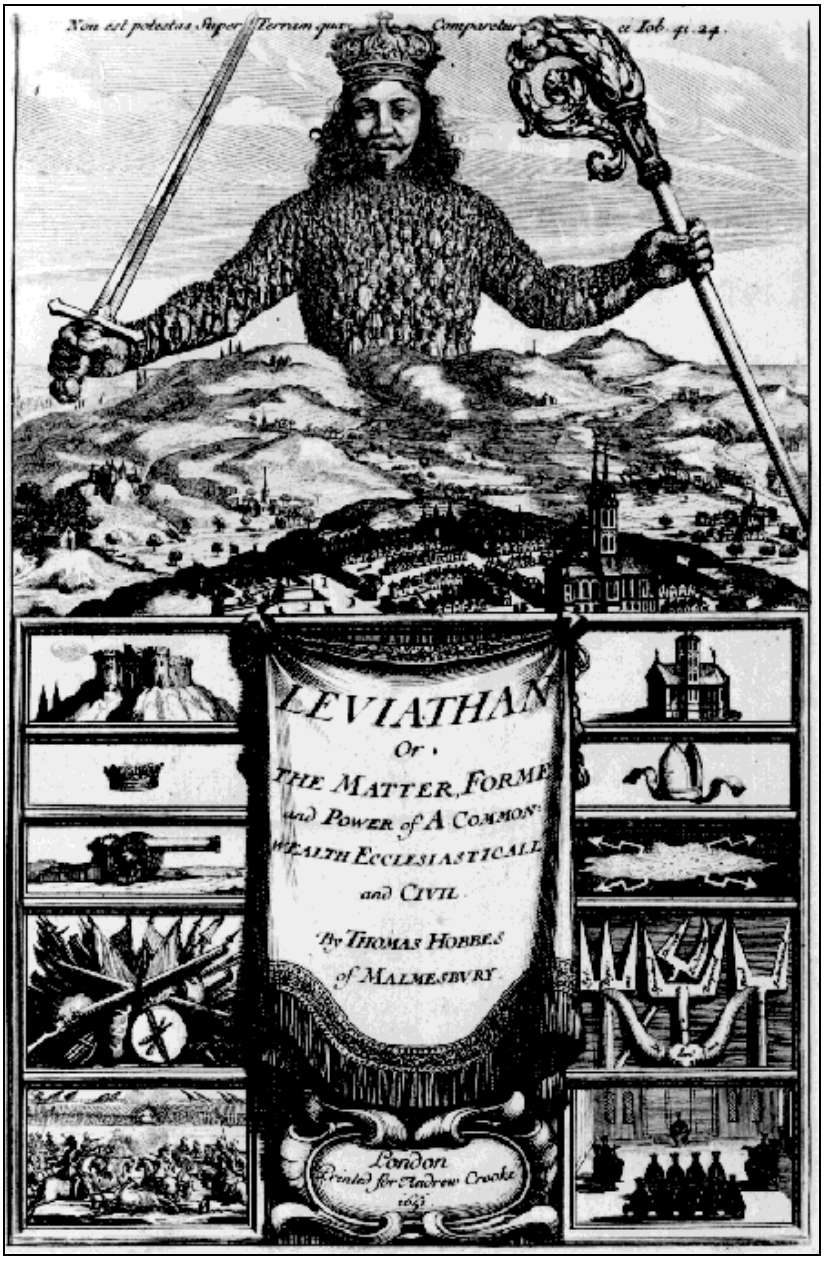
In 1640, the conflict between the King, Charles I, and Parliament had escalated. Hobbes sided with the royalists and moved to France where, in 1646, he was briefly mathematics tutor to the exiled Prince of Wales (the future Charles II). During this time in France, he wrote a treatise on 'The Citizen' (*De Cive*) and much of *Leviathan* (English edition, 1651; Latin edition, 1668).

In 1649, Charles I was executed, but, in 1651, Hobbes returned to England and submitted himself to Cromwell, who appeared to be able to guarantee peace in England. Hobbes continued to engage in (primarily philosophical) controversy, and his *De Homine* (1658) – which dealt with his views on human nature and, particularly, optics – was published at this time.

In 1660, the monarchy was restored in England. Hobbes was granted a pension by Charles II – and, later, by Louis XIV. It is no doubt because of his favour with the King that allegations of heresy and atheism raised against him (beginning in 1666 and continuing until his death) never succeeded, but he was prohibited from publishing on 'subversive' subjects. Still, Hobbes continued to be active, both physically and philosophically, into his later years. He died on December 4, 1679 at the age of 91.

Leviathan

Leviathan (1651) is generally considered to be Hobbes's major and definitive political work. The figure of the Leviathan is taken from the Biblical book of *Job*. In *Job*, the Leviathan is a monster; in Hobbes, it is an artificial creature, like a machine, who holds the greatest power possible.



Leviathan contains Hobbes's views on human nature (both prior to, and within, society), the conditions needed for organised social life, the formation of the state, and sovereign power. In order to fully appreciate his project, it is important to note that this work treats of both civil and ecclesiastical power. The first two parts deal with 'Man' and 'Commonwealth', but there are also further lengthy sections 'Of a Christian Commonwealth' and 'Of the Kingdom of Darkness.' The frontispiece to the English edition illustrates this unity of the civil and the ecclesiastical: it presents a king, with a breastplate composed of human beings. In his right hand, the king carries a sword, and in his left, a bishop's crozier or staff; for every aspect of civil authority, one sees a parallel representation of ecclesiastical jurisdiction.

Method

Hobbes employed a deductive method, modeled on geometry. C.B. Macpherson describes this as a 'resoluto-compositive' method, similar to approaches found in the writings of Galileo and Descartes. While it is not explicitly employed in *Leviathan*, it is found in the early texts of Hobbes, such as *The Elements of Law, Natural and Politic* (written in 1640), where Hobbes explains that one comes to understand what a thing is and how it works by reducing an entity to its elements and then 'reconstituting' it.

Hobbes thought that the study of politics could be made a science, like mathematics, and that a theory of the state could be deduced from principles of human nature. Civil law, he argued, is based on "the natural inclinations of mankind, and upon the articles of the laws of nature."[2]

The foundation of our knowledge of human nature is largely introspection or self-observation, and is expressed by the phrase *nosce teipsum* – "read thyself." Hobbes holds that there is a "similitude of the thoughts and passions of one man, to the thoughts and passions of another" and that, therefore, "whosoever looketh into himself and considereth what he doth, when he does *think*, *opine*, *reason*, *hope*, *fear*, *etc*., and upon what grounds; he shall thereby read and know, what are the thoughts and passions of all other men upon the like occasion." In fact, Hobbes notes, "[f]or this kind of doctrine admitteth no other demonstration."[3]

Human Nature

The first twelve chapters of *Leviathan* deal with the principal faculties of human beings (e.g., sensation, imagination, speech, knowledge, passions, intellectual virtue, morals, and religious belief). The concept of the human person that we find here resembles that of a machine – that is, something subject entirely to the principles of causality and physical law. Hobbes draws a number of parallels between a living being and a mechanism. The account he provides is, therefore, 'naturalistic' and can be described as a form of mechanistic materialism.

Life, on Hobbes' account, is "but a motion of limbs." There are two principal motions: appetite or desire and aversion or hate. 'Good' and 'evil' are defined in these terms; 'good' is the object of desire or appetite and 'evil' is the object of hatred or aversion. These properties are not, however, found in the things we desire or hate, but in ourselves.

Many commentators conclude from this that Hobbes held that there is no particular good common to all humanity; each person determines his or her own good. It is not surprising, then, that on such a reading, his theory is seen as having a tendency towards psychological egoism,. Still, it is not clear that Hobbes would have endorsed ethical egoism.

All passions – even deliberation and will – can be reduced either to an appetite or an aversion. Reason is subsequent to the passions, on this view. It is, Hobbes writes, a 'motion of the mind,' caused by sense and imagination, and it is used to serve the passions – specifically, to provide the means to realise our own desires (e.g., to avoid violent death).

Hobbes' view suggests, then, that people a) are (more or less) rational beings who b) are essentially motivated by desire (e.g., self-interest or gain) and c) have an interest in the preservation of their health and lives and the means to them. He says, moreover, that human beings are also (more or less) equal in power, so that there are no 'natural superiors.'

The question is, what happens when we take such beings and put them together? This is what comprises the "natural condition of mankind,' or what is often referred to as 'the state of nature' (i.e., the situation where there are no universal ethical standards regulating the interaction among persons). Hobbes holds that such a condition is uncertain and dangerous: there is no law that exists there and, since human beings are basically beings motivated by desire, and since what some have may be desired by others, the result will inevitably be a world where theft, injury, and murder would be the norm. If some individuals restrict themselves in what they can or will not do to others, they may themselves become the victims of these others. An individual may, therefore, do whatever she or he thinks is necessary in order to preserve his life. Life in this 'state' would be, Hobbes says, "solitary, poor, nasty, brutish and short."[4]

To avoid this continued state of danger, Hobbes says that people would agree upon certain moral rules and principles of justice (in how to distribute the various goods that exist in society). These are rules of mutual benefit – "precepts of reason" or 'natural laws.' This requires an exchange and a contract. Individuals give up (some of) their freedoms in return for an opportunity at living a better life. This agreement and these rules, then, become the standards which determine what is right and what is wrong. Thus, morality is by agreement; once established, morality is simply obedience to the (natural) laws. But if this agreement breaks down, (i.e., if the purpose of the agreement is impossible), individuals are no longer obliged to respect it. Given this view of the primacy of the individual, both naturally and morally, the political theory Hobbes presents, then, is generally considered to be 'individualist.'

One way of understanding Hobbes's view as described above, is to see it as reflecting a 'contactarian' view. Motreover, on this view, there is nothing that is *intrinsically* good or evil; what is good or evil is based on what is forbidden or commanded by the law or custom – a custom or law that is of strictly human origin – that is a consequence of this agreement. Morality, therefore, is a 'creation' of human society. Nevertheless, this theory is not purely subjectivist. The good that a person does, does not depend on what he or she thinks, but on these laws or customs. Hobbes proposes an approach to morality that is not unlike that of setting up the rules for a club or the rules of order at a meeting.

Problems and Questions to be Addressed

In the selections that follow, Hobbes describes the 'natural condition' of humanity, the laws of nature which are established, the nature of personhood, the institution of a commonwealth and its power, the nature of law, and the nature of the 'liberty' of those within the commonwealth. As one reads this material, it is useful to focus on how Hobbes addresses (or might address) the following problems:

1. What is the nature of the human person?
2. How can one be sure that people will keep their agreements or contracts?
3. How can one prevent people from violating these agreements as they see fit? from breaking their promises?
4. Does Hobbes have to show that such an agreement actually occurred – and, if he does, does this mean that, if there never was any such contract, such an agreement is not binding?
5. Does this agreement require unanimous consent and, if it does, how does Hobbes deal with the problem of 'future generations'?

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NOTES

[1] "Hobbes' Verse Autobiography" in *Leviathan: with selected variants from the Latin edition of 1688*, ed. Edwin Curley (Indianapolis, IN: Hackett Publishing, 1994), p. liv.

[2] *Leviathan*, ed. Laslett, "Review and Conclusion," p. 509.

[3] *Leviathan*, ed. Laslett, "Author's Introduction," p. 20. This is reflected in his later comments – for example, in Chapter 13 [p. 100] – where he writes that:

> "It may seem strange to some man, that has not well weighed these things; that nature should thus dissociate, and render men apt to invade, and destroy one another: and he may therefore, not trusting to this inference, made from the passions, desire perhaps to have the same confirmed by experience. Let him therefore consider with himself, when taking a journey, he arms himself, and seeks to go well accompanied; when going to sleep, he locks his doors; when even in his house he locks his chests; and this when he knows there be laws, and public officers, armed, to revenge all injuries shall be done him; what opinion he has of his fellow subjects, when he rides armed; of his fellow citizens, when he locks his doors; and of his children, and servants, when he locks his chests. Does he not there as much accuse mankind by his actions, as I do by my words?"

[4] *Leviathan*, ed. Laslett, Ch. 13, p. 100.

Leviathan (1651)

INTRODUCTION

NATURE (the art whereby God hath made and governs the world) is by the *art* of man, as in many other things, so in this also imitated, that it can make an artificial animal. For seeing life is but a motion of limbs, the beginning whereof is in some principal part within, why may we not say that all *automata* (engines that move themselves by springs and wheels as doth a watch) have an artificial life? For what is the *heart*, but a *spring*; and the *nerves*, but so many *strings*; and the *joints*, but so many *wheels*, giving motion to the whole body, such as was intended by the Artificer? *Art* goes yet further, imitating that rational and most excellent work of Nature, *man*. For by art is created that great LEVIATHAN called a COMMONWEALTH, or STATE (in Latin, CIVITAS), which is but an artificial man, though of greater stature and strength than the natural, for whose protection and defence it was intended; and in which the *sovereignty* is an artificial *soul*, as giving life and motion to the whole body; the *magistrates* and other *officers* of judicature and execution, artificial *joints*; *reward* and *punishment* (by which fastened to the seat of the sovereignty, every joint and member is moved to perform his duty) are the *nerves*, that do the same in the body natural; the *wealth* and *riches* of all the particular members are the *strength*; *salus populi* (the *people's safety*) its *business*; *counsellors*, by whom all things needful for it to know are suggested unto it, are the *memory*; *equity* and *laws*, an artificial *reason* and *will*; *concord*, *health*; *sedition*, *sickness*; and *civil war*, *death*. Lastly, the *pacts* and *covenants*, by which the parts of this body politic were at first made, set together, and united, resemble that *fiat*, or the *Let us make man*, pronounced by God in the Creation.

To describe the nature of this artificial man, I will consider

First, the *matter* thereof, and the *artificer*; both which is *man*.

Secondly, *how*, and by what *covenants* it is made; what are the *rights* and just *power* or *authority* of a *sovereign*; and what it is that *preserveth* and *dissolveth* it.

Thirdly, what is a *Christian Commonwealth*.

Lastly, what is the *Kingdom of Darkness*.

Concerning the first, there is a saying much usurped of late, that *wisdom* is acquired, not by reading of *books*, but of *men*. Consequently whereunto, those persons, that for the most part can give no other proof of being wise, take great delight to show what they think they have read in men, by uncharitable censures of one another behind their backs. But there is another saying not of late understood, by which they might learn truly to read one another, if they would take the pains; and that is, *Nosce teipsum*, *Read thyself*: which was not meant, as it is now used, to countenance either the barbarous state of men in power towards their inferiors, or to encourage men of low degree to a saucy behaviour towards their betters; but to teach us that

for the similitude of the thoughts and passions of one man, to the thoughts and passions of another, whosoever looketh into himself and considereth what he doth when he does *think, opine, reason, hope, fear,* etc., and upon what grounds; he shall thereby read and know what are the thoughts and passions of all other men upon the like occasions. I say the *similitude* of passions, which are the same in all men,- *desire, fear, hope,* etc.; not the similitude of the *objects* of the passions, which are the things *desired, feared, hoped,* etc.: for these the constitution individual, and particular education, do so vary, and they are so easy to be kept from our knowledge, that the characters of man's heart, blotted and confounded as they are with dissembling, lying, counterfeiting, and erroneous doctrines, are legible only to him that searcheth hearts. And though by men's actions we do discover their design sometimes; yet to do it without comparing them with our own, and distinguishing all circumstances by which the case may come to be altered, is to decipher without a key, and be for the most part deceived, by too much trust or by too much diffidence, as he that reads is himself a good or evil man.

But let one man read another by his actions never so perfectly, it serves him only with his acquaintance, which are but few. He that is to govern a whole nation must read in himself, not this, or that particular man; but mankind: which though it be hard to do, harder than to learn any language or science; yet, when I shall have set down my own reading orderly and perspicuously, the pains left another will be only to consider if he also find not the same in himself. For this kind of doctrine admitteth no other demonstration.

THE FIRST PART: OF MAN

CHAPTER VI: OF THE INTERIOR BEGINNINGS OF VOLUNTARY MOTIONS, COMMONLY CALLED THE PASSIONS; AND THE SPEECHES BY WHICH THEY ARE EXPRESSED

THERE be in animals two sorts of *motions* peculiar to them: One called *vital,* begun in generation, and continued without interruption through their whole life; such as are the *course of the blood,* the *pulse,* the *breathing,* the concoction, nutrition, excretion, etc.; to which motions there needs no help of imagination: the other is *animal motion,* otherwise called *voluntary motion;* as to *go,* to *speak,* to *move* any of our limbs, in such manner as is first fancied in our minds. That sense is motion in the organs and interior parts of man's body, caused by the action of the things we see, hear, etc., and that fancy is but the relics of the same motion, remaining after sense, has been already said in the first and second chapters. And because *going, speaking,* and the like voluntary motions depend always upon a precedent thought of *whither, which way,* and *what,* it is evident that the imagination is the first internal beginning of all voluntary motion. And although unstudied men do not conceive any motion at all to be there, where the thing moved is invisible, or the space it is moved in is, for the shortness of it, insensible; yet that doth not hinder but that such

motions are. For let a space be never so little, that which is moved over a greater space, whereof that little one is part, must first be moved over that. These small beginnings of motion within the body of man, before they appear in walking, speaking, striking, and other visible actions, are commonly called ENDEAVOUR.

This endeavour, when it is toward something which causes it, is called APPETITE, or DESIRE, the latter being the general name, and the other oftentimes restrained to signify the desire of food, namely *hunger* and *thirst*. And when the endeavour is from ward something, it is generally called AVERSION. These words *appetite* and *aversion* we have from the Latins; and they both of them signify the motions, one of approaching, the other of retiring. So also do the Greek words for the same, which are *orme* and *aphorme*. For Nature itself does often press upon men those truths which afterwards, when they look for somewhat beyond Nature, they stumble at. For the Schools find in mere appetite to go, or move, no actual motion at all; but because some motion they must acknowledge, they call it metaphorical motion, which is but an absurd speech; for though words may be called metaphorical, bodies and motions cannot.

That which men desire they are said to LOVE, and to HATE those things for which they have aversion. So that desire and love are the same thing; save that by desire, we signify the absence of the object; by love, most commonly the presence of the same. So also by aversion, we signify the absence; and by hate, the presence of the object.

Of appetites and aversions, some are born with men; as appetite of food, appetite of excretion, and exoneration (which may also and more properly be called aversions, from somewhat they feel in their bodies), and some other appetites, not many. The rest, which are appetites of particular things, proceed from experience and trial of their effects upon themselves or other men. For of things we know not at all, or believe not to be, we can have no further desire than to taste and try. But aversion we have for things, not only which we know have hurt us, but also that we do not know whether they will hurt us, or not.

[…]

And because the constitution of a man's body is in continual mutation, it is impossible that all the same things should always cause in him the same appetites and aversions: much less can all men consent in the desire of almost any one and the same object.

But whatsoever is the object of any man's appetite or desire, that is it which he for his part calleth *good*; and the object of his hate and aversion, *evil*; and of his contempt, *vile* and *inconsiderable*. For these words of good, evil, and contemptible are ever used with relation to the person that useth them: there being nothing simply and absolutely so; nor any common rule of good and evil to be taken from the nature of the objects themselves; but from the person of the man, where there is no Commonwealth; or, in a Commonwealth, from the person that representeth it; or from an arbitrator or

judge, whom men disagreeing shall by consent set up and make his sentence the rule thereof. [...]

CHAPTER X: OF POWER, WORTH, DIGNITY, HONOUR AND WORTHINESS

THE POWER *of a man*, to take it universally, is his present means to obtain some future apparent good, and is either *original* or *instrumental*.

Natural power is the eminence of the faculties of body, or mind; as extraordinary strength, form, prudence, arts, eloquence, liberality, nobility. *Instrumental* are those powers which, acquired by these, or by fortune, are means and instruments to acquire more; as riches, reputation, friends, and the secret working of God, which men call good luck. For the nature of power is, in this point, like to fame, increasing as it proceeds; or like the motion of heavy bodies, which, the further they go, make still the more haste.

The greatest of human powers is that which is compounded of the powers of most men, united by consent, in one person, natural or civil, that has the use of all their powers depending on his will; such as is the power of a Commonwealth: or depending on the wills of each particular; such as is the power of a faction, or of diverse. factions leagued. Therefore to have servants is power; to have friends is power: for they are strengths united.

Also, riches joined with liberality is power; because it procureth friends and servants: without liberality, not so; because in this case they defend not, but expose men to envy, as a prey.

Reputation of power is power; because it draweth with it the adherence of those that need protection.

So is reputation of love of a man's country, called popularity, for the same reason.

Also, what quality soever maketh a man beloved or feared of many, or the reputation of such quality, is power; because it is a means to have the assistance and service of many.

[…]

The *value* or WORTH of a man is, as of all other things, his price; that is to say, so much as would be given for the use of his power, and therefore is not absolute, but a thing dependent on the need and judgement of another. An able conductor of soldiers is of great price in time of war present or imminent, but in peace not so. A learned and uncorrupt judge is much worth in time of peace, but not so much in war. And as in other things, so in men, not the seller, but the buyer determines the price. For let a man, as most men do, rate themselves at the highest value they can, yet their true value is no more than it is esteemed by others.

The manifestation of the value we set on one another is that which is commonly called honouring and dishonouring. To value a man at a high rate is to *honour* him; at a low rate is to *dishonour* him. But high and low, in this case, is to be understood by comparison to the rate that each man setteth on himself.

The public worth of a man, which is the value set on him by the Commonwealth, is that which men commonly call DIGNITY. And this value of him by the Commonwealth is understood by offices of command, judicature, public employment; or by names and titles introduced for distinction of such value. [...]

CHAPTER XI: OF THE DIFFERENCE OF MANNERS

BY MANNERS, I mean not here decency of behaviour; as how one man should salute another, or how a man should wash his mouth, or pick his teeth before company, and such other points of the small morals; but those qualities of mankind that concern their living together in peace and unity. To which end we are to consider that the felicity of this life consisteth not in the repose of a mind satisfied. For there is no such *finis ultimus* (utmost aim) nor *summum bonum* (greatest good) as is spoken of in the books of the old moral philosophers. Nor can a man any more live whose desires are at an end than he whose senses and imaginations are at a stand. Felicity is a continual progress of the desire from one object to another, the attaining of the former being still but the way to the latter. The cause whereof is that the object of man's desire is not to enjoy once only, and for one instant of time, but to assure forever the way of his future desire. And therefore the voluntary actions and inclinations of all men tend not only to the procuring, but also to the assuring of a contented life, and differ only in the way, which ariseth partly from the diversity of passions in diverse men, and partly from the difference of the knowledge or opinion each one has of the causes which produce the effect desired.

So that in the first place, I put for a general inclination of all mankind a perpetual and restless desire of power after power, that ceaseth only in death. And the cause of this is not always that a man hopes for a more intensive delight than he has already attained to, or that he cannot be content with a moderate power, but because he cannot assure the power and means to live well, which he hath present, without the acquisition of more. And from hence it is that kings, whose power is greatest, turn their endeavours to the assuring it at home by laws, or abroad by wars: and when that is done, there succeedeth a new desire; in some, of fame from new conquest; in others, of ease and sensual pleasure; in others, of admiration, or being flattered for excellence in some art or other ability of the mind.

Competition of riches, honour, command, or other power inclineth to contention, enmity, and war, because the way of one competitor to the attaining of his desire is to kill, subdue, supplant, or repel the other. Particularly, competition of praise inclineth to a reverence of antiquity. For men contend with the living, not with the dead; to these ascribing more than due, that they may obscure the glory of the other.

Desire of ease, and sensual delight, disposeth men to obey a common power: because by such desires a man doth abandon the protection that might be hoped for from his own industry and labour. Fear of death and wounds

disposeth to the same, and for the same reason. On the contrary, needy men and hardy, not contented with their present condition, as also all men that are ambitious of military command, are inclined to continue the causes of war and to stir up trouble and sedition: for there is no honour military but by war; nor any such hope to mend an ill game as by causing a new shuffle.

Desire of knowledge, and arts of peace, inclineth men to obey a common power: for such desire containeth a desire of leisure, and consequently protection from some other power than their own.

Desire of praise disposeth to laudable actions, such as please them whose judgement they value; for of those men whom we contemn, we contemn also the praises. Desire of fame after death does the same. And though after death there be no sense of the praise given us on earth, as being joys that are either swallowed up in the unspeakable joys of heaven or extinguished in the extreme torments of hell: yet is not such fame vain; because men have a present delight therein, from the foresight of it, and of the benefit that may redound thereby to their posterity: which though they now see not, yet they imagine; and anything that is pleasure in the sense, the same also is pleasure in the imagination.

To have received from one, to whom we think ourselves equal, greater benefits than there is hope to requite, disposeth to counterfeit love, but really secret hatred, and puts a man into the estate of a desperate debtor that, in declining the sight of his creditor, tacitly wishes him there where he might never see him more. For benefits oblige; and obligation is thraldom; and unrequitable obligation, perpetual thraldom; which is to one's equal, hateful. But to have received benefits from one whom we acknowledge for superior inclines to love; because the obligation is no new depression: and cheerful acceptation (which men call *gratitude*) is such an honour done to the obliger as is taken generally for retribution. Also to receive benefits, though from an equal, or inferior, as long as there is hope of requital, disposeth to love: for in the intention of the receiver, the obligation is of aid and service mutual; from whence proceedeth an emulation of who shall exceed in benefiting; the most noble and profitable contention possible, wherein the victor is pleased with his victory, and the other revenged by confessing it. [...]

CHAPTER XIII: OF THE NATURAL CONDITION OF MANKIND AS CONCERNING THEIR FELICITY AND MISERY

NATURE hath made men so equal in the faculties of body and mind as that, though there be found one man sometimes manifestly stronger in body or of quicker mind than another, yet when all is reckoned together the difference between man and man is not so considerable as that one man can thereupon claim to himself any benefit to which another may not pretend as well as he. For as to the strength of body, the weakest has strength enough to kill the strongest, either by secret machination or by confederacy with others that are in the same danger with himself.

And as to the faculties of the mind, setting aside the arts grounded upon words, and especially that skill of proceeding upon general and infallible rules, called science, which very few have and but in few things, as being not a native faculty born with us, nor attained, as prudence, while we look after somewhat else, I find yet a greater equality amongst men than that of strength. For prudence is but experience, which equal time equally bestows on all men in those things they equally apply themselves unto. That which may perhaps make such equality incredible is but a vain conceit of one's own wisdom, which almost all men think they have in a greater degree than the vulgar; that is, than all men but themselves, and a few others, whom by fame, or for concurring with themselves, they approve. For such is the nature of men that howsoever they may acknowledge many others to be more witty, or more eloquent or more learned, yet they will hardly believe there be many so wise as themselves; for they see their own wit at hand, and other men's at a distance. But this proveth rather that men are in that point equal, than unequal. For there is not ordinarily a greater sign of the equal distribution of anything than that every man is contented with his share.

From this equality of ability ariseth equality of hope in the attaining of our ends. And therefore if any two men desire the same thing, which nevertheless they cannot both enjoy, they become enemies; and in the way to their end (which is principally their own conservation, and sometimes their delectation only) endeavour to destroy or subdue one another. And from hence it comes to pass that where an invader hath no more to fear than another man's single power, if one plant, sow, build, or possess a convenient seat, others may probably be expected to come prepared with forces united to dispossess and deprive him, not only of the fruit of his labour, but also of his life or liberty. And the invader again is in the like danger of another.

And from this diffidence of one another, there is no way for any man to secure himself so reasonable as anticipation; that is, by force, or wiles, to master the persons of all men he can so long till he see no other power great enough to endanger him: and this is no more than his own conservation requireth, and is generally allowed. Also, because there be some that, taking pleasure in contemplating their own power in the acts of conquest, which they pursue farther than their security requires, if others, that otherwise would be glad to be at ease within modest bounds, should not by invasion increase their power, they would not be able, long time, by standing only on their defence, to subsist. And by consequence, such augmentation of dominion over men being necessary to a man's conservation, it ought to be allowed him.

Again, men have no pleasure (but on the contrary a great deal of grief) in keeping company where there is no power able to overawe them all. For every man looketh that his companion should value him at the same rate he sets upon himself, and upon all signs of contempt or undervaluing naturally endeavours, as far as he dares (which amongst them that have no common power to keep them in quiet is far enough to make them destroy each other), to extort a greater value from his contemners, by damage; and from others, by the example.

So that in the nature of man, we find three principal causes of quarrel. First, competition; secondly, diffidence; thirdly, glory.

The first maketh men invade for gain; the second, for safety; and the third, for reputation. The first use violence, to make themselves masters of other men's persons, wives, children, and cattle; the second, to defend them; the third, for trifles, as a word, a smile, a different opinion, and any other sign of undervalue, either direct in their persons or by reflection in their kindred, their friends, their nation, their profession, or their name.

Hereby it is manifest that during the time men live without a common power to keep them all in awe, they are in that condition which is called war; and such a war as is of every man against every man. For WAR consisteth not in battle only, or the act of fighting, but in a tract of time, wherein the will to contend by battle is sufficiently known: and therefore the notion of *time* is to be considered in the nature of war, as it is in the nature of weather. For as the nature of foul weather lieth not in a shower or two of rain, but in an inclination thereto of many days together: so the nature of war consisteth not in actual fighting, but in the known disposition thereto during all the time there is no assurance to the contrary. All other time is PEACE.

Whatsoever therefore is consequent to a time of war, where every man is enemy to every man, the same consequent to the time wherein men live without other security than what their own strength and their own invention shall furnish them withal. In such condition there is no place for industry, because the fruit thereof is uncertain: and consequently no culture of the earth; no navigation, nor use of the commodities that may be imported by sea; no commodious building; no instruments of moving and removing such things as require much force; no knowledge of the face of the earth; no account of time; no arts; no letters; no society; and which is worst of all, continual fear, and danger of violent death; and the life of man, solitary, poor, nasty, brutish, and short.

It may seem strange to some man that has not well weighed these things that Nature should thus dissociate and render men apt to invade and destroy one another: and he may therefore, not trusting to this inference, made from the passions, desire perhaps to have the same confirmed by experience. Let him therefore consider with himself: when taking a journey, he arms himself and seeks to go well accompanied; when going to sleep, he locks his doors; when even in his house he locks his chests; and this when he knows there be laws and public officers, armed, to revenge all injuries shall be done him; what opinion he has of his fellow subjects, when he rides armed; of his fellow citizens, when he locks his doors; and of his children, and servants, when he locks his chests. Does he not there as much accuse mankind by his actions as I do by my words? But neither of us accuse man's nature in it. The desires, and other passions of man, are in themselves no sin. No more are the actions that proceed from those passions till they know a law that forbids them; which till laws be made they cannot know, nor can any law be made till they have agreed upon the person that shall make it.

It may peradventure be thought there was never such a time nor condition of war as this; and I believe it was never generally so, over all the world: but there are many places where they live so now. For the savage people in many places of America, except the government of small families, the concord whereof dependeth on natural lust, have no government at all, and live at this day in that brutish manner, as I said before. Howsoever, it may be perceived what manner of life there would be, where there were no common power to fear, by the manner of life which men that have formerly lived under a peaceful government use to degenerate into a civil war.

But though there had never been any time wherein particular men were in a condition of war one against another, yet in all times kings and persons of sovereign authority, because of their independency, are in continual jealousies, and in the state and posture of gladiators, having their weapons pointing, and their eyes fixed on one another; that is, their forts, garrisons, and guns upon the frontiers of their kingdoms, and continual spies upon their neighbours, which is a posture of war. But because they uphold thereby the industry of their subjects, there does not follow from it that misery which accompanies the liberty of particular men.

To this war of every man against every man, this also is consequent; that nothing can be unjust. The notions of right and wrong, justice and injustice, have there no place. Where there is no common power, there is no law; where no law, no injustice. Force and fraud are in war the two cardinal virtues. Justice and injustice are none of the faculties neither of the body nor mind. If they were, they might be in a man that were alone in the world, as well as his senses and passions. They are qualities that relate to men in society, not in solitude. It is consequent also to the same condition that there be no propriety, no dominion, no *mine* and *thine* distinct; but only that to be every man's that he can get, and for so long as he can keep it. And thus much for the ill condition which man by mere nature is actually placed in; though with a possibility to come out of it, consisting partly in the passions, partly in his reason.

The passions that incline men to peace are: fear of death; desire of such things as are necessary to commodious living; and a hope by their industry to obtain them. And reason suggesteth convenient articles of peace upon which men may be drawn to agreement. These articles are they which otherwise are called the Laws of Nature, whereof I shall speak more particularly in the two following chapters.

CHAPTER XIV: OF THE FIRST AND SECOND NATURAL LAWS, AND OF CONTRACTS

THE RIGHT OF NATURE, which writers commonly call *jus naturale*, is the liberty each man hath to use his own power as he will himself for the preservation of his own nature; that is to say, of his own life; and consequently, of doing anything which, in his own judgement and reason, he shall conceive to be the aptest means thereunto.

By LIBERTY is understood, according to the proper signification of the word, the absence of external impediments; which impediments may oft take away part of a man's power to do what he would, but cannot hinder him from using the power left him according as his judgement and reason shall dictate to him.

A LAW OF NATURE, *lex naturalis*, is a precept, or general rule, found out by reason, by which a man is forbidden to do that which is destructive of his life, or taketh away the means of preserving the same, and to omit that by which he thinketh it may be best preserved. For though they that speak of this subject use to confound *jus* and *lex*, *right* and *law*, yet they ought to be distinguished, because RIGHT consisteth in liberty to do, or to forbear; whereas LAW determineth and bindeth to one of them: so that law and right differ as much as obligation and liberty, which in one and the same matter are inconsistent.

And because the condition of man (as hath been declared in the precedent chapter) is a condition of war of every one against every one, in which case every one is governed by his own reason, and there is nothing he can make use of that may not be a help unto him in preserving his life against his enemies; it followeth that in such a condition every man has a right to every thing, even to one another's body. And therefore, as long as this natural right of every man to every thing endureth, there can be no security to any man, how strong or wise soever he be, of living out the time which nature ordinarily alloweth men to live. And consequently it is a precept, or general rule of reason: *that every man ought to endeavour peace, as far as he has hope of obtaining it; and when he cannot obtain it, that he may seek and use all helps and advantages of war*. The first branch of which rule containeth the first and fundamental law of nature, which is: *to seek peace and follow it*. The second, the sum of the right of nature, which is: *by all means we can, to defend ourselves*.

From this fundamental law of nature, by which men are commanded to endeavour peace, is derived this second law: *that a man be willing, when others are so too, as far forth as for peace and defence of himself he shall think it necessary, to lay down this right to all things; and be contented with so much liberty against other men as he would allow other men against himself*. For as long as every man holdeth this right, of doing anything he liketh; so long are all men in the condition of war. But if other men will not lay down their right, as well as he, then there is no reason for anyone to divest himself of his: for that were to expose himself to prey, which no man is bound to, rather than to dispose himself to peace. This is that law of the gospel: *Whatsoever you require that others should do to you, that do ye to them*. And that law of all men, *quod tibi fieri non vis, alteri ne feceris*.[1]

To *lay down* a man's *right* to any thing is to *divest* himself of the *liberty* of hindering another of the benefit of his own right to the same. For he that renounceth or passeth away his right giveth not to any other man a right which he had not before, because there is nothing to which every man had not right by nature, but only standeth out of his way that he may enjoy his own

original right without hindrance from him, not without hindrance from another. So that the effect which redoundeth to one man by another man's defect of right is but so much diminution of impediments to the use of his own right original.

Right is laid aside, either by simply renouncing it, or by transferring it to another. By *simply* RENOUNCING, when he cares not to whom the benefit thereof redoundeth. By TRANSFERRING, when he intendeth the benefit thereof to some certain person or persons. And when a man hath in either manner abandoned or granted away his right, then is he said to be OBLIGED, or BOUND, not to hinder those to whom such right is granted, or abandoned, from the benefit of it: and that he *ought*, and it is his DUTY, not to make void that voluntary act of his own: and that such hindrance is INJUSTICE, and INJURY, as being *sine jure*; the right being before renounced or transferred. […] The way by which a man either simply renounceth or transferreth his right is a declaration, or signification, by some voluntary and sufficient sign, or signs, that he doth so renounce or transfer, or hath so renounced or transferred the same, to him that accepteth it. […]

Whensoever a man transferreth his right, or renounceth it, it is either in consideration of some right reciprocally transferred to himself, or for some other good he hopeth for thereby. For it is a voluntary act: and of the voluntary acts of every man, the object is some *good to himself*. And therefore there be some rights which no man can be understood by any words, or other signs, to have abandoned or transferred. As first a man cannot lay down the right of resisting them that assault him by force to take away his life, because he cannot be understood to aim thereby at any good to himself. The same may be said of wounds, and chains, and imprisonment, both because there is no benefit consequent to such patience, as there is to the patience of suffering another to be wounded or imprisoned, as also because a man cannot tell when he seeth men proceed against him by violence whether they intend his death or not. And lastly the motive and end for which this renouncing and transferring of right is introduced is nothing else but the security of a man's person, in his life, and in the means of so preserving life as not to be weary of it. And therefore if a man by words, or other signs, seem to despoil himself of the end for which those signs were intended, he is not to be understood as if he meant it, or that it was his will, but that he was ignorant of how such words and actions were to be interpreted.

The mutual transferring of right is that which men call CONTRACT.

[…]

When the transferring of right is not mutual, but one of the parties transferreth in hope to gain thereby friendship or service from another, or from his friends; or in hope to gain the reputation of charity, or magnanimity; or to deliver his mind from the pain of compassion; or in hope of reward in heaven; this is not contract, but GIFT, FREE GIFT, GRACE: which words signify one and the same thing.

Signs of contract are either *express* or *by inference*. Express are words spoken with understanding of what they signify: and such words are

either of the time *present* or *past*; as, *I give, I grant, I have given, I have granted, I will that this be yours*: or of the future; as, *I will give, I will grant*, which words of the future are called PROMISE.

Signs by inference are sometimes the consequence of words; sometimes the consequence of silence; sometimes the consequence of actions; sometimes the consequence of forbearing an action: and generally a sign by inference, of any contract, is whatsoever sufficiently argues the will of the contractor.

Words alone, if they be of the time to come, and contain a bare promise, are an insufficient sign of a free gift and therefore not obligatory. For if they be of the time to come, as, *tomorrow I will give*, they are a sign I have not given yet, and consequently that my right is not transferred, but remaineth till I transfer it by some other act. But if the words be of the time present, or past, as, *I have given*, or *do give to be delivered tomorrow*, then is my tomorrow's right given away today; and that by the virtue of the words, though there were no other argument of my will. […]

In contracts the right passeth, not only where the words are of the time present or past, but also where they are of the future, because all contract is mutual translation, or change of right; and therefore he that promiseth only, because he hath already received the benefit for which he promiseth, is to be understood as if he intended the right should pass: for unless he had been content to have his words so understood, the other would not have performed his part first. And for that cause, in buying, and selling, and other acts of contract, a promise is equivalent to a covenant, and therefore obligatory. […]

If a covenant be made wherein neither of the parties perform presently, but trust one another, in the condition of mere nature (which is a condition of war of every man against every man) upon any reasonable suspicion, it is void: but if there be a common power set over them both, with right and force sufficient to compel performance, it is not void. For he that performeth first has no assurance the other will perform after, because the bonds of words are too weak to bridle men's ambition, avarice, anger, and other passions, without the fear of some coercive power; which in the condition of mere nature, where all men are equal, and judges of the justness of their own fears, cannot possibly be supposed. And therefore he which performeth first does but betray himself to his enemy, contrary to the right he can never abandon of defending his life and means of living.

But in a civil estate, where there a power set up to constrain those that would otherwise violate their faith, that fear is no more reasonable; and for that cause, he which by the covenant is to perform first is obliged so to do.

The cause of fear, which maketh such a covenant invalid, must be always something arising after the covenant made, as some new fact or other sign of the will not to perform, else it cannot make the covenant void. For that which could not hinder a man from promising ought not to be admitted as a hindrance of performing.

He that transferreth any right transferreth the means of enjoying it, as far as lieth in his power. As he that selleth land is understood to transfer the

herbage and whatsoever grows upon it; nor can he that sells a mill turn away the stream that drives it. And they that give to a man the right of government in sovereignty are understood to give him the right of levying money to maintain soldiers, and of appointing magistrates for the administration of justice.

To make covenants with brute beasts is impossible, because not understanding our speech, they understand not, nor accept of any translation of right, nor can translate any right to another: and without mutual acceptation, there is no covenant.

To make covenant with God is impossible but by mediation of such as God speaketh to, either by revelation supernatural or by His lieutenants that govern under Him and in His name: for otherwise we know not whether our covenants be accepted or not. And therefore they that vow anything contrary to any law of nature, vow in vain, as being a thing unjust to pay such vow. And if it be a thing commanded by the law of nature, it is not the vow, but the law that binds them.

The matter or subject of a covenant is always something that falleth under deliberation, for to covenant is an act of the will; that is to say, an act, and the last act, of deliberation; and is therefore always understood to be something to come, and which judged possible for him that covenanteth to perform.

And therefore, to promise that which is known to be impossible is no covenant. But if that prove impossible afterwards, which before was thought possible, the covenant is valid and bindeth, though not to the thing itself, yet to the value; or, if that also be impossible, to the unfeigned endeavour of performing as much as is possible, for to more no man can be obliged.

Men are freed of their covenants two ways; by performing, or by being forgiven. For performance is the natural end of obligation, and forgiveness the restitution of liberty, as being a retransferring of that right in which the obligation consisted.

Covenants entered into by fear, in the condition of mere nature, are obligatory. For example, if I covenant to pay a ransom, or service for my life, to an enemy, I am bound by it. For it is a contract, wherein one receiveth the benefit of life; the other is to receive money, or service for it, and consequently, where no other law (as in the condition of mere nature) forbiddeth the performance, the covenant is valid. Therefore prisoners of war, if trusted with the payment of their ransom, are obliged to pay it: and if a weaker prince make a disadvantageous peace with a stronger, for fear, he is bound to keep it; unless (as hath been said before) there ariseth some new and just cause of fear to renew the war. And even in Commonwealths, if I be forced to redeem myself from a thief by promising him money, I am bound to pay it, till the civil law discharge me. For whatsoever I may lawfully do without obligation, the same I may lawfully covenant to do through fear: and what I lawfully covenant, I cannot lawfully break.

A former covenant makes void a later. For a man that hath passed away his right to one man today hath it not to pass tomorrow to another: and therefore the later promise passeth no right, but is null.

A covenant not to defend myself from force, by force, is always void. For (as I have shown before) no man can transfer or lay down his right to save himself from death, wounds, and imprisonment, the avoiding whereof is the only end of laying down any right; and therefore the promise of not resisting force, in no covenant transferreth any right, nor is obliging. For though a man may covenant thus, *unless I do so, or so, kill me*; he cannot covenant thus, *unless I do so, or so, I will not resist you when you come to kill me*. For man by nature chooseth the lesser evil, which is danger of death in resisting, rather than the greater, which is certain and present death in not resisting. And this is granted to be true by all men, in that they lead criminals to execution, and prison, with armed men, notwithstanding that such criminals have consented to the law by which they are condemned.

A covenant to accuse oneself, without assurance of pardon, is likewise invalid. For in the condition of nature where every man is judge, there is no place for accusation: and in the civil state the accusation is followed with punishment, which, being force, a man is not obliged not to resist. The same is also true of the accusation of those by whose condemnation a man falls into misery; as of a father, wife, or benefactor. For the testimony of such an accuser, if it be not willingly given, is presumed to be corrupted by nature, and therefore not to be received: and where a man's testimony is not to be credited, he is not bound to give it. Also accusations upon torture are not to be reputed as testimonies. For torture is to be used but as means of conjecture, and light, in the further examination and search of truth: and what is in that case confessed tendeth to the ease of him that is tortured, not to the informing of the torturers, and therefore ought not to have the credit of a sufficient testimony: for whether he deliver himself by true or false accusation, he does it by the right of preserving his own life.

The force of words being (as I have formerly noted) too weak to hold men to the performance of their covenants, there are in man's nature but two imaginable helps to strengthen it. And those are either a fear of the consequence of breaking their word, or a glory or pride in appearing not to need to break it. This latter is a generosity too rarely found to be presumed on, especially in the pursuers of wealth, command, or sensual pleasure, which are the greatest part of mankind. The passion to be reckoned upon is fear; whereof there be two very general objects: one, the power of spirits invisible; the other, the power of those men they shall therein offend. Of these two, though the former be the greater power, yet the fear of the latter is commonly the greater fear. The fear of the former is in every man his own religion, which hath place in the nature of man before civil society. The latter hath not so; at least not place enough to keep men to their promises, because in the condition of mere nature, the inequality of power is not discerned, but by the event of battle. So that before the time of civil society, or in the interruption thereof by war, there is nothing can strengthen a covenant of peace agreed on

against the temptations of avarice, ambition, lust, or other strong desire, but the fear of that invisible power which they every one worship as God, and fear as a revenger of their perfidy. All therefore that can be done between two men not subject to civil power is to put one another to swear by the God he feareth: which *swearing*, or OATH, is a *form of speech, added to a promise, by which he that promiseth signifieth that unless he perform he renounceth the mercy of his God, or calleth to him for vengeance on himself*. Such was the heathen form, *Let Jupiter kill me else, as I kill this beast*. So is our form, *I shall do thus, and thus, so help me God*. And this, with the rites and ceremonies which every one useth in his own religion, that the fear of breaking faith might be the greater. […]

CHAPTER XV: OF OTHER LAWS OF NATURE

FROM that law of nature by which we are obliged to transfer to another such rights as, being retained, hinder the peace of mankind, there followeth a third; which is this: *that men perform their covenants made*; without which covenants are in vain, and but empty words; and the right of all men to all things remaining, we are still in the condition of war.

And in this law of nature consisteth the fountain and original of JUSTICE. For where no covenant hath preceded, there hath no right been transferred, and every man has right to everything and consequently, no action can be unjust. But when a covenant is made, then to break it is *unjust* and the definition of INJUSTICE is no other than *the not performance of covenant*. And whatsoever is not unjust is *just*.

But because covenants of mutual trust, where there is a fear of not performance on either part (as hath been said in the former chapter), are invalid, though the original of justice be the making of covenants, yet injustice actually there can be none till the cause of such fear be taken away; which, while men are in the natural condition of war, cannot be done. Therefore before the names of just and unjust can have place, there must be some coercive power to compel men equally to the performance of their covenants, by the terror of some punishment greater than the benefit they expect by the breach of their covenant, and to make good that propriety which by mutual contract men acquire in recompense of the universal right they abandon: and such power there is none before the erection of a Commonwealth. And this is also to be gathered out of the ordinary definition of justice in the Schools, for they say that *justice is the constant will of giving to every man his own*. And therefore where there is no *own*, that is, no propriety, there is no injustice; and where there is no coercive power erected, that is, where there is no Commonwealth, there is no propriety, all men having right to all things: therefore where there is no Commonwealth, there nothing is unjust. So that the nature of justice consisteth in keeping of valid covenants, but the validity of covenants begins not but with the constitution of a civil power sufficient to compel men to keep them: and then it is also that propriety begins.

[…] He, therefore, that breaketh his covenant, and consequently declareth that he thinks he may with reason do so, cannot be received into any society that unite themselves for peace and defence but by the error of them that receive him; nor when he is received be retained in it without seeing the danger of their error; which errors a man cannot reasonably reckon upon as the means of his security: and therefore if he be left, or cast out of society, he perisheth; and if he live in society, it is by the errors of other men, which he could not foresee nor reckon upon, and consequently against the reason of his preservation; and so, as all men that contribute not to his destruction forbear him only out of ignorance of what is good for themselves.

As for the instance of gaining the secure and perpetual felicity of heaven by any way, it is frivolous; there being but one way imaginable, and that is not breaking, but keeping of covenant.

And for the other instance of attaining sovereignty by rebellion; it is manifest that, though the event follow, yet because it cannot reasonably be expected, but rather the contrary, and because by gaining it so, others are taught to gain the same in like manner, the attempt thereof is against reason. Justice therefore, that is to say, keeping of covenant, is a rule of reason by which we are forbidden to do anything destructive to our life, and consequently a law of nature.

There be some that proceed further and will not have the law of nature to be those rules which conduce to the preservation of man's life on earth, but to the attaining of an eternal felicity after death; to which they think the breach of covenant may conduce, and consequently be just and reasonable; such are they that think it a work of merit to kill, or depose, or rebel against the sovereign power constituted over them by their own consent. But because there is no natural knowledge of man's estate after death, much less of the reward that is then to be given to breach of faith, but only a belief grounded upon other men's saying that they know it supernaturally or that they know those that knew them that knew others that knew it supernaturally, breach of faith cannot be called a precept of reason or nature.

Others, that allow for a law of nature the keeping of faith, do nevertheless make exception of certain persons; as heretics, and such as use not to perform their covenant to others; and this also is against reason. For if any fault of a man be sufficient to discharge our covenant made, the same ought in reason to have been sufficient to have hindered the making of it. […]

Whatsoever is done to a man, conformable to his own will signified to the doer, is not injury to him. For if he that doeth it hath not passed away his original right to do what he please by some antecedent covenant, there is no breach of covenant, and therefore no injury done him. And if he have, then his will to have it done, being signified, is a release of that covenant, and so again there is no injury done him. […]

As justice dependeth on antecedent covenant; so does GRATITUDE depend on antecedent grace; that is to say, antecedent free gift; and is the fourth law of nature, which may be conceived in this form: *that a man which receiveth benefit from another of mere grace endeavour that he which giveth*

it have no reasonable cause to repent him of his good will. For no man giveth but with intention of good to himself, because gift is voluntary; and of all voluntary acts, the object is to every man his own good; of which if men see they shall be frustrated, there will be no beginning of benevolence or trust, nor consequently of mutual help, nor of reconciliation of one man to another; and therefore they are to remain still in the condition of *war*, which is contrary to the first and fundamental law of nature which commandeth men to *seek peace*. The breach of this law is called *ingratitude*, and hath the same relation to grace that injustice hath to obligation by covenant.

A fifth law of nature is COMPLAISANCE; that is to say, *that every man strive to accommodate himself to the rest*. [...] For seeing every man, not only by right, but also by necessity of nature, is supposed to endeavour all he can to obtain that which is necessary for his conservation, he that shall oppose himself against it for things superfluous is guilty of the war that thereupon is to follow, and therefore doth that which is contrary to the fundamental law of nature, which commandeth *to seek peace*. […]

A sixth law of nature is this: *that upon caution of the future time, a man ought to pardon the offences past of them that, repenting, desire it*. For PARDON is nothing but granting of peace; which though granted to them that persevere in their hostility, be not peace, but fear; yet not granted to them that give caution of the future time is sign of an aversion to peace, and therefore contrary to the law of nature.

A seventh is: *that in revenges (that is, retribution of evil for evil), men look not at the greatness of the evil past, but the greatness of the good to follow*. Whereby we are forbidden to inflict punishment with any other design than for correction of the offender, or direction of others. For this law is consequent to the next before it, that commandeth pardon upon security of the future time. Besides, revenge without respect to the example and profit to come is a triumph, or glorying in the hurt of another, tending to no end (for the end is always somewhat to come); and glorying to no end is vain-glory, and contrary to reason; and to hurt without reason tendeth to the introduction of war, which is against the law of nature, and is commonly styled by the name of *cruelty*.

And because all signs of hatred, or contempt, provoke to fight; insomuch as most men choose rather to hazard their life than not to be revenged, we may in the eighth place, for a law of nature, set down this precept: *that no man by deed, word, countenance, or gesture, declare hatred or contempt of another*. The breach of which law is commonly called *contumely*.

The question who is the better man has no place in the condition of mere nature, where (as has been shown before) all men are equal. The inequality that now is has been introduced by the laws civil. […] If nature therefore have made men equal, that equality is to be acknowledged: or if nature have made men unequal, yet because men that think themselves equal will not enter into conditions of peace, but upon equal terms, such equality must be admitted. And therefore for the ninth law of nature, I put this: *that*

every man acknowledge another for his equal by nature. The breach of this precept is *pride*.

On this law dependeth another: *that at the entrance into conditions of peace, no man require to reserve to himself any right which he is not content should he reserved to every one of the rest*. As it is necessary for all men that seek peace to lay down certain rights of nature; that is to say, not to have liberty to do all they list, so is it necessary for man's life to retain some: as right to govern their own bodies; enjoy air, water, motion, ways to go from place to place; and all things else without which a man cannot live, or not live well. If in this case, at the making of peace, men require for themselves that which they would not have to be granted to others, they do contrary to the precedent law that commandeth the acknowledgement of natural equality, and therefore also against the law of nature. [...]

Also, if *a man be trusted to judge between man and man*, it is a precept of the law of nature *that he deal equally between them*. For without that, the controversies of men cannot be determined but by war. He therefore that is partial in judgement, doth what in him lies to deter men from the use of judges and arbitrators, and consequently, against the fundamental law of nature, is the cause of war.

[…]

And from this followeth another law: *that such things as cannot he divided be enjoyed in common, if it can be; and if the quantity of the thing permit, without stint; otherwise proportionably to the number of them that have right*. For otherwise the distribution is unequal, and contrary to equity.

But some things there be that can neither be divided nor enjoyed in common. Then, the law of nature which prescribeth equity requireth: *that the entire right, or else (making the use alternate) the first possession, be determined by lot*. For equal distribution is of the law of nature; and other means of equal distribution cannot be imagined.

[…]

And therefore those things which cannot be enjoyed in common, nor divided, ought to be adjudged to the first possessor; and in some cases to the first born, as acquired by lot.

[…] And therefore it is of the law of nature *that they that are at controversy submit their right to the judgement of an arbitrator*.

And seeing every man is presumed to do all things in order to his own benefit, no man is a fit arbitrator in his own cause: and if he were never so fit, yet equity allowing to each party equal benefit, if one be admitted to be judge, the other is to be admitted also; and so the controversy, that is, the cause of war, remains, against the law of nature.

[…]

These are the laws of nature, dictating peace, for a means of the conservation of men in multitudes; and which only concern the doctrine of civil society. There be other things tending to the destruction of particular men; as drunkenness, and all other parts of intemperance, which may therefore also be reckoned amongst those things which the law of nature hath

forbidden, but are not necessary to be mentioned, nor are pertinent enough to this place.

And though this may seem too subtle a deduction of the laws of nature to be taken notice of by all men, whereof the most part are too busy in getting food, and the rest too negligent to understand; yet to leave all men inexcusable, they have been contracted into one easy sum, intelligible even to the meanest capacity; and that is: *Do not that to another which thou wouldest not have done to thyself,* which showeth him that he has no more to do in learning the laws of nature but, when weighing the actions of other men with his own they seem too heavy, to put them into the other part of the balance, and his own into their place, that his own passions and self-love may add nothing to the weight; and then there is none of these laws of nature that will not appear unto him very reasonable.

The laws of nature oblige *in foro interno*; that is to say, they bind to a desire they should take place: but *in foro externo*; that is, to the putting them in act, not always. For he that should be modest and tractable, and perform all he promises in such time and place where no man else should do so, should but make himself a prey to others, and procure his own certain ruin, contrary to the ground of all laws of nature which tend to nature's preservation. And again, he that having sufficient security that others shall observe the same laws towards him, observes them not himself, seeketh not peace, but war, and consequently the destruction of his nature by violence.

And whatsoever laws bind *in foro interno* may be broken, not only by a fact contrary to the law, but also by a fact according to it, in case a man think it contrary. For though his action in this case be according to the law, yet his purpose was against the law; which, where the obligation is *in foro interno,* is a breach.

The laws of nature are immutable and eternal; for injustice, ingratitude, arrogance, pride, iniquity, acception of persons, and the rest can never be made lawful. For it can never be that war shall preserve life, and peace destroy it.

The same laws, because they oblige only to a desire and endeavour, mean an unfeigned and constant endeavour, are easy to be observed. For in that they require nothing but endeavour, he that endeavoureth their performance fulfilleth them; and he that fulfilleth the law is just.

And the science of them is the true and only moral philosophy. For moral philosophy is nothing else but the science of what is *good* and *evil* in the conversation and society of mankind. *Good* and *evil* are names that signify our appetites and aversions, which in different tempers, customs, and doctrines of men are different: and diverse men differ not only in their judgement on the senses of what is pleasant and unpleasant to the taste, smell, hearing, touch, and sight; but also of what is conformable or disagreeable to reason in the actions of common life. Nay, the same man, in diverse times, differs from himself; and one time praiseth, that is, calleth good, what another time he dispraiseth, and calleth evil: from whence arise disputes, controversies, and at last war. And therefore so long as a man is in the

condition of mere nature, which is a condition of war, private appetite is the measure of good and evil: and consequently all men agree on this, that peace is good, and therefore also the way or means of peace, which (as I have shown before) are *justice, gratitude, modesty, equity, mercy*, and the rest of the laws of nature, are good; that is to say, *moral virtues*; and their contrary *vices*, evil. Now the science of virtue and vice is moral philosophy; and therefore the true doctrine of the laws of nature is the true moral philosophy. But the writers of moral philosophy, though they acknowledge the same virtues and vices; yet, not seeing wherein consisted their goodness, nor that they come to be praised as the means of peaceable, sociable, and comfortable living, place them in a mediocrity of passions: as if not the cause, but the degree of daring, made fortitude; or not the cause, but the quantity of a gift, made liberality.

These dictates of reason men used to call by the name of laws, but improperly: for they are but conclusions or theorems concerning what conduceth to the conservation and defence of themselves; whereas law, properly, is the word of him that by right hath command over others. But yet if we consider the same theorems as delivered in the word of God that by right commandeth all things, then are they properly called laws.

CHAPTER XVI: OF PERSONS, AUTHORS, AND THINGS PERSONATED

A PERSON is he *whose words or actions are considered, either as his own, or as representing the words or actions of another man, or of any other thing to whom they are attributed, whether truly or by fiction*.

When they are considered as his own, then is he called a *natural* person: and when they are considered as representing the words and actions of another, then is he a *feigned* or *artificial person*.

The word person is Latin, instead whereof the Greeks have *prosopon*, which signifies the face, as *persona* in Latin signifies the *disguise*, or *outward appearance* of a man, counterfeited on the stage; and sometimes more particularly that part of it which disguiseth the face, as a mask or vizard: and from the stage hath been translated to any representer of speech and action, as well in tribunals as theatres. So that a *person* is the same that an *actor* is, both on the stage and in common conversation; and to *personate* is to *act* or *represent* himself or another; and he that acteth another is said to bear his person, or act in his name (in which sense Cicero useth it where he says, *Unus sustineo tres personas; mei, adversarii, et judicis*: I bear three persons; my own, my adversary's, and the judge's), and is called in diverse occasions, diversely; as a *representer*, or *representative*, a *lieutenant*, a *vicar*, an *attorney*, a *deputy*, a *procurator*, an *actor*, and the like.

Of persons artificial, some have their words and actions *owned* by those whom they represent. And then the person is the *actor*, and he that owneth his words and actions is the AUTHOR, in which case the actor acteth by authority. For that which in speaking of goods and possessions is called an

owner, and in Latin *dominus*, in Greek *kurios*; speaking of actions, is called author. And as the right of possession is called dominion so the right of doing any action is called AUTHORITY. So that by authority is always understood a right of doing any act; and *done by authority*, done by commission or license from him whose right it is.

From hence it followeth that when the actor maketh a covenant by authority, he bindeth thereby the author no less than if he had made it himself; and no less subjecteth him to all the consequences of the same. And therefore all that hath been said formerly (Chapter XIV) of the nature of covenants between man and man in their natural capacity is true also when they are made by their actors, representers, or procurators, that have authority from them, so far forth as is in their commission, but no further.

And therefore he that maketh a covenant with the actor, or representer, not knowing the authority he hath, doth it at his own peril. For no man is obliged by a covenant whereof he is not author, nor consequently by a covenant made against or beside the authority he gave.

When the actor doth anything against the law of nature by command of the author, if he be obliged by former covenant to obey him, not he, but the author breaketh the law of nature: for though the action be against the law of nature, yet it is not his; but, contrarily, to refuse to do it is against the law of nature that forbiddeth breach of covenant.

And he that maketh a covenant with the author, by mediation of the actor, not knowing what authority he hath, but only takes his word; in case such authority be not made manifest unto him upon demand, is no longer obliged: for the covenant made with the author is not valid without his counter-assurance. But if he that so covenanteth knew beforehand he was to expect no other assurance than the actor's word, then is the covenant valid, because the actor in this case maketh himself the author. And therefore, as when the authority is evident, the covenant obligeth the author, not the actor; so when the authority is feigned, it obligeth the actor only, there being no author but himself.

There are few things that are incapable of being represented by fiction. Inanimate things, as a church, a hospital, a bridge, may be personated by a rector, master, or overseer. But things inanimate cannot be authors, nor therefore give authority to their actors: yet the actors may have authority to procure their maintenance, given them by those that are owners or governors of those things. And therefore such things cannot be personated before there be some state of civil government.

Likewise children, fools, and madmen that have no use of reason may be personated by guardians, or curators, but can be no authors during that time of any action done by them, longer than (when they shall recover the use of reason) they shall judge the same reasonable. Yet during the folly he that hath right of governing them may give authority to the guardian. But this again has no place but in a state civil, because before such estate there is no dominion of persons.

An idol, or mere figment of the brain, may be personated, as were the gods of the heathen, which, by such officers as the state appointed, were personated, and held possessions, and other goods […].

The true God may be personated. […]

A multitude of men are made *one* person when they are by one man, or one person, represented; so that it be done with the consent of every one of that multitude in particular. For it is the *unity* of the representer, not the *unity* of the represented, that maketh the person *one*. And it is the representer that beareth the person, and but one person: and *unity* cannot otherwise be understood in multitude.

And because the multitude naturally is not *one*, but *many*, they cannot be understood for one, but in any authors, of everything their representative saith or doth in their name; every man giving their common representer authority from himself in particular, and owning all the actions the representer doth, in case they give him authority without stint: otherwise, when they limit him in what and how far he shall represent them, none of them owneth more than they gave him commission to act.

And if the representative consist of many men, the voice of the greater number must be considered as the voice of them all. […]

Of authors there be two sorts. The first simply so called, which I have before defined to be him that owneth the action of another simply. The second is he that owneth an action or covenant of another conditionally; that is to say, he undertaketh to do it, if the other doth it not, at or before a certain time. […]

THE SECOND PART: OF COMMONWEALTH

CHAPTER XVII: OF THE CAUSES, GENERATION, AND DEFINITION OF A COMMONWEALTH

THE final cause, end, or design of men (who naturally love liberty, and dominion over others) in the introduction of that restraint upon themselves, in which we see them live in Commonwealths, is the foresight of their own preservation, and of a more contented life thereby; that is to say, of getting themselves out from that miserable condition of war which is necessarily consequent, as hath been shown (Chapter XIII), to the natural passions of men when there is no visible power to keep them in awe, and tie them by fear of punishment to the performance of their covenants, and observation of those laws of nature set down in the fourteenth and fifteenth chapters.

For the laws of nature, as *justice*, *equity*, *modesty*, *mercy*, and, in sum, *doing to others as we would be done to*, of themselves, without the terror of some power to cause them to be observed, are contrary to our natural passions, that carry us to partiality, pride, revenge, and the like. And covenants, without the sword, are but words and of no strength to secure a man at all. Therefore, notwithstanding the laws of nature (which every one hath then kept, when he has the will to keep them, when he can do it safely),

if there be no power erected, or not great enough for our security, every man will and may lawfully rely on his own strength and art for caution against all other men. And in all places, where men have lived by small families, to rob and spoil one another has been a trade, and so far from being reputed against the law of nature that the greater spoils they gained, the greater was their honour; and men observed no other laws therein but the laws of honour; that is, to abstain from cruelty, leaving to men their lives and instruments of husbandry. And as small families did then; so now do cities and kingdoms, which are but greater families (for their own security), enlarge their dominions upon all pretences of danger, and fear of invasion, or assistance that may be given to invaders; endeavour as much as they can to subdue or weaken their neighbours by open force, and secret arts, for want of other caution, justly; and are remembered for it in after ages with honour.

Nor is it the joining together of a small number of men that gives them this security; because in small numbers, small additions on the one side or the other make the advantage of strength so great as is sufficient to carry the victory, and therefore gives encouragement to an invasion. The multitude sufficient to confide in for our security is not determined by any certain number, but by comparison with the enemy we fear; and is then sufficient when the odds of the enemy is not of so visible and conspicuous moment to determine the event of war, as to move him to attempt.

And be there never so great a multitude; yet if their actions be directed according to their particular judgements, and particular appetites, they can expect thereby no defence, nor protection, neither against a common enemy, nor against the injuries of one another. For being distracted in opinions concerning the best use and application of their strength, they do not help, but hinder one another, and reduce their strength by mutual opposition to nothing: whereby they are easily, not only subdued by a very few that agree together, but also, when there is no common enemy, they make war upon each other for their particular interests. For if we could suppose a great multitude of men to consent in the observation of justice, and other laws of nature, without a common power to keep them all in awe, we might as well suppose all mankind to do the same; and then there neither would be, nor need to be, any civil government or Commonwealth at all, because there would be peace without subjection.

Nor is it enough for the security, which men desire should last all the time of their life, that they be governed and directed by one judgement for a limited time; as in one battle, or one war. For though they obtain a victory by their unanimous endeavour against a foreign enemy, yet afterwards, when either they have no common enemy, or he that by one part is held for an enemy is by another part held for a friend, they must needs by the difference of their interests dissolve, and fall again into a war amongst themselves.

It is true that certain living creatures, as bees and ants, live sociably one with another (which are therefore by Aristotle numbered amongst political creatures), and yet have no other direction than their particular judgements and appetites; nor speech, whereby one of them can signify to

another what he thinks expedient for the common benefit: and therefore some man may perhaps desire to know why mankind cannot do the same. To which I answer,

First, that men are continually in competition for honour and dignity, which these creatures are not; and consequently amongst men there ariseth on that ground, envy, and hatred, and finally war; but amongst these not so.

Secondly, that amongst these creatures the common good differeth not from the private; and being by nature inclined to their private, they procure thereby the common benefit. But man, whose joy consisteth in comparing himself with other men, can relish nothing but what is eminent.

Thirdly, that these creatures, having not, as man, the use of reason, do not see, nor think they see, any fault in the administration of their common business: whereas amongst men there are very many that think themselves wiser and abler to govern the public better than the rest, and these strive to reform and innovate, one this way, another that way; and thereby bring it into distraction and civil war.

Fourthly, that these creatures, though they have some use of voice in making known to one another their desires and other affections, yet they want that art of words by which some men can represent to others that which is good in the likeness of evil; and evil, in the likeness of good; and augment or diminish the apparent greatness of good and evil, discontenting men and troubling their peace at their pleasure.

Fifthly, irrational creatures cannot distinguish between injury and damage; and therefore as long as they be at ease, they are not offended with their fellows: whereas man is then most troublesome when he is most at ease; for then it is that he loves to show his wisdom, and control the actions of them that govern the Commonwealth.

Lastly, the agreement of these creatures is natural; that of men is by covenant only, which is artificial: and therefore it is no wonder if there be somewhat else required, besides covenant, to make their agreement constant and lasting; which is a common power to keep them in awe and to direct their actions to the common benefit.

The only way to erect such a common power, as may be able to defend them from the invasion of foreigners, and the injuries of one another, and thereby to secure them in such sort as that by their own industry and by the fruits of the earth they may nourish themselves and live contentedly, is to confer all their power and strength upon one man, or upon one assembly of men, that may reduce all their wills, by plurality of voices, unto one will: which is as much as to say, to appoint one man, or assembly of men, to bear their person; and every one to own and acknowledge himself to be author of whatsoever he that so beareth their person shall act, or cause to be acted, in those things which concern the common peace and safety; and therein to submit their wills, every one to his will, and their judgements to his judgement. This is more than consent, or concord; it is a real unity of them all in one and the same person, made by covenant of every man with every man, in such manner as if every man should say to every man: *I authorise and give up*

my right of governing myself to this man, or to this assembly of men, on this condition; that thou give up, thy right to him, and authorise all his actions in like manner. This done, the multitude so united in one person is called a COMMONWEALTH; in Latin, CIVITAS. This is the generation of that great LEVIATHAN, or rather, to speak more reverently, of that *mortal god* to which we owe, under the *immortal God*, our peace and defence. For by this authority, given him by every particular man in the Commonwealth, he hath the use of so much power and strength conferred on him that, by terror thereof, he is enabled to form the wills of them all, to peace at home, and mutual aid against their enemies abroad. And in him consisteth the essence of the Commonwealth; which, to define it, is: *one person, of whose acts a great multitude, by mutual covenants one with another, have made themselves every one the author, to the end he may use the strength and means of them all as he shall think expedient for their peace and common defence*.

And he that carryeth this person is called SOVEREIGN, and said to have *sovereign power*; and every one besides, his SUBJECT.

The attaining to this sovereign power is by two ways. One, by natural force: as when a man maketh his children to submit themselves, and their children, to his government, as being able to destroy them if they refuse; or by war subdueth his enemies to his will, giving them their lives on that condition. The other, is when men agree amongst themselves to submit to some man, or assembly of men, voluntarily, on confidence to be protected by him against all others. This latter may be called a political Commonwealth, or Commonwealth by *Institution*; and the former, a Commonwealth by *acquisition*. And first, I shall speak of a Commonwealth by institution.

CHAPTER XVIII: OF THE RIGHTS OF SOVEREIGNS BY INSTITUTION

A COMMONWEALTH is said to be *instituted* when a *multitude* of men do agree, and *covenant, every one with every one*, that to whatsoever *man*, or *assembly of men*, shall be given by the major part the *right* to *present* the person of them all, that is to say, to be their *representative*; every one, as well he that *voted for it* as he that *voted against it*, shall *authorize* all the actions and judgements of that man, or assembly of men, in the same manner as if they were his own, to the end to live peaceably amongst themselves, and be protected against other men.

From this institution of a Commonwealth are derived all the *rights* and *faculties* of him, or them, on whom the sovereign power is conferred by the consent of the people assembled.

First, because they covenant, it is to be understood they are not obliged by former covenant to anything repugnant hereunto. And consequently they that have already instituted a Commonwealth, being thereby bound by covenant to own the actions and judgements of one, cannot lawfully make a new covenant amongst themselves to be obedient to any other, in anything whatsoever, without his permission. And therefore, they

that are subjects to a monarch cannot without his leave cast off monarchy and return to the confusion of a disunited multitude; nor transfer their person from him that beareth it to another man, other assembly of men: for they are bound, every man to every man, to own and be reputed author of all that already is their sovereign shall do and judge fit to be done; so that any one man dissenting, all the rest should break their covenant made to that man, which is injustice: and they have also every man given the sovereignty to him that beareth their person; and therefore if they depose him, they take from him that which is his own, and so again it is injustice. Besides, if he that attempteth to depose his sovereign be killed or punished by him for such attempt, he is author of his own punishment, as being, by the institution, author of all his sovereign shall do; and because it is injustice for a man to do anything for which he may be punished by his own authority, he is also upon that title unjust. And whereas some men have pretended for their disobedience to their sovereign a new covenant, made, not with men but with God, this also is unjust: for there is no covenant with God but by mediation of somebody that representeth God's person, which none doth but God's lieutenant who hath the sovereignty under God. But this pretence of covenant with God is so evident a lie, even in the pretenders' own consciences, that it is not only an act of an unjust, but also of a vile and unmanly disposition.

Secondly, because the right of bearing the person of them all is given to him they make sovereign, by covenant only of one to another, and not of him to any of them, there can happen no breach of covenant on the part of the sovereign; and consequently none of his subjects, by any pretence of forfeiture, can be freed from his subjection. That he which is made sovereign maketh no covenant with his subjects before hand is manifest; because either he must make it with the whole multitude, as one party to the covenant, or he must make a several covenant with every man. With the whole, as one party, it is impossible, because as they are not one person: and if he make so many several covenants as there be men, those covenants after he hath the sovereignty are void; because what act soever can be pretended by any one of them for breach thereof is the act both of himself, and of all the rest, because done in the person, and by the right of every one of them in particular. Besides, if any one or more of them pretend a breach of the covenant made by the sovereign at his institution, and others or one other of his subjects, or himself alone, pretend there was no such breach, there is in this case no judge to decide the controversy: it returns therefore to the sword again; and every man recovereth the right of protecting himself by his own strength, contrary to the design they had in the institution. It is therefore in vain to grant sovereignty by way of precedent covenant. The opinion that any monarch receiveth his power by covenant, that is to say, on condition, proceedeth from want of understanding this easy truth: that covenants being but words, and breath, have no force to oblige, contain, constrain, or protect any man, but what it has from the public sword; that is, from the untied hands of that man, or assembly of men, that hath the sovereignty, and whose actions are avouched by them all, and performed by the strength of them all, in him

united. But when an assembly of men is made sovereign, then no man imagineth any such covenant to have passed in the institution: for no man is so dull as to say, for example, the people of Rome made a covenant with the Romans to hold the sovereignty on such or such conditions; which not performed, the Romans might lawfully depose the Roman people. That men see not the reason to be alike in a monarchy and in a popular government proceedeth from the ambition of some that are kinder to the government of an assembly, whereof they may hope to participate, than of monarchy, which they despair to enjoy.

Thirdly, because the major part hath by consenting voices declared a sovereign, he that dissented must now consent with the rest; that is, be contented to avow all the actions he shall do, or else justly be destroyed by the rest. For if he voluntarily entered into the congregation of them that were assembled, he sufficiently declared thereby his will, and therefore tacitly covenanted, to stand to what the major part should ordain: and therefore if he refuse to stand thereto, or make protestation against any of their decrees, he does contrary to his covenant, and therefore unjustly. And whether he be of the congregation or not, and whether his consent be asked or not, he must either submit to their decrees or be left in the condition of war he was in before; wherein he might without injustice be destroyed by any man whatsoever.

Fourthly, because every subject is by this institution author of all the actions and judgements of the sovereign instituted, it follows that whatsoever he doth, can be no injury to any of his subjects; nor ought he to be by any of them accused of injustice. For he that doth anything by authority from another doth therein no injury to him by whose authority he acteth: but by this institution of a Commonwealth every particular man is author of all the sovereign doth; and consequently he that complaineth of injury from his sovereign complaineth of that whereof he himself is author, and therefore ought not to accuse any man but himself; no, nor himself of injury, because to do injury to oneself is impossible. It is true that they that have sovereign power may commit iniquity, but not injustice or injury in the proper signification.

Fifthly, and consequently to that which was said last, no man that hath sovereign power can justly be put to death, or otherwise in any manner by his subjects punished. For seeing every subject is author of the actions of his sovereign, he punisheth another for the actions committed by himself.

And because the end of this institution is the peace and defence of them all, and whosoever has right to the end has right to the means, it belonged of right to whatsoever man or assembly that hath the sovereignty to be judge both of the means of peace and defence, and also of the hindrances and disturbances of the same; and to do whatsoever he shall think necessary to be done, both beforehand, for the preserving of peace and security, by prevention of discord at home, and hostility from abroad; and when peace and security are lost, for the recovery of the same. And therefore,

Sixthly, it is annexed to the sovereignty to be judge of what opinions and doctrines are averse, and what conducing to peace; and consequently, on what occasions, how far, and what men are to be trusted withal in speaking to multitudes of people; and who shall examine the doctrines of all books before they be published. For the actions of men proceed from their opinions, and in the well governing of opinions consisteth the well governing of men's actions in order to their peace and concord. And though in matter of doctrine nothing to be regarded but the truth, yet this is not repugnant to regulating of the same by peace. For doctrine repugnant to peace can no more be true, than peace and concord can be against the law of nature. It is true that in a Commonwealth, where by the negligence or unskillfulness of governors and teachers false doctrines are by time generally received, the contrary truths may be generally offensive: yet the most sudden and rough bustling in of a new truth that can be does never break the peace, but only sometimes awake the war. For those men that are so remissly governed that they dare take up arms to defend or introduce an opinion are still in war; and their condition, not peace, but only a cessation of arms for fear of one another; and they live, as it were, in the procincts of battle continually. It belonged therefore to him that hath the sovereign power to be judge, or constitute all judges of opinions and doctrines, as a thing necessary to peace; thereby to prevent discord and civil war.

Seventhly, is annexed to the sovereignty the whole power of prescribing the rules whereby every man may know what goods he may enjoy, and what actions he may do, without being molested by any of his fellow subjects: and this is it men call *propriety*. For before constitution of sovereign power, as hath already been shown, all men had right to all things, which necessarily causeth war: and therefore this propriety, being necessary to peace, and depending on sovereign power, is the act of that power, in order to the public peace. These rules of propriety (or *meum* and *tuum*) and of *good*, *evil*, *lawful*, and *unlawful* in the actions of subjects are the civil laws; that is to say, the laws of each Commonwealth in particular; though the name of civil law be now restrained to the ancient civil laws of the city of Rome; which being the head of a great part of the world, her laws at that time were in these parts the civil law.

Eighthly, is annexed to the sovereignty the right of judicature; that is to say, of hearing and deciding all controversies which may arise concerning law, either civil or natural, or concerning fact. For without the decision of controversies, there is no protection of one subject against the injuries of another; the laws concerning *meum* and *tuum* are in vain, and to every man remaineth, from the natural and necessary appetite of his own conservation, the right of protecting himself by his private strength, which is the condition of war, and contrary to the end for which every Commonwealth is instituted. […]

These are the rights which make the essence of sovereignty, and which are the marks whereby a man may discern in what man, or assembly of men, the sovereign power is placed and resideth. For these are

incommunicable and inseparable. The power to coin money, to dispose of the estate and persons of infant heirs, to have pre-emption in markets, and all other statute prerogatives may be transferred by the sovereign, and yet the power to protect his subjects be retained. But if he transfer the *militia*, he retains the judicature in vain, for want of execution of the laws; or if he grant away the power of raising money, the militia is in vain; or if he give away the government of doctrines, men will be frighted into rebellion with the fear of spirits. And so if we consider any one of the said rights, we shall presently see that the holding of all the rest will produce no effect in the conservation of peace and justice, the end for which all Commonwealths are instituted. And this division is it whereof it is said, *a kingdom divided in itself* cannot stand: for unless this division precede, division into opposite armies can never happen. If there had not first been an opinion received of the greatest part of England that these powers were divided between the King and the Lords and the House of Commons, the people had never been divided and fallen into this Civil War; first between those that disagreed in politics, and after between the dissenters about the liberty of religion, which have so instructed men in this point of sovereign right that there be few now in England that do not see that these rights are inseparable, and will be so generally acknowledged at the next return of peace; and so continue, till their miseries are forgotten, and no longer, except the vulgar be better taught than they have hitherto been.

And because they are essential and inseparable rights, it follows necessarily that in whatsoever words any of them seem to be granted away, yet if the sovereign power itself be not in direct terms renounced and the name of sovereign no more given by the grantees to him that grants them, the grant is void: for when he has granted all he can, if we grant back the sovereignty, all is restored, as inseparably annexed thereunto.

[…]

But a man may here object that the condition of subjects is very miserable, as being obnoxious to the lusts and other irregular passions of him or them that have so unlimited a power in their hands. And commonly they that live under a monarch think it the fault of monarchy; and they that live under the government of democracy, or other sovereign assembly, attribute all the inconvenience to that form of Commonwealth; whereas the power in all forms, if they be perfect enough to protect them, is the same: not considering that the estate of man can never be without some incommodity or other; and that the greatest that in any form of government can possibly happen to the people in general is scarce sensible, in respect of the miseries and horrible calamities that accompany a civil war, or that dissolute condition of masterless men without subjection to laws and a coercive power to tie their hands from rapine and revenge: nor considering that the greatest pressure of sovereign governors proceedeth, not from any delight or profit they can expect in the damage weakening of their subjects, in whose vigour consisteth their own strength and glory, but in the restiveness of themselves that, unwillingly contributing to their own defence, make it necessary for their governors to draw from them what they can in time of peace that they may

have means on any emergent occasion, or sudden need, to resist or take advantage on their enemies. For all men are by nature provided of notable multiplying glasses (that is their passions and self-love) through which every little payment appeareth a great grievance, but are destitute of those prospective glasses (namely moral and civil science) to see afar off the miseries that hang over them and cannot without such payments be avoided.

CHAPTER XIX: OF THE SEVERAL KINDS OF COMMONWEALTH BY INSTITUTION, AND OF SUCCESSION TO THE SOVEREIGN POWER

THE difference of Commonwealths consisteth in the difference of the sovereign, or the person representative of all and every one of the multitude. And because the sovereignty is either in one man, or in an assembly of more than one; and into that assembly either every man hath right to enter, or not every one, but certain men distinguished from the rest; it is manifest there can be but three kinds of Commonwealth. For the representative must needs be one man, or more; and if more, then it is the assembly of all, or but of a part. When the representative is one man, then is the Commonwealth a MONARCHY; when an assembly of all that will come together, then it is a DEMOCRACY, or popular Commonwealth; when an assembly of a part only, then it is called an ARISTOCRACY. Other kind of Commonwealth there can be none: for either one, or more, or all, must have the sovereign power (which I have shown to be indivisible) entire.

There be other names of government in the histories and books of policy; as tyranny and oligarchy; but they are not the names of other forms of government, but of the same forms misliked. For they that are discontented under monarchy call it *tyranny*; and they that are displeased with *aristocracy* call it *oligarchy*: so also, they which find themselves grieved under a *democracy* call it *anarchy*, which signifies want of government; and yet I think no man believes that want of government is any new kind of government: nor by the same reason ought they to believe that the government is of one kind when they like it, and another when they mislike it or are oppressed by the governors.

It is manifest that men who are in absolute liberty may, if they please, give authority to one man to represent them every one, as well as give such authority to any assembly of men whatsoever; and consequently may subject themselves, if they think good, to a monarch as absolutely as to other representative. Therefore, where there is already erected a sovereign power, there can be no other representative of the same people, but only to certain particular ends, by the sovereign limited. For that were to erect two sovereigns; and every man to have his person represented by two actors that, by opposing one another, must needs divide that power, which (if men will live in peace) is indivisible; and thereby reduce the multitude into the condition of war, contrary to the end for which all sovereignty is instituted. And therefore as it is absurd to think that a sovereign assembly, inviting the people of their dominion to send up their deputies with power to make known

their advice or desires should therefore hold such deputies, rather than themselves, for the absolute representative of the people; so it is absurd also to think the same in a monarchy. And I know not how this so manifest a truth should of late be so little observed: that in a monarchy he that had the sovereignty from a descent of six hundred years was alone called sovereign, had the title of Majesty from every one of his subjects, and was unquestionably taken by them for their king, was notwithstanding never considered as their representative; that name without contradiction passing for the title of those men which at his command were sent up by the people to carry their petitions and give him, if he permitted it, their advice. Which may serve as an admonition for those that are the true and absolute representative of a people, to instruct men in the nature of that office, and to take heed how they admit of any other general representation upon any occasion whatsoever, if they mean to discharge the trust committed to them.

The difference between these three kinds of Commonwealth consisteth, not in the difference of power, but in the difference of convenience or aptitude to produce the peace and security of the people; for which end they were instituted. And to compare monarchy with the other two, we may observe: first, that whosoever beareth the person of the people, or is one of that assembly that bears it, beareth also his own natural person. And though he be careful in his politic person to procure the common interest, yet he is more, or no less, careful to procure the private good of himself, his family, kindred and friends; and for the most part, if the public interest chance to cross the private, he prefers the private: for the passions of men are commonly more potent than their reason. From whence it follows that where the public and private interest are most closely united, there is the public most advanced. Now in monarchy the private interest is the same with the public. The riches, power, and honour of a monarch arise only from the riches, strength, and reputation of his subjects. For no king can be rich, nor glorious, nor secure, whose subjects are either poor, or contemptible, or too weak through want, or dissension, to maintain a war against their enemies; whereas in a democracy, or aristocracy, the public prosperity confers not so much to the private fortune of one that is corrupt, or ambitious, as doth many times a perfidious advice, a treacherous action, or a civil war.

Secondly, that a monarch receiveth counsel of whom, when, and where he pleaseth; and consequently may hear the opinion of men versed in the matter about which he deliberates, of what rank or quality soever, and as long before the time of action and with as much secrecy as he will. But when a sovereign assembly has need of counsel, none are admitted but such as have a right thereto from the beginning; which for the most part are of those who have been versed more in the acquisition of wealth than of knowledge, and are to give their advice in long discourses which may, and do commonly, excite men to action, but not govern them in it. For the *understanding* is by the flame of the passions never enlightened, but dazzled: nor is there any place or time wherein an assembly can receive counsel secrecy, because of their own multitude.

Thirdly, that the resolutions of a monarch are subject to no other inconstancy than that of human nature; but in assemblies, besides that of nature, there ariseth an inconstancy from the number. For the absence of a few that would have the resolution, once taken, continue firm (which may happen by security, negligence, or private impediments), or the diligent appearance of a few of the contrary opinion, undoes today all that was concluded yesterday.

Fourthly, that a monarch cannot disagree with himself, out of envy or interest; but an assembly may; and that to such a height as may produce a civil war.

Fifthly, that in monarchy there is this inconvenience; that any subject, by the power of one man, for the enriching of a favourite or flatterer, may be deprived of all he possesseth; which I confess is a great an inevitable inconvenience. But the same may as well happen where the sovereign power is in an assembly: for their power is the same; and they are as subject to evil counsel, and to be seduced by orators, as a monarch by flatterers; and becoming one another's flatterers, serve one another's covetousness and ambition by turns. And whereas the favourites of monarchs are few, and they have none else to advance but their own kindred; the favourites of an assembly are many, and the kindred much more numerous than of any monarch. Besides, there is no favourite of a monarch which cannot as well succour his friends as hurt his enemies: but orators, that is to say, favourites of sovereign assemblies, though they have great power to hurt, have little to save. For to accuse requires less eloquence (such is man's nature) than to excuse; and condemnation, than absolution, more resembles justice.

[…]

Therefore it is manifest that by the institution of monarchy, the disposing of the successor is always left to the judgement and will of the present possessor.

And for the question which may arise sometimes, who it is that the monarch in possession hath designed to the succession and inheritance of his power, it is determined by his express words and testament; or by other tacit signs sufficient.

[…]

But if it be lawful for a monarch to dispose of the succession by words of contract, or testament, men may perhaps object a great inconvenience: for he may sell or give his right of governing to a stranger; which, because strangers (that is, men not used to live under the same government, nor speaking the same language) do commonly undervalue one another, may turn to the oppression of his subjects, which is indeed a great inconvenience: but it proceedeth not necessarily from the subjection to a stranger's government, but from the unskillfulness of the governors, ignorant of the true rules of politics. And therefore the Romans, when they had subdued many nations, to make their government digestible were wont to take away that grievance as much as they thought necessary by giving sometimes to whole nations, and sometimes to principal men of every nation they conquered, not

only the privileges, but also the name of Romans; and took many of them into the Senate, and offices of charge, even in the Roman city. And this was it our most wise king, King James, aimed at in endeavouring the union of his two realms of England and Scotland. Which, if he could have obtained, had in all likelihood prevented the civil wars which both those kingdoms, at this present, miserable. It is not therefore any injury to the people for a monarch to dispose of the succession by will; though by the fault of many princes, it hath been sometimes found inconvenient. Of the lawfulness of it, this also is an argument; that whatsoever inconvenience can arrive by giving a kingdom to a stranger, may arrive also by so marrying with strangers, as the right of succession may descend upon them: yet this by all men is accounted lawful.

CHAPTER XX: OF DOMINION PATERNAL AND DESPOTICAL

A COMMONWEALTH *by acquisition* is that where the sovereign power is acquired by force; and it is acquired by force when men singly, or many together by plurality of voices, for fear of death, or bonds, do authorise all the actions of that man, or assembly, that hath their lives and liberty in his power.

And this kind of dominion, or sovereignty, differeth from sovereignty by institution only in this, that men who choose their sovereign do it for fear of one another, and not of him whom they institute: but in this case, they subject themselves to him they are afraid of. In both cases they do it for fear: which is to be noted by them that hold all such covenants, as proceed from fear of death or violence, void: which, if it were true, no man in any kind of Commonwealth could be obliged to obedience. It is true that in a Commonwealth once instituted, or acquired, promises proceeding from fear of death or violence are no covenants, nor obliging, when the thing promised is contrary to the laws; but the reason is not because it was made upon fear, but because he that promiseth hath no right in the thing promised. Also, when he may lawfully perform, and doth not, it is not the invalidity of the covenant that absolveth him, but the sentence of the sovereign. Otherwise, whensoever a man lawfully promiseth, he unlawfully breaketh: but when the sovereign, who is the actor, acquitteth him, then he is acquitted by him that extorted the promise, as by the author of such absolution.

But the rights and consequences of sovereignty are the same in both. His power cannot, without his consent, be transferred to another: he cannot forfeit it: he cannot be accused by any of his subjects of injury: he cannot be punished by them: he is judge of what is necessary for peace, and judge of doctrines: he is sole legislator, and supreme judge of controversies, and of the times and occasions of war and peace: to him it belonged to choose magistrates, counsellors, commanders, and all other officers and ministers; and to determine of rewards and punishments, honour and order. The reasons whereof are the same which are alleged in the precedent chapter for the same rights and consequences of sovereignty by institution.

Dominion is acquired two ways: by generation and by conquest. The right of dominion by generation is that which the parent hath over his

children, and is called PATERNAL. And is not so derived from the generation, as if therefore the parent had dominion over his child because he begat him, but from the child's consent, either express or by other sufficient arguments declared. For as to the generation, God hath ordained to man a helper, and there be always two that are equally parents: the dominion therefore over the child should belong equally to both, and he be equally subject to both, which is impossible; for no man can obey two masters. And whereas some have attributed the dominion to the man only, as being of the more excellent sex, they misreckon in it. For there is not always that difference of strength or prudence between the man and the woman as that the right can be determined without war. In Commonwealths this controversy is decided by the civil law: and for the most part, but not always, the sentence is in favour of the father, because for the most part Commonwealths have been erected by the fathers, not by the mothers of families. But the question lieth now in the state of mere nature where there are supposed no laws of matrimony, no laws for the education of children, but the law of nature and the natural inclination of the sexes, one to another, and to their children. In this condition of mere nature, either the parents between themselves dispose of the dominion over the child by contract, or do not dispose thereof at all. If they dispose thereof, the right passeth according to the contract. We find in history that the Amazons contracted with the men of the neighbouring countries, to whom they had recourse for issue, that the issue male should be sent back, but the female remain with themselves: so that the dominion of the females was in the mother.

If there be no contract, the dominion is in the mother. For in the condition of mere nature, where there are no matrimonial laws, it cannot be known who is the father unless it be declared by the mother; and therefore the right of dominion over the child dependeth on her will, and is consequently hers. Again, seeing the infant is first in the power of the mother, so as she may either nourish or expose it; if she nourish it, it oweth its life to the mother, and is therefore obliged to obey her rather than any other; and by consequence the dominion over it is hers. But if she expose it, and another find and nourish it, dominion is in him that nourisheth it. For it ought to obey him by whom it is preserved, because preservation of life being the end for which one man becomes subject to another, every man is supposed to promise obedience to him in whose power it is to save or destroy him.

If the mother be the father's subject, the child is in the father's power; and if the father be the mother's subject (as when a sovereign queen marrieth one of her subjects), the child is subject to the mother, because the father also is her subject.

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He that hath the dominion over the child hath dominion also over the children of the child, and over their children's children. For he that hath dominion over the person of a man hath dominion over all that is his, without which dominion were but a title without the effect.

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Dominion acquired by conquest, or victory in war, is that which some writers call DESPOTICAL from *Despotes*, which signifieth a *lord* or *master*, and is the dominion of the master over his servant. And this dominion is then acquired to the victor when the vanquished, to avoid the present stroke of death, covenanteth, either in express words or by other sufficient signs of the will, that so long as his life and the liberty of his body is allowed him, the victor shall have the use thereof at his pleasure. And after such covenant made, the vanquished is a SERVANT, and not before: for by the word *servant* (whether it be derived from *servire*, to serve, or from *servare*, to save, which I leave to grammarians to dispute) is not meant a captive, which is kept in prison, or bonds, till the owner of him that took him, or bought him of one that did, shall consider what to do with him: for such men, commonly called slaves, have no obligation at all; but may break their bonds, or the prison; and kill, or carry away captive their master, justly: but one that, being taken, hath corporal liberty allowed him; and upon promise not to run away, nor to do violence to his master, is trusted by him.

It is not therefore the victory that giveth the right of dominion over the vanquished, but his own covenant. Nor is he obliged because he is conquered; that is to say, beaten, and taken, or put to flight; but because he cometh in and submitteth to the victor; nor is the victor obliged by an enemy's rendering himself, without promise of life, to spare him for this his yielding to discretion; which obliges not the victor longer than in his own discretion he shall think fit.

And that which men do when they demand, as it is now called, *quarter* (which the Greeks called *Zogria*, *taking alive*) is to evade the present fury of the victor by submission, and to compound for their life with ransom or service: and therefore he that hath quarter hath not his life given, but deferred till further deliberation; for it is not a yielding on condition of life, but to discretion. And then only is his life in security, and his service due, when the victor hath trusted him with his corporal liberty. For slaves that work in prisons, or fetters, do it not of duty, but to avoid the cruelty of their task-masters.

The master of the servant is master also of all he hath, and may exact the use thereof; that is to say, of his goods, of his labour, of his servants, and of his children, as often as he shall think fit. For he holdeth his life of his master by the covenant of obedience; that is, of owning and authorising whatsoever the master shall do. And in case the master, if he refuse, kill him, or cast him into bonds, or otherwise punish him for his disobedience, he is himself the author of the same, and cannot accuse him of injury.

In sum, the rights and consequences of both *paternal* and *despotical* dominion are the very same with those of a sovereign by institution; and for the same reasons: which reasons are set down in the precedent chapter. So that for a man that is monarch of diverse nations, he hath in one the sovereignty by institution of the people assembled, and in another by conquest; that is by the submission of each particular, to avoid death or bonds; to demand of one nation more than of the other, from the title of conquest, as

being a conquered nation, is an act of ignorance of the rights of sovereignty. For the sovereign is absolute over both alike; or else there is no sovereignty at all, and so every man may lawfully protect himself, if he can, with his own sword, which is the condition of war.

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So that it appeareth plainly, to my understanding, both from reason and Scripture, that the sovereign power, whether placed in one man, as in monarchy, or in one assembly of men, as in popular and aristocratical Commonwealths, is as great as possibly men can be imagined to make it. And though of so unlimited a power, men may fancy many evil consequences, yet the consequences of the want of it, which is perpetual war of every man against his neighbour, are much worse. The condition of man in this life shall never be without inconveniences; but there happeneth in no Commonwealth any great inconvenience but what proceeds from the subjects' disobedience and breach of those covenants from which the Commonwealth hath its being. And whosoever, thinking sovereign power too great, will seek to make it less, must subject himself to the power that can limit it; that is to say, to a greater.

The greatest objection is that of the practice; when men ask where and when such power has by subjects been acknowledged. But one may ask them again, when or where has there been a kingdom long free from sedition and civil war? In those nations whose Commonwealths have been long-lived, and not been destroyed but by foreign war, the subjects never did dispute of the sovereign power. But howsoever, an argument from the practice of men that have not sifted to the bottom, and with exact reason weighed the causes and nature of Commonwealths, and suffer daily those miseries that proceed from the ignorance thereof, is invalid. For though in all places of the world men should lay the foundation of their houses on the sand, it could not thence be inferred that so it ought to be. The skill of making and maintaining Commonwealths consisteth in certain rules, as doth arithmetic and geometry; not, as tennis play, on practice only: which rules neither poor men have the leisure, nor men that have had the leisure have hitherto had the curiosity or the method, to find out.

CHAPTER XXI: OF THE LIBERTY OF SUBJECTS

LIBERTY, or FREEDOM, signifieth properly the absence of opposition (by opposition, I mean external impediments of motion); and may be applied no less to irrational and inanimate creatures than to rational. For whatsoever is so tied, or environed, as it cannot move but within a certain space, which space is determined by the opposition of some external body, we say it hath not liberty to go further. And so of all living creatures, whilst they are imprisoned, or restrained with walls or chains; and of the water whilst it is kept in by banks or vessels that otherwise would spread itself into a larger space; we use to say they are not at liberty to move in such manner as without those external impediments they would. But when the impediment of motion is in the constitution of the thing itself, we use not to say it wants the liberty, but the

power, to move; as when a stone lieth still, or a man is fastened to his bed by sickness.

And according to this proper and generally received meaning of the word, a FREEMAN *is he that, in those things which by his strength and wit he is able to do, is not hindered to do what he has a will to*. But when the words *free* and *liberty* are applied to anything but *bodies*, they are abused; for that which is not subject to motion is not to subject to impediment: and therefore, when it is said, for example, the way is free, no liberty of the way is signified, but of those that walk in it without stop. And when we say a gift is free, there is not meant any liberty of the gift, but of the giver, that was not bound by any law or covenant to give it. So when we *speak freely*, it is not the liberty of voice, or pronunciation, but of the man, whom no law hath obliged to speak otherwise than he did. Lastly, from the use of the words *free will*, no liberty can be inferred of the will, desire, or inclination, but the liberty of the man; which consisteth in this, that he finds no stop in doing what he has the will, desire, or inclination to do.

Fear and liberty are consistent: as when a man throweth his goods into the sea for *fear* the ship should sink, he doth it nevertheless very willingly, and may refuse to do it if he will; it is therefore the action of one that was *free*: so a man sometimes pays his debt, only for *fear* of imprisonment, which, because no body hindered him from detaining, was the action of a man at *liberty*. And generally all actions which men do in Commonwealths, for *fear* of the law, are actions which the doers had *liberty* to omit.

Liberty and *necessity* are consistent: as in the water that hath not only *liberty*, but a *necessity* of descending by the channel; so, likewise in the actions which men voluntarily do, which, because they proceed their will, proceed from *liberty*, and yet because every act of man's will and every desire and inclination proceedeth from some cause, and that from another cause, in a continual chain (whose first link is in the hand of God, the first of all causes), proceed from *necessity*. So that to him that could see the connexion of those causes, the *necessity* of all men's voluntary actions would appear manifest. And therefore God, that seeth and disposeth all things, seeth also that the *liberty* of man in doing what he will is accompanied with the *necessity* of doing that which God will and no more, nor less. For though men may do many things which God does not command, nor is therefore author of them; yet they can have no passion, nor appetite to anything, of which appetite God's will is not the cause. And did not His will assure the *necessity* of man's will, and consequently of all that on man's will dependeth, the *liberty* of men would be a contradiction and impediment to the omnipotence and *liberty* of God. And this shall suffice, as to the matter in hand, of that natural *liberty*, which only is properly called *liberty*.

But as men, for the attaining of peace and conservation of themselves thereby, have made an artificial man, which we call a Commonwealth; so also have they made artificial chains, called *civil laws*, which they themselves, by mutual covenants, have fastened at one end to the lips of that man, or

assembly, to whom they have given the sovereign power, and at the other to their own ears. These bonds, in their own nature but weak, may nevertheless be made to hold, by the danger, though not by the difficulty of breaking them.

In relation to these bonds only it is that I am to speak now of the *liberty* of *subjects*. For seeing there is no Commonwealth in the world wherein there be rules enough set down for the regulating of all the actions and words of men (as being a thing impossible): it followeth necessarily that in all kinds of actions, by the laws pretermitted, men have the liberty of doing what their own reasons shall suggest for the most profitable to themselves. For if we take liberty in the proper sense, for corporal liberty; that is to say, freedom from chains and prison, it were very absurd for men to clamour as they do for the liberty they so manifestly enjoy. Again, if we take liberty for an exemption from laws, it is no less absurd for men to demand as they do that liberty by which all other men may be masters of their lives. And yet as absurd as it is, this is it they demand, not knowing that the laws are of no power to protect them without a sword in the hands of a man, or men, to cause those laws to be put in execution. The liberty of a subject lieth therefore only in those things which, in regulating their actions, the sovereign hath pretermitted: such as is the liberty to buy, and sell, and otherwise contract with one another; to choose their own abode, their own diet, their own trade of life, and institute their children as they themselves think fit; and the like.

Nevertheless we are not to understand that by such liberty the sovereign power of life and death is either abolished or limited. For it has been already shown that nothing the sovereign representative can do to a subject, on what pretence soever, can properly be called injustice or injury; because every subject is author of every act the sovereign doth, so that he never wanteth right to any thing, otherwise than as he himself is the subject of God, and bound thereby to observe the laws of nature. And therefore it may and doth often happen in Commonwealths that a subject may be put to death by the command of the sovereign power, and yet neither do the other wrong; […]

The liberty whereof there is so frequent and honourable mention in the histories and philosophy of the ancient Greeks and Romans, and in the writings and discourse of those that from them have received all their learning in the politics, is not the liberty of particular men, but the liberty of the Commonwealth: which is the same with that which every man then should have, if there were no civil laws nor Commonwealth at all. And the effects of it also be the same. For as amongst masterless men, there is perpetual war of every man against his neighbour; no inheritance to transmit to the son, nor to expect from the father; no propriety of goods or lands; no security; but a full and absolute liberty in every particular man: so in states and Commonwealths not dependent on one another, every Commonwealth, not every man, has an absolute liberty to do what it shall judge, that is to say, what that man or assembly that representeth it shall judge, most conducing to their benefit. But withal, they live in the condition of a perpetual war, and upon the confines of battle, with their frontiers armed, and cannons planted against their

neighbours round about. The Athenians and Romans were free; that is, free Commonwealths: not that any particular men had the liberty to resist their own representative, but that their representative had the liberty to resist, or invade, other people. There is written on the turrets of the city of Luca in great characters at this day, the word LIBERTAS; yet no man can thence infer that a particular man has more liberty or immunity from the service of the Commonwealth there than in Constantinople. Whether a Commonwealth be monarchical or popular, the freedom is still the same.

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To come now to the particulars of the true liberty of a subject; that is to say, what are the things which, though commanded by the sovereign, he may nevertheless without injustice refuse to do; we are to consider what rights we pass away when we make a Commonwealth; or, which is all one, what liberty we deny ourselves by owning all the actions, without exception, of the man or assembly we make our sovereign. For in the act of our *submission* consisteth both our *obligation* and our *liberty*; which must therefore be inferred by arguments taken from thence; there being no obligation on any man which ariseth not from some act of his own; for all men equally are by nature free. And because such arguments must either be drawn from the express words, "*I authorise all his actions*," or from the intention of him that submitteth himself to his power (which intention is to be understood by the end for which he so submitteth), the obligation and liberty of the subject is to be derived either from those words, or others equivalent, or else from the end of the institution of sovereignty; namely, the peace of the subjects within themselves, and their defence against a common enemy.

First therefore, seeing sovereignty by institution is by covenant of every one to every one; and sovereignty by acquisition, by covenants of the vanquished to the victor, or child to the parent; it is manifest that every subject has liberty in all those things the right whereof cannot by covenant be transferred. I have shown before, in the fourteenth Chapter, that covenants not to defend a man's own body are void. Therefore,

If the sovereign command a man, though justly condemned, to kill, wound, or maim himself; or not to resist those that assault him; or to abstain from the use of food, air, medicine, or any other thing without which he cannot live; yet hath that man the liberty to disobey.

If a man be interrogated by the sovereign, or his authority, concerning a crime done by himself, he is not bound (without assurance of pardon) to confess it; because no man, as I have shown in the same chapter, can be obliged by covenant to accuse himself.

Again, the consent of a subject to sovereign power is contained in these words, "*I authorise, or take upon me, all his actions*"; in which there is no restriction at all of his own former natural liberty: for by allowing him to *kill me*, I am not bound to kill myself when he commands me. It is one thing to say, "*Kill me, or my fellow, if you please*"; another thing to say, "*I will kill myself, or my fellow*." It followeth, therefore, that

No man is bound by the words themselves, either to kill himself or any other man; and consequently, that the obligation a man may sometimes have, upon the command of the sovereign, to execute any dangerous or dishonourable office, dependeth not on the words of our submission, but on the intention; which is to be understood by the end thereof. When therefore our refusal to obey frustrates the end for which the sovereignty was ordained, then there is no liberty to refuse; otherwise, there is.

Upon this ground a man that is commanded as a soldier to fight against the enemy, though his sovereign have right enough to punish his refusal with death, may nevertheless in many cases refuse, without injustice; as when he substituteth a sufficient soldier in his place: for in this case he deserteth not the service of the Commonwealth. And there is allowance to be made for natural timorousness, not only to women (of whom no such dangerous duty is expected), but also to men of feminine courage. When armies fight, there is on one side, or both, a running away; yet when they do it not out of treachery, but fear, they are not esteemed to do it unjustly, but dishonourably. For the same reason, to avoid battle is not injustice, but cowardice. But he that enrolleth himself a soldier, or taketh impressed money, taketh away the excuse of a timorous nature, and is obliged, not only to go to the battle, but also not to run from it without his captain's leave. And when the defence of the Commonwealth requireth at once the help of all that are able to bear arms, every one is obliged; because otherwise the institution of the Commonwealth, which they have not the purpose or courage to preserve, was in vain.

To resist the sword of the Commonwealth in defence of another man, guilty or innocent, no man hath liberty; because such liberty takes away from the sovereign the means of protecting us, and is therefore destructive of the very essence of government. But in case a great many men together have already resisted the sovereign power unjustly, or committed some capital crime for which every one of them expecteth death, whether have they not the liberty then to join together, and assist, and defend one another? Certainly they have: for they but defend their lives, which the guilty man may as well do as the innocent. There was indeed injustice in the first breach of their duty: their bearing of arms subsequent to it, though it be to maintain what they have done, is no new unjust act. And if it be only to defend their persons, it is not unjust at all. But the offer of pardon taketh from them to whom it is offered the plea of self-defence, and maketh their perseverance in assisting or defending the rest unlawful.

As for other liberties, they depend on the silence of the law. In cases where the sovereign has prescribed no rule, there the subject hath the liberty to do, or forbear, according to his own discretion. And therefore such liberty is in some places more, and in some less; and in some times more, in other times less, according as they that have the sovereignty shall think most convenient. As for example, there was a time when in England a man might enter into his own land, and dispossess such as wrongfully possessed it, by force. But in after times that liberty of forcible entry was taken away by a

statute made by the king in Parliament. And in some places of the world men have the liberty of many wives: in other places, such liberty is not allowed. […]

The obligation of subjects to the sovereign is understood to last as long, and no longer, than the power lasteth by which he is able to protect them. For the right men have by nature to protect themselves, when none else can protect them, can by no covenant be relinquished. The sovereignty is the soul of the Commonwealth; which, once departed from the body, the members do no more receive their motion from it. The end of obedience is protection; which, wheresoever a man seeth it, either in his own or in another's sword, nature applieth his obedience to it, and his endeavour to maintain it. And though sovereignty, in the intention of them that make it, be immortal; yet is it in its own nature, not only subject to violent death by foreign war, but also through the ignorance and passions of men it hath in it, from the very institution, many seeds of a natural mortality, by intestine discord.

If a subject be taken prisoner in war, or his person or his means of life be within the guards of the enemy, and hath his life and corporal liberty given him on condition to be subject to the victor, he hath liberty to accept the condition; and, having accepted it, is the subject of him that took him; because he had no other way to preserve himself. The case is the same if he be detained on the same terms in a foreign country. But if a man be held in prison, or bonds, or is not trusted with the liberty of his body, he cannot be understood to be bound by covenant to subjection, and therefore may, if he can, make his escape by any means whatsoever.

If a monarch shall relinquish the sovereignty, both for himself and his heirs, his subjects return to the absolute liberty of nature; because, though nature may declare who are his sons, and who are the nearest of his kin, yet it dependeth on his own will, as hath been said in the precedent chapter, who shall be his heir. If therefore he will have no heir, there is no sovereignty, nor subjection. The case is the same if he die without known kindred, and without declaration of his heir. For then there can no heir be known, and consequently no subjection be due.

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CHAPTER XXVI: OF CIVIL LAWS

BY civil laws, I understand the laws that men are therefore bound to observe, because they are members, not of this or that Commonwealth in particular, but of a Commonwealth. For the knowledge of particular laws belongeth to them that profess the study of the laws of their several countries; but the knowledge of civil law in general, to any man. The ancient law of Rome was called their *civil law*, from the word *civitas*, which signifies a Commonwealth: and those countries which, having been under the Roman Empire and governed by that law, retain still such part thereof as they think fit, call that part the civil law to distinguish it from the rest of their own civil

laws. But that is not it I intend to speak of here; my design being not to show what is law here and there, but what is law; as Plato, Aristotle, Cicero, and diverse others have done, without taking upon them the profession of the study of the law.

And first it is manifest that law in general is not counsel, but command; nor a command of any man to any man, but only of him whose command is addressed to one formerly obliged to obey him. And as for civil law, it addeth only the name of the person commanding, which is *persona civitatis*, the person of the Commonwealth.

Which considered, I define civil law in this manner. CIVIL LAW *is to every subject those rules which the Commonwealth hath commanded him, by word, writing, or other sufficient sign of the will, to make use of for the distinction of right and wrong; that is to say, of that is contrary and what is not contrary to the rule.*

In which definition there is nothing that is that is not at first sight evident. For every man seeth that some laws are addressed to all the subjects in general; some to particular provinces; some to particular vocations; and some to particular men; and are therefore laws to every of those to whom the command is directed, and to none else. As also, that laws are the rules of just and unjust, nothing being reputed unjust that is not contrary to some law. Likewise, that none can make laws but the Commonwealth, because our subjection is to the Commonwealth only; and that commands are to be signified by sufficient signs, because a man knows not otherwise how to obey them. And therefore, whatsoever can from this definition by necessary consequence be deduced, ought to be acknowledged for truth. Now I deduce from it this that followeth.

1. The legislator in all Commonwealths is only the sovereign, be he one man, as in a monarchy, or one assembly of men, as in a democracy or aristocracy. For the legislator is he that maketh the law. And the Commonwealth only prescribes and commandeth the observation of those rules which we call law: therefore the Commonwealth is the legislator. But the Commonwealth is no person, nor has capacity to do anything but by the representative, that is, the sovereign; and therefore the sovereign is the sole legislator. For the same reason, none can abrogate a law made, but the sovereign, because a law is not abrogated but by another law that forbiddeth it to be put in execution.

2. The sovereign of a Commonwealth, be it an assembly or one man, is not subject to the civil laws. For having power to make and repeal laws, he may, when he pleaseth, free himself from that subjection by repealing those laws that trouble him, and making of new; and consequently he was free before. For he is free that can be free when he will: nor is it possible for any person to be bound to himself, because he that can bind can release; and therefore he that is bound to himself only is not bound.

3. When long use obtaineth the authority of a law, it is not the length of time that maketh the authority, but the will of the sovereign signified by his silence (for silence is sometimes an signified by his silence (for silence is

sometimes an argument of consent); and it is no longer law, than the sovereign shall be silent therein. And therefore if the sovereign shall have a question of right grounded, not upon his present will, but upon the laws formerly made, the length of time shall bring no prejudice to his right: but the question shall be judged by equity. For many unjust actions and unjust sentences go uncontrolled a longer time than any man can remember. And our lawyers account no customs law but such as reasonable, and that evil customs are to be abolished: but the judgement of what is reasonable, and of what is to be abolished, belonged to him that maketh the law, which is the sovereign assembly or monarch.

4. The law of nature and the civil law contain each other and are of equal extent. For the laws of nature, which consist in equity, justice, gratitude, and other moral virtues on these depending, in the condition of mere nature (as I have said before in the end of the fifteenth Chapter), are not properly laws, but qualities that dispose men to peace and to obedience. When a Commonwealth is once settled, then are they actually laws, and not before; as being then the commands of the Commonwealth; and therefore also civil laws: for it is the sovereign power that obliges men to obey them. For the differences of private men, to declare what is equity, what is justice, and is moral virtue, and to make them binding, there is need of the ordinances of sovereign power, and punishments to be ordained for such as shall break them; which ordinances are therefore part of the civil law. The law of nature therefore is a part of the civil law in all Commonwealths of the world. Reciprocally also, the civil law is a part of the dictates of nature. For justice, that is to say, performance of covenant, and giving to every man his own, is a dictate of the law of nature. But every subject in a Commonwealth hath covenanted to obey the civil law; either one with another, as when they assemble to make a common representative, or with the representative itself one by one when, subdued by the sword, they promise obedience that they may receive life; and therefore obedience to the civil law is part also of the law of nature. Civil and natural law are not different kinds, but different parts of law; whereof one part, being written, is called civil the other unwritten, natural. But the right of nature, that is, the natural liberty of man, may by the civil law be abridged and restrained: nay, the end of making laws is no other but such restraint, without which there cannot possibly be any peace. And law was brought into the world for nothing else but to limit the natural liberty of particular men in such manner as they might not hurt, but assist one another, and join together against a common enemy.

[…]

7. That law can never be against reason, our lawyers are agreed: and that not the letter (that is, every construction of it), but that which is according to the intention of the legislator, is the law. And it is true: but the doubt is of whose reason it is that shall be received for law. It is not meant of any private reason; […] but the reason of this our artificial man the Commonwealth, and his command, that maketh law: and the Commonwealth being in their representative but one person, there cannot easily arise any contradiction in

the laws; and when there doth, the same reason is able, by interpretation or alteration, to take it away. In all courts of justice, the sovereign (which is the person of the Commonwealth) is he that judgeth: […].

8. From this, that the law is a command, and a command consisteth in declaration or manifestation of the will of him that commandeth, by voice, writing, or some other sufficient argument of the same, we may understand that the command of the Commonwealth is law only to those that have means to take notice of it. Over natural fools, children, or madmen there is no law, no more than over brute beasts; nor are they capable of the title of just or unjust, because they had never power to make any covenant or to understand the consequences thereof, and consequently never took upon them to authorize the actions of any sovereign, as they must do that make to themselves a Commonwealth. And as those from whom nature or accident hath taken away the notice of all laws in general; so also every man, from whom any accident not proceeding from his own default, hath taken away the means to take notice of any particular law, is excused if he observe it not; and to speak properly, that law is no law to him. It is therefore necessary to consider in this place what arguments and signs be sufficient for the knowledge of what is the law; that is to say, what is the will of the sovereign, as well in monarchies as in other forms of government.

And first, if it be a law that obliges all the subjects without exception, and is not written, nor otherwise published in such places as they may take notice thereof, it is a law of nature. For whatever men are to take knowledge of for law, not upon other men's words, but every one from his own reason, must be such as is agreeable to the reason of all men; which no law can be, but the law of nature. The laws of nature therefore need not any publishing nor proclamation; as being contained in this one sentence, approved by all the world, *Do not that to another which thou thinkest unreasonable to be done by another to thyself.*

Secondly, if it be a law that obliges only some condition of men, or one particular man, and be not written, nor published by word, then also it is a law of nature, and known by the same arguments and signs that distinguish those in such a condition from other subjects. For whatsoever law is not written, or some way published by him that makes it law, can be known no way but by the reason of him that is to obey it; and is therefore also a law not only civil, but natural. For example, if the sovereign employ a public minister, without written instructions what to do, he is obliged to take for instructions the dictates of reason: as if he make a judge, the judge is to take notice that his sentence ought to be according to the reason of his sovereign, which being always understood to be equity, he is bound to it by the law of nature: or if an ambassador, he is, in all things not contained in his written instructions, to take for instruction that which reason dictates to be most conducing to his sovereign's interest; and so of all other ministers of the sovereignty, public and private. All which instructions of natural reason may be comprehended under one name of *fidelity*, which is a branch of natural justice.

The law of nature excepted, it belonged to the essence of all other laws to be made known to every man that shall be obliged to obey them, either by word, or writing, or some other act known to proceed from the sovereign authority. […]

Nor is it enough the law be written and published, but also that there be manifest signs that it proceedeth from the will of the sovereign. For private men, when they have, or think they have, force enough to secure their unjust designs, and convoy them safely to their ambitious ends, may publish for laws what they please, without or against the legislative authority. There is therefore requisite, not only a declaration of the law, but also sufficient signs of the author and authority. The author or legislator is supposed in every Commonwealth to be evident, because he is the sovereign, who, having been constituted by the consent of every one, is supposed by every one to be sufficiently known. And though the ignorance and security of men be such, for the most part, as that when the memory of the first constitution of their Commonwealth is worn out, they do not consider by whose power they use to be defended against their enemies, and to have their industry protected, and to be righted when injury is done them; yet because no man that considers can make question of it, no excuse can be derived from the ignorance of where the sovereignty is placed. And it is a dictate of natural reason, and consequently an evident law of nature, that no man ought to weaken that power the protection whereof he hath himself demanded or wittingly received against others. […]

All laws, written and unwritten, have need of interpretation. The unwritten law of nature, though it be easy to such as without partiality and passion make use of their natural reason, and therefore leaves the violators thereof without excuse; yet considering there be very few, perhaps none, that in some cases are not blinded by self-love, or some other passion, it is now become of all laws the most obscure, and has consequently the greatest need of able interpreters. The written laws, if laws, if they be short, are easily misinterpreted, for the diverse significations of a word or two; if long, they be more obscure by the diverse significations of many words: in so much as no written law, delivered in few or many words, can be well understood without a perfect understanding of the final causes for which the law was made; the knowledge of which final causes is in the legislator. To him therefore there cannot be any knot in the law insoluble, either by finding out the ends to undo it by, or else by making what ends he will (as Alexander did with his sword in the Gordian knot) by the legislative power; which no other interpreter can do.

The interpretation of the laws of nature in a Commonwealth dependeth not on the books of moral philosophy. The authority of writers, without the authority of the Commonwealth, maketh not their opinions law, be they never so true. That which I have written in this treatise concerning the moral virtues, and of their necessity for the procuring and maintaining peace, though it be evident truth, is not therefore presently law, but because in all Commonwealths in the world it is part of the civil law. For though it be naturally reasonable, yet it is by the sovereign power that it is law: otherwise,

it were a great error to call the laws of nature unwritten law; whereof we see so many volumes published, and in them so many contradictions of one another and of themselves.

The interpretation of the law of nature is the sentence of the judge constituted by the sovereign authority to hear and determine such controversies as depend thereon, and consisteth in the application of the law to the present case. […]

Another division of laws is into *natural* and *positive*. *Natural* are those which have been laws from all eternity, and are called not only *natural*, but also moral laws, consisting in the moral virtues; as justice, equity, and all habits of the mind that conduce to peace and charity, of which I have already spoken in the fourteenth and fifteenth Chapters.

Positive are those which have not been from eternity, but have been made laws by the will of those that have had the sovereign power over others, and are either written or made known to men by some other argument of the will of their legislator.

Again, of positive laws some are *human*, some *divine*: and of human positive laws, some are *distributive*, some *penal*. *Distributive* are those that determine the rights of the subjects, declaring to every man what it is by which he acquireth and holdeth a propriety in lands or goods, and a right or liberty of action: and these speak to all the subjects. *Penal* are those which declare what penalty shall be inflicted on those that violate the law; and speak to the ministers and officers ordained for execution. For though every one ought to be informed of the punishments ordained beforehand for their transgression; nevertheless the command is not addressed to the delinquent (who cannot be supposed will faithfully punish himself), but to public ministers appointed to see the penalty executed. And these penal laws are for the most part written together with the laws distributive, and are sometimes called judgements. For all laws are general judgements, or sentences of the legislator; as also every particular judgement is a law to him whose case is judged.

Divine positive laws (for natural laws, being eternal and universal, are all divine) are those which, being the commandments of God, not from all eternity, nor universally addressed to all men, but only to a certain people or to certain persons, are declared for such by those whom God hath authorized to declare them. But this authority of man to declare what be these positive of God, how can it be known? God may command a man, by a supernatural way, to deliver laws to other men. But because it is of the essence of law that he who is to be obliged be assured of the authority of him that declareth it, which we cannot naturally take notice to be from God, *how can a man without supernatural revelations be assured of the revelation received by the declarer?* And *how can he be bound to obey bound to obey them?* For the first question, how a man can be assured of the revelation of another without a revelation particularly to himself, it is evidently impossible: for though a man may be induced to believe such revelation, from the miracles they see him do, or from seeing the extraordinary sanctity of his life, or from seeing the

extraordinary wisdom, or extraordinary felicity of his actions, all which are marks of God's extraordinary favour; yet they are not assured evidences of special revelation. Miracles are marvellous works; but that which is marvellous to one may not be so to another. Sanctity may be feigned; and the visible felicities of this world are most often the work of God by natural and ordinary causes. And therefore no man can infallibly know by natural reason that another has had a supernatural revelation of God's will but only a belief; every one, as the signs thereof shall appear greater or lesser, a firmer or a weaker belief.

But for the second, how he can be bound to obey them, it is not so hard. For if the law declared be not against the law of nature, which is undoubtedly God's law, and he undertake to obey it, he is bound by his own act; bound I say to obey it, but not bound to believe it: for men's belief, and interior cogitations, are not subject to the commands, but only to the operation of God, ordinary or extraordinary. Faith of supernatural law is not a fulfilling, but only an assenting to the same; and not a duty that we exhibit to God, but a gift which God freely giveth to whom He pleaseth; as also unbelief is not a breach of any of His laws, but a rejection of them all, except the laws natural. But this that I say will be made yet clearer by, the examples and testimonies concerning this point in Holy Scripture. The covenant God made with Abraham in a supernatural manner was thus, "*This is the covenant which thou shalt observe between me and thee and thy seed after thee*." (*Gen* xvii.10) Abraham's seed had not this revelation, nor were yet in being; yet they are a party to the covenant, and bound to obey what Abraham should declare to them for God's law; which they could not be but in virtue of the obedience they owed to their parents, who (if they be subject to no other earthly power, as here in the case of Abraham) have sovereign power over their children and servants. […] For in whatsoever is not regulated by the Commonwealth, it is equity (which is the law of nature, and therefore an eternal law of God) that every man equally enjoy his liberty.

[...]

A REVIEW AND CONCLUSION

[…] To the Laws of Nature declared in the fifteenth Chapter, I would have this added: *that every man is bound by nature, as much as in him lieth, to protect in war the authority by which he is himself protected in time of peace*. For he that pretendeth a right of nature to preserve his own body, cannot pretend a right of nature to destroy him by whose strength he is preserved: it is a manifest contradiction of himself. And though this law may be drawn by consequence from some of those that are there already mentioned, yet the times require to have it inculcated and remembered. […]

And as to the whole doctrine, I see not yet, but the principles of it are true and proper, and the ratiocination solid. For I ground the civil right of sovereigns, and both the duty and liberty of subjects, upon the known natural inclinations of mankind, and upon the articles of the law of nature; of which no

man, that pretends but reason enough to govern his private family, ought to be ignorant. And for the power ecclesiastical of the same sovereigns, I ground it on such texts as are both evident in themselves and consonant to the scope of the whole Scripture, and therefore am persuaded that he that shall read it with a purpose only to be informed, shall be Inform d by it. But for those that by writing or public discourse, or by their eminent actions, have already engaged themselves to the maintaining of contrary opinions, they will not be so easily satisfied. For in such cases, it is natural for men, at one and the same time, both to proceed in reading and to lose their attention in the search of objections to that they had read before: of which, in a time wherein the interests of men are changed (seeing much of that doctrine which serveth to the establishing of a new government must needs be contrary to that which conduced to the dissolution of the old), there cannot choose but be very many.

[…]

There is nothing I distrust more than my elocution, which nevertheless I am confident (excepting the mischances of the press) is not obscure. That I have neglected the ornament of quoting ancient poets, orators, and philosophers, contrary to the custom of late time, whether I have done well or ill in it, proceedeth from my judgement, grounded on many reasons. For first, all truth of doctrine dependeth either upon *reason* or upon *Scripture*; both which give credit to many, but never receive it from any writer. Secondly, the matters in question are not of *fact*, but of *right*, wherein there is no place for witnesses. There is scarce any of those old writers that contradicteth not sometimes both himself and others; which makes their testimonies insufficient. Fourthly, such opinions as are taken only upon credit of antiquity are not intrinsically the judgement of Those that cite them, but words that pass, like gaping, from mouth to mouth. Fifthly, it is many times with a fraudulent design that men stick their corrupt doctrine with the cloves of other men's wit. Sixthly, I find not that the ancients they cite took it for an ornament to do the like with those that wrote before them. Seventhly, it is an argument of indigestion, when Greek and Latin sentences unchewed come up again, as they use to do, unchanged. Lastly, though I reverence those men of ancient time that either have written truth perspicuously, or set us in a better way to find it out ourselves; yet to the antiquity itself I think nothing due. For if we will reverence the age, the present is the oldest: if the antiquity of the writer, I am not sure that generally they to whom such honour is given, were more ancient when they wrote than I am that am writing: but if it be well considered, the praise of ancient authors proceeds not from the reverence of the dead, but from the competition and mutual envy of the living.

To conclude, there is nothing in this whole discourse, nor in that I wrote before of the same subject in Latin, as far as I can perceive, contrary either to the word of God or to good manners; or to the disturbance of the public tranquillity. Therefore I think it may be profitably printed, and more profitably taught in the Universities, in case they also think so, whom the judgement of the same belongeth. For seeing the Universities are the fountains of civil and moral doctrine, from whence the preachers and the gentry, drawing

such water as they find, use to sprinkle the same (both from the pulpit and in their conversation) upon the people, there ought certainly to be great care taken, to have it pure, both from the venom of heathen politicians, and from the incantation of deceiving spirits. And by that means the most men, knowing their duties, will be the less subject to serve the ambition of a few discontented persons in their purposes against the state, and be the less grieved with the contributions necessary for their peace and defence; and the governors themselves have the less cause to maintain at the common charge any greater army than is necessary to make good the public liberty against the invasions and encroachments of foreign enemies.

And thus I have brought to an end my discourse of civil and ecclesiastical government, occasioned by the disorders of the present time, without partiality, without application, and without other design than to set before men's eyes the mutual relation between protection and obedience; of which the condition of human nature, and the laws divine, both natural and positive, require an inviolable observation. And though in the revolution of states there can be no very good constellation for truths of this nature to be born under (as having an angry aspect from the dissolvers of an old government, and seeing but the backs of them that erect a new); yet I cannot think it will be condemned at this time, either by the public judge of doctrine, or by any that desires the continuance of public peace. And in this hope I return to my interrupted speculation of bodies natural; wherein, if God give me health to finish it, I hope the novelty will as much please as in the doctrine of this artificial body it useth to offend. For such truth as opposeth no man's profit nor pleasure is to all men welcome.

THE END

NOTE

[1] Latin: “do not do unto others what you do not want done to yourself.”

CHAPTER II

JOHN LOCKE (1632-1704)

Biographical Information

Though born some 50 years after Hobbes, Locke also lived through the turmoil of the conflicts between Monarchy and Parliament in seventeenth century England: the English Civil War, Cromwell's Commonwealth, the restoration of the monarchy in 1660, and the 'Glorious Revolution.' Nevertheless, their reactions to this conflict were not the same, and there are many differences in their political views.

Locke was born at Wringdon, Somerset, on August 29, 1632. He came from a middle-class Puritan family; his father was an attorney who, during the civil crises of the 1640s, served in the parliamentary army. Locke's studies were initially in science and, later, in medicine and psychology, and this is reflected in his writings on the nature and limits of human understanding. He was at Christ Church, Oxford, from 1652 to 1666 (he received his B.A. in 1656, but remained there to lecture and to study medicine); it was during this time that he wrote his (unpublished) *Two Tracts on Government* – tracts that provided a somewhat Hobbesian defence of the sovereignty of the king.[1]

From 1666 until 1675, Locke served as secretary and physician to Lord Ashley, later Earl of Shaftesbury and, as in the case of Hobbes before him, through this position came to know many of the political leaders of the time. In 1675 Locke went to France, where he remained until 1679. The reason given for his voyage was ill health, but the political situation in England was uneasy, and Locke's friendships with opponents of the King made his position precarious. It was during this time that Locke conceived the project of the *Two Treatises of Government*, though many of the ideas that appear there had been prefigured in his 1669 *Constitutions on the Carolinas* (where he defended the idea of a 'balance of powers' in government) and in his essay on tolerance (started in 1666, though published only in 1689).

Locke returned to England in 1679 but, when Shaftesbury and many of his friends were arrested for treason, soon fled into exile (1683-89), to Amsterdam. During this time Locke completed many of the writing projects that he had started long before, but was also involved in attempts to remove James II from the English throne.

Locke came back to England following the Glorious Revolution of 1688 and the ascension of William of Orange and the Princess Mary II Stuart. In 1689, he published *The Essay Concerning Human Understanding* – which he had begun in the early 1670s – a work outlining some of the principles of human nature and the nature and limits of human knowledge (largely a reaction to Descartes), and, the following year, the *Two Treatises Concerning*

Government (though, during his lifetime, he refused to acknowledge being the author of this text).

In the years following his return, Locke served as an economic counsellor for the government and as a commissioner on the Board of Trade. This period was also philosophically productive; he completed several editions of the *Essay*, revisions to the *Two Treatises*, and wrote essays on education (1693) and on the reasonableness of Christianity. His health soon, however, went into decline, and he died on October 27, 1704.

Two Treatises

Though published together (anonymously) in 1690, Peter Laslett has argued that the writing of the second treatise predates the first – that it was conceived of and written in the late 1670s and, thus, is a genuinely radical work.[2] The first treatise was a largely polemical work, directed against the defence of the divine right of kings provided by Sir Robert Filmer's *Patriarcha: or the natural power of kings*. In *Patriarcha*, Filmer denied the natural liberty and equality of human beings and, therefore, any basis for a right to choose – or to resist – a government. In his reply to Filmer, Locke challenged the view that absolute monarchy had ever been divinely instituted, and that, even if it had been, such power is not something that could be inherited.

The *Second Treatise* stands independently of the first. Here, Locke provides a positive account of the nature and source of human rights and the roles and limits of government – and, consistent with his suggestions in the first treatise, he also establishes that there are conditions under which the people have a warrant to rebel against their rulers. The model of the state that Locke provides is one governed by a ruler limited in power and bound by a constitution and by the injunction to protect individual rights. The paradigm of such rights is the right to property.

Though Locke says little directly on the topic in the *Two Treatises*, given his psychological and metaphysical views, it is not surprising that there is an important relation between Locke's account of human nature and his political philosophy.

Human Nature

Like Hobbes, Locke was an empiricist. He argued that it was only on the basis of experience – sense perception and introspection – that reason has the material with which to provide knowledge, and he denied the possibility of innate ideas (including moral principles). This is not to say that arguments cannot produce certainty, but that all such arguments must ultimately be grounded in ideas obtained through experience.

Locke held that human beings are rational and free. There was a 'priority' in this; it is in virtue of the rational element in the individual that she or he is free (§62).[3] (Strictly speaking, these characteristics do not exist at

birth, but are characteristics that humans *naturally* develop.) Locke holds, however, that this liberty is fundamental (§17).

To emphasise that human beings are rational is not to overlook that they are also beings of passion and of self-interest. Like Hobbes, Locke held that human beings were at the very least psychologically egoistic; thus, Locke writes, the first power a person has in a state of nature is "to do whatsoever he thinks fit for the preservation of himself" (§128), and that the motive a person has for surrendering his or her liberty is "only with an intention […] the better to preserve himself, his liberty, and property" (§131). For example, he notes that a ruler will institute a system of law, not out of affection for his subjects, but for "love of himself, and the profit they bring for him" (§93).

Again, like Hobbes, Locke speaks of the psychological features that motivate human beings. In the *Essay Concerning Human Understanding*, he writes that human beings have "a desire of happiness, and an aversion to misery."[4] Among these psychological features is the motive of fear – not surprising given the unsettled political situation in England throughout much of Locke's life.

The foundation for Locke's 'fear' is, as in Hobbes, that human beings are fundamentally equal and Locke's observation that most individuals are "no strict observers of equity and justice" (§123). In the state of nature, human beings possess "the same advantages of nature and the use of the same faculties" – there is no natural "subordination or subjection" (§4) – although there are many ways in which they differ, including industry (§48).

Locke acknowledges that there is a social dimension to the individual. Society is, in a sense, natural; "the first society was that of man and wife"(§77).[5] Still, in general terms, it is artificial; social life is something that is constructed by individuals who can exist as individuals apart from it, even though it is in many ways 'necessary' (cf §§15; 77). Even "conjugal society is made by a voluntary compact" (§78). The social bond does not, then, go deep into the nature of the human individual.

Despite a recognition of the social character of the human person, there is an ontological individualism here. As we see in his *Essay*, Locke enjoins individuals not to base their claims to knowledge on what has been handed down but, rather, on what they can discern or know by themselves. Moreover, all individuals are (naturally) free and have the capacity to reason – to evaluate their situation, and to decide to contract into political life. Individuals are the constituent 'atoms' of any collectivity, and life in the state, though beneficial, is not necessary and not a given.

There is also a moral individualism present in Locke's analysis of human nature. Locke suggests that human beings not only have value but are the source of value, through their labour. He writes that "labour makes the far greatest part of the value of things we enjoy in this world," and that "the ground which produces the materials" has scarcely any value at all (§42). Locke does not see this moral individualism as inconsistent with a common good, however. Thus, he adds that "he who appropriates land to himself by

his labour, does not lessen, but increases the common stock of mankind" (§37).

The State of Nature

Though there are similarities, Locke's description of the state of nature is different from that found in Hobbes. Like Hobbes, the function of such a 'state' seems largely methodological – i.e., it serves as a device to help to explain the legitimacy of government; it is not principally a historical claim. Still, there is evidence that Locke thought that such a 'state' did exist – in America before the arrival of European settlers – and that the term could be used to describe the relationship existing among governments.

The state of nature is a "state of perfect freedom," where all may do whatever they wish for the preservation of themselves *and* others (§128); here, we note a difference from Hobbes's view of what the 'right of nature' entitles one to, and it is far from a state of 'license.' This state of nature is also a state of equality. As mentioned above, Locke holds that all human beings are born with the same natural characteristics and are not naturally subject to any other human person. (While he acknowledges that there are some natural differences among individuals, the main source of inequality that comes to exist is one based on differences in possessions.)

Unlike Hobbes, however, Locke did not think that the state of nature is automatically a state of war or of conflict. He speaks, for example, of there being natural duties in the state of nature, such as the "obligation to mutual love amongst men" (§5). (This, Locke notes, is based on the equality of man – for, as he says, quoting Hooker, "my desire therefore to be loved of my equals in nature, as much as possible may be, imposeth upon me a natural duty of bearing to them-ward fully the like affection" [§5].)

Nevertheless, the state of nature has certain disadvantages or drawbacks; it lacks "an established, settled known law, [acknowledged] by common consent to be the standard of right and wrong" (§124) and "a known and indifferent [earthly] judge" (§125) to adjudicate these matters. There, people are constantly exposed to the invasion of others; the enjoyment of property is not secure, and there is uncertainty and fear (§123).

Yet, in spite of these disadvantages, this state has some stability. It is governed by "the natural law" and, since human beings are, by nature, rational, they can come to know and follow this law. Agreements are possible and can be sustained. In fact, in this 'state' there can be money – which is based on tacit agreement (§36; cf §§45-50) – property, and industry. (Still, it is not clear whether this 'natural law' is enforceable on its own, or whether it requires an authority with coercive force.)

The Natural Law

What is the 'natural law'? While it is clearly different from that described by Hobbes, Locke does not fully explain it. At times, he says that it is a "declar-

ation of the will of God" (cf §135), but it is also often identified with "reason" (cf §§6, 8, 10). One might wonder, then, not only what its origin is, but what the source of its obligatory character could be. Still, given that reason is said to be one of the defining attributes of the human person, one might say that the 'rules' or laws that constitute the law of nature are principles *discovered* in virtue of a fundamental characteristic of the human person – i.e., so far as she or he possesses reason. Locke would hold that human beings have a natural capacity to discover such principles, implanted in them by God,[6] and that they can be certain of them, since at least some of the principles of ethics are demonstrable.[7]

The most "fundamental law of nature," Locke writes, is "the preservation of mankind" (§135), and he says that "the peace and preservation of all mankind" is the aim of the natural law (§7). Again, Locke writes that "the first and fundamental natural law... is the preservation of the society and (as far as will consist with the public good) of every person in it" (§134).

Some scholars have noted that there is some tension here. While the preceding remarks might suggest that the source of value lies in the collectivity or the common good, recall that Locke also writes that the law holds everyone to preserve themselves – it is from this that people derive their basic rights – and that it is only so long as one's own preservation is not at stake that a person must do as much as she or he can to preserve the rest of humanity (§6). It is unclear, then, whether the aim of the natural law – and the function of law generally – is to preserve all humanity as a group, or all humans individually.

The law of nature has a number of implications, most obviously, the right to enforce the law of the preservation of humanity; that "the execution of the law of nature is, in that state, put into every man's hands, whereby every one has a right to punish the transgressors of that law to such a degree as may hinder its violation" (§7). Unless there were such a provision, Locke writes, the natural law would be in vain.

These laws of nature are "eternal" (§135) and "bind men absolutely" (§15), though, in fact, Locke means that only those who are capable of reasoning (e.g., not children or those with mental or severe emotional handicaps [§§60-61]) are subject to this law (cf. §57).

In short, the law of nature addresses persons both within and outside of civil society. As law, it defines, preserves, and enlarges human freedom (§57). It also serves as *the* moral law – it includes the natural obligations that individuals have towards themselves (e.g., against suicide), towards their familes, and towards others in general. It reflects as well a principle of punishment, based on that of the *lex talionis*. It has, as its aim, the common good and the individual good, because it preserves and enlarges freedom. Finally – but also far from unimportantly – the natural law serves as a foundation for the civil law (cf §§12, 135) and rights.

Yet the good that the natural law seeks to preserve is not entirely defined in advance; Locke acknowledges that one's individual good is not

predetermined (cf §4) and that, within the general limits of this law, one act as he or she sees fit (§4).

The sanction for 'transgressing' the law of nature is that one may be treated without concern and respect as a human being. In violating this law, one is seen to have lost the capability of entering into social relations with other human beings and, thus, to have abandoned his or her human nature. A violator becomes, as it were, a "noxious creature" (§10) and, thus, "may be destroyed as a lion or a tiger" or any other kind of savage beast that poses a threat to human beings (§11). In a state of nature, this is a right that is put into the hands of every person.

Society and Government

In the state of nature all are "free" – but what is it to be "free" or "at liberty"? By 'liberty' Locke means "a power to act or not to act, according as the mind directs"[8]; in the *Second Treatise* he writes that the "natural liberty of man is to be free from any superior power on earth, and not to be under the will or legislative authority of men, but to have only the law of nature for his rule" (§22).[9] In neither case, however, does Locke have in mind 'license' – that every person be free to do as she or he chooses. Although this state has some stability and is governed by natural law, uncertainty and fear (as we have seen) remain. Thus, Locke argues, people will choose to enter into society and, ultimately, political society.

The purpose for which one enters into society, and gives up the equality, liberty and power one had in the state of nature, then, is "only with an intention [...] to better preserve himself, his liberty, and his property; (for no rational creature can be supposed to change his condition with an intention to be worse)" (§131). By 'property,' though, Locke does not mean just one's material possessions; one has 'property in oneself.' The purpose of entering into *civil* society is, again, the preservation of property (§88) – though 'property' in the large sense.

It is important to recognise that, in Locke's theory, there is a distinction between life in society (where the assembly of persons is called "the people'), and life under a ruler or government. This latter, civil society, is "the first and fundamental act of society," and its purpose is the preservation and continuation of society (§212).

Life in society is not, however, natural, in the sense of being inevitable or logically necessary. It must, therefore, be justified to the individual. Because of the risks involved with beings like ourselves living together, but without a common power, we find that we should establish a legislature, judiciary and executive (see §§123-125). Still, society and government are based on consent – that is, on either the express or tacit consent of the individual (§119).

The necessity of consent, here, is related to freedom (§17, cf §95). Individuals own their "power" and they can choose to do what they wish with what they own. To give up the fruits which one's power has gained for

onseself, then, requires one's consent and, thus, liberty in society "is to be under no other legislative power, but that established, by consent" (§22). Locke distinguishes one's natural liberty – what exists in a state of nature – from one's political liberty – "the freedom of [people] under government," where one is free to follow one's will in anything that has not been prescribed by law (§22).

Problems and Questions to be Addressed

The selections that follow focus on the nature, source, and limits on the power of the state and on the nature and source of rights. It is useful, then, to keep in mind the following questions as one reads this material:

1. What, exactly, is the nature of the human person?
2. What does Locke understand by 'the law of nature' and its function?
3. What does Locke say are one's basic natural rights, and what is their source?
4. What is the basis for one's right to a particular piece of property?
5. What are the limits of one's rights?
6. Explain the nature, character, purpose, and role of 'the state.'
7. How is one obliged to follow what the state commands? How, for example, are children obliged?
8. What are the nature and limits of the power of the legislature and of the executive, and who determines if either has gone beyond these limits?

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NOTES

[1] See *Two Tracts on Government*, ed. Philip Abrams (Cambridge: Cambridge University Press, 1967).

[2] See the Introduction to Peter Laslett's edition of the *Two Treatises on Government* (Cambridge: Cambridge University Press, 2nd ed., 1967).

[3] Unless otherwise indicated, all references are to the section number of the *Second Treatise*.

[4] See *An Essay Concerning Human Understanding* (*ECHU*), ed. P.H. Nidditch (Oxford: Clarendon Press, 1979), Book I, ch. 3, section 3, p. 67.

[5] Some have argued that Locke provides a basis for a defense of the equality of rights between women and men – even though he does not go very far in this respect himself (see §§29, 47, 55, 62, 82, 183).

[6] See Joshua Mitchell, *Not by Reason Alone* (Chicago: University of Chicago Press, 1993).

[7] See *ECHU* (ed. Nidditch), Book IV, ch. 3, §17.

[8] See *ECHU* (ed. Nidditch), Book II, ch. 21, §71. p. 282; cf ch. 21, §§12, 23, 24, 50, 56, 71.

[9] Locke insists: "The liberty of man, in society, is to be under no other legislative power; nor under the dominion of any will, or restraint of any law, but what the legislative shall enact, according to the trust put in it." (§ 21)

Concerning Civil Government, Second Essay: An Essay Concerning the True Original Extent and End of Civil Government (1690)

CHAPTER II: OF THE STATE OF NATURE

4. To understand political power aright, and derive it from its original, we must consider what estate all men are naturally in, and that is, *a state of perfect freedom* to order their actions, and dispose of their possessions and persons as they think fit, within the bounds of the law of Nature, without asking leave or depending upon the will of any other man. A state also *of equality*, wherein all the power and jurisdiction is reciprocal, no one having more than another, there being nothing more evident than that creatures of the same species and rank, promiscuously born to all the same advantages of Nature, and the use of the same faculties, should also be equal one amongst another, without subordination or subjection, unless the lord and master of them all should, by any manifest declaration of his will, set one above another, and confer on him, by an evident and clear appointment, an undoubted right to dominion and sovereignty.

5. This *equality* of men by nature, the judicious Hooker looks upon as so evident in itself, and beyond all question, that he makes it the foundation of that obligation to mutual love amongst men, on which he builds the duties they owe one another, and from whence he derives the great maxims of *justice* and *charity*. [...]

6. But though this be *a state of liberty*, yet *it is not a state of licence*; though man in that state have an uncontrollable liberty to dispose of his person or possessions, yet he has not liberty to destroy himself, or so much as any creature in his possession, but where some nobler use than its bare preservation calls for it. The state of Nature has a law of Nature to govern it, which obliges every one, and reason, which is that law, teaches all mankind who will but consult it, that being all equal and independent, no one ought to harm another in his life, health, liberty or possessions; for men being all the workmanship of one omnipotent and infinitely wise Maker; all the servants of one sovereign Master, sent into the world by His order and about His business; they are His property, whose workmanship they are made to last during His, not one another's pleasure. And, being furnished with like faculties, sharing all in one community of Nature, there cannot be supposed any such subordination among us that may authorise us to destroy one another, as if we were made for one another's uses, as the inferior ranks of creatures are for ours. Every one as he is bound to preserve himself, and not to quit his station wilfully, so by the like reason, when his own preservation comes not in competition, ought he as much as he can to preserve the rest of mankind, and not unless it be to do

justice on an offender, take away or impair the life, or what tends to the preservation of the life, the liberty, health, limb, or goods of another.

7. And that all men may be restrained from invading others' rights, and from doing hurt to one another, and the law of Nature be observed, which willeth the peace and preservation of all mankind, the execution of the law of Nature is in that state put into every man's hands, whereby every one has a right to punish the transgressors of that law to such a degree as may hinder its violation. For the law of Nature would, as all other laws that concern men in this world, be in vain if there were nobody that in the state of Nature had a power to execute that law, and thereby preserve the innocent and restrain offenders; and if any one in the state of Nature may punish another for any evil he has done, every one may do so. For in that state of perfect equality, where naturally there is no superiority or jurisdiction of one over another, what any may do in prosecution of that law, every one must needs have a right to do.

[...] 10. Besides the crime which consists in violating the laws, and varying from the right rule of reason, whereby a man so far becomes degenerate, and declares himself to quit the principles of human nature and to be a noxious creature, there is commonly injury done, and some person or other, some other man, receives damage by his transgression; in which case, he who hath received any damage has (besides the right of punishment common to him, with other men) a particular right to seek reparation from him that hath done it. And any other person who finds it just may also join with him that is injured, and assist him in recovering from the offender so much as may make satisfaction for the harm he hath suffered.

11. From these two distinct rights (the one of punishing the crime, for restraint and preventing the like offence, which right of punishing is in everybody, the other of taking reparation, which belongs only to the injured party) comes it to pass that the magistrate, who by being magistrate hath the common right of punishing put into his hands, can often, where the public good demands not the execution of the law, remit the punishment of criminal offences by his own authority, but yet cannot remit the satisfaction due to any private man for the damage he has received. That he who hath suffered the damage has a right to demand in his own name, and he alone can remit. The damnified person has this power of appropriating to himself the goods or service of the offender by right of self-preservation, as every man has a power to punish the crime to prevent its being committed again, by the right he has of preserving all mankind, and doing all reasonable things he can in order to that end. And thus it is that every man in the state of Nature has a power to kill a murderer, both to deter others from doing the like injury (which no reparation can compensate) by the example of the punishment that attends it from everybody, and also to secure men from the attempts of a criminal who, having renounced reason, the common rule and measure God hath given to mankind, hath, by the unjust violence and slaughter he hath committed upon one, declared war

against all mankind, and therefore may be destroyed as a lion or a tiger, one of those wild savage beasts with whom men can have no society nor security. And upon this is grounded that great law of nature, "Whoso sheddeth man's blood, by man shall his blood be shed." And Cain was so fully convinced that every one had a right to destroy such a criminal, that, after the murder of his brother, he cries out, "Every one that findeth me shall slay me," so plain was it writ in the hearts of all mankind.

[...] 14. It is often asked as a mighty objection, where are, or ever were there any men in such a state of nature? To which it may suffice as an answer at present, that since all princes and rulers of independent governments all through the world, are in a state of nature, it is plain the world never was, nor ever will be, without numbers of men in that state. [...]

CHAPTER III: OF THE STATE OF WAR

[...] 19. And here we have the plain difference between the state of Nature and the state of war, which however some men have confounded, are as far distant as a state of peace, goodwill, mutual assistance, and preservation; and a state of enmity, malice, violence and mutual destruction are one from another. Men living together according to reason without a common superior on earth, with authority to judge between them, is properly the state of Nature. But force, or a declared design of force upon the person of another, where there is no common superior on earth to appeal to for relief, is the state of war; and it is the want of such an appeal gives a man the right of war even against an aggressor, though he be in society and a fellow-subject. Thus, a thief whom I cannot harm, but by appeal to the law, for having stolen all that I am worth, I may kill when he sets on me to rob me but of my horse or coat, because the law, which was made for my preservation, where it cannot interpose to secure my life from present force, which if lost is capable of no reparation, permits me my own defence and the right of war, a liberty to kill the aggressor, because the aggressor allows not time to appeal to our common judge, nor the decision of the law, for remedy in a case where the mischief may be irreparable. Want of a common judge with authority puts all men in a state of Nature; force without right upon a man's person makes a state of war both where there is, and is not, a common judge.

CHAPTER IV: OF SLAVERY

22. The natural liberty of man is to be free from any superior power on earth, and not to be under the will or legislative authority of man, but to have only the law of Nature for his rule. The liberty of man in society is to be under no other legislative power but that established by consent in the commonwealth, nor under the dominion of any will, or restraint of any law, but what that legislative shall enact according to the trust put in it. Freedom, then, is not what Sir Robert Filmer tells us: "A liberty for every one to do what he lists, to

live as he pleases, and not to be tied by any laws"; but freedom of men under government is to have a standing rule to live by, common to every one of that society, and made by the legislative power erected in it. A liberty to follow my own will in all things where that rule prescribes not, not to be subject to the inconstant, uncertain, unknown, arbitrary will of another man, as freedom of nature is to be under no other restraint but the law of Nature.

23. This freedom from absolute, arbitrary power is so necessary to, and closely joined with, a man's preservation, that he cannot part with it but by what forfeits his preservation and life together. For a man, not having the power of his own life, cannot by compact or his own consent enslave himself to any one, nor put himself under the absolute, arbitrary power of another to take away his life when he pleases. Nobody can give more power than he has himself, and he that cannot take away his own life cannot give another power over it. Indeed, having by his fault forfeited his own life by some act that deserves death, he to whom he has forfeited it may, when he has him in his power, delay to take it, and make use of him to his own service; and he does him no injury by it. For, whenever he finds the hardship of his slavery outweigh the value of his life, it is in his power, by resisting the will of his master, to draw on himself the death he desires.

24. This is the perfect condition of slavery, which is nothing else but the state of war continued between a lawful conqueror and a captive, for if once compact enter between them, and make an agreement for a limited power on the one side, and obedience on the other, the state of war and slavery ceases as long as the compact endures; for, as has been said, no man can by agreement pass over to another that which he hath not in himself—a power over his own life. I confess, we find among the Jews, as well as other nations, that men did sell themselves; but it is plain this was only to drudgery, not to slavery; for it is evident the person sold was not under an absolute, arbitrary, despotical power, for the master could not have power to kill him at any time, whom at a certain time he was obliged to let go free out of his service; and the master of such a servant was so far from having an arbitrary power over his life that he could not at pleasure so much as maim him, but the loss of an eye or tooth set him free (Exod. 21.).

CHAPTER V: OF PROPERTY

25. Whether we consider natural reason, which tells us that men, being once born, have a right to their preservation, and consequently to meat and drink and such other things as Nature affords for their subsistence, or "revelation," which gives us an account of those grants God made of the world to Adam, and to Noah and his sons, it is very clear that God, as King David says (Psalm 115. 16), "has given the earth to the children of men," given it to mankind in common. But, this being supposed, it seems to some a very great difficulty how any one should ever come to have a property in

anything, I will not content myself to answer, that, if it be difficult to make out "property" upon a supposition that God gave the world to Adam and his posterity in common, it is impossible that any man but one universal monarch should have any "property" upon a supposition that God gave the world to Adam and his heirs in succession, exclusive of all the rest of his posterity; but I shall endeavour to show how men might come to have a property in several parts of that which God gave to mankind in common, and that without any express compact of all the commoners.

[...] 27. Though the earth and all inferior creatures be common to all men, yet every man has a "property" in his own "person." This nobody has any right to but himself. The "labour" of his body and the "work" of his hands, we may say, are properly his. Whatsoever, then, he removes out of the state that Nature hath provided and left it in, he hath mixed his labour with it, and joined to it something that is his own, and thereby makes it his property. It being by him removed from the common state Nature placed it in, it hath by this labour something annexed to it that excludes the common right of other men. For this "labour" being the unquestionable property of the labourer, no man but he can have a right to what that is once joined to, at least where there is enough, and as good left in common for others.

[...] 31. It will, perhaps, be objected to this, that if gathering the acorns or other fruits of the earth, etc., makes a right to them, then any one may engross as much as he will. To which I answer, Not so. The same law of Nature that does by this means give us property, does also bound that property too. "God has given us all things richly." Is the voice of reason confirmed by inspiration? But how far has He given it us? "To enjoy" As much as any one can make use of to any advantage of life before it spoils, so much he may by his labour fix a property in. Whatever is beyond this is more than his share, and belongs to others. Nothing was made by God for man to spoil or destroy. And thus considering the plenty of natural provisions there was a long time in the world, and the few spenders, and to how small a part of that provision the industry of one man could extend itself and engross it to the prejudice of others, especially keeping within the bounds set by reason of what might serve for his use, there could be then little room for quarrels or contentions about property so established.

[...] 33. Nor was this appropriation of any parcel of land, by improving it, any prejudice to any other man, since there was still enough and as good left, and more than the yet unprovided could use. So that, in effect, there was never the less left for others because of his enclosure for himself. For he that leaves as much as another can make use of does as good as take nothing at all. Nobody could think himself injured by the drinking of another man, though he took a good draught, who had a whole river of the same water left him to quench his thirst. And the case of land and water, where there is enough of both, is perfectly the same.

34. God gave the world to men in common, but since He gave it them for their benefit and the greatest conveniencies of life they were capable to draw from it, it cannot be supposed He meant it should always remain common and uncultivated. He gave it to the use of the industrious and rational (and labour was to be his title to it); not to the fancy or covetousness of the quarrelsome and contentious. He that had as good left for his improvement as was already taken up needed not complain, ought not to meddle with what was already improved by another's labour; if he did it is plain he desired the benefit of another's pains, which he had no right to, and not the ground which God had given him, in common with others, to labour on, and whereof there was as good left as that already possessed, and more than he knew what to do with, or his industry could reach to.

[...] 37. This is certain, that in the beginning, before the desire of having more than men needed had altered the intrinsic value of things, which depends only on their usefulness to the life of man, or had agreed that a little piece of yellow metal, which would keep without wasting or decay, should be worth a great piece of flesh or a whole heap of corn, though men had a right to appropriate by their labour, each one to himself, as much of the things of Nature as he could use, yet this could not be much, nor to the prejudice of others, where the same plenty was still left, to those who would use the same industry. Before the appropriation of land, he who gathered as much of the wild fruit, killed, caught, or tamed as many of the beasts as he could – he that so employed his pains about any of the spontaneous products of Nature as any way to alter them from the state Nature put them in, by placing any of his labour on them, did thereby acquire a propriety in them; but if they perished in his possession without their due use – if the fruits rotted or the venison putrefied before he could spend it, he offended against the common law of Nature, and was liable to be punished: he invaded his neighbour's share, for he had no right farther than his use called for any of them, and they might serve to afford him conveniencies of life. [...]

[...] 42. [...] [L]abour makes the far greatest part of the value of things we enjoy in this world: and the ground which produces the materials, is scarce to be reckoned in, as any, or at most, but a very small part of it; so little, that even amongst us, land that is left wholly to nature, that hath no improvement of pasturage, tillage, or planting, is called, as indeed it is, waste; [...]

[...] 44. From all which it is evident, that though the things of Nature are given in common, man (by being master of himself, and proprietor of his own person, and the actions or labour of it) had still in himself the great foundation of property; and that which made up the great part of what he applied to the support or comfort of his being, when invention and arts had improved the conveniences of life, was perfectly his own, and did not belong in common to others.

45. Thus labour, in the beginning, gave a right of property, wherever any one was pleased to employ it, upon what was common, which remained a long while, the far greater part, and is yet more than mankind makes use of Men at first, for the most part, contented themselves with what unassisted Nature offered to their necessities; and though afterwards, in some parts of the world, where the increase of people and stock, with the use of money, had made land scarce, and so of some value, the several communities settled the bounds of their distinct territories, and, by laws, within themselves, regulated the properties of the private men of their society, and so, by compact and agreement, settled the property which labour and industry began. And the leagues that have been made between several states and kingdoms, either expressly or tacitly disowning all claim and right to the land in the other's possession, have, by common consent, given up their pretences to their natural common right, which originally they had to those countries; and so have, by positive agreement, settled a property amongst themselves, in distinct parts of the world; yet there are still great tracts of ground to be found, which the inhabitants thereof, not having joined with the rest of mankind in the consent of the use of their common money, lie waste, and are more than the people who dwell on it, do, or can make use of, and so still lie in common; though this can scarce happen amongst that part of mankind that have consented to the use of money.

CHAPTER VI: OF PATERNAL POWER

[...] 54. Though I have said above, Chap. II. That all men by nature are equal, I cannot be supposed to understand all sorts of equality: age or virtue may give men a just precedency: excellency of parts and merit may place others above the common level: [...]: and yet all this consists with the equality, which all men are in, in respect of jurisdiction or dominion one over another; which was the equality I there spoke of, as proper to the business in hand, being that equal right, that every man hath, to his natural freedom, without being subjected to the will or authority of any other man.

55. Children, I confess, are not born in this full state of equality, though they are born to it. Their parents have a sort of rule and jurisdiction over them, when they come into the world, and for some time after; but it is but a temporary one [...]

[...] 57. The law, that was to govern Adam, was the same that was to govern all his posterity, the law of reason. But his offspring having another way of entrance into the world, different from him, by a natural birth, that produced them ignorant and without the use of reason, they were not presently under that law; for no body can be under a law, which is not promulgated to him; and this law being promulgated or made known by reason only, he that is not come to the use of his reason, cannot be said to be under this law; and Adam's children, being not presently as soon as born under this law of reason, were not

presently free: for law, in its true notion, is not so much the limitation as the direction of a free and intelligent agent to his proper interest, and prescribes no farther than is for the general good of those under that law: could they be happier without it, the law, as an useless thing, would of itself vanish; and that ill deserves the name of confinement which hedges us in only from bogs and precipices. So that, however it may be mistaken, the end of law is not to abolish or restrain, but to preserve and enlarge freedom: for in all the states of created beings capable of laws, where there is no law, there is no freedom: for liberty is, to be free from restraint and violence from others; which cannot be, where there is no law: but freedom is not, as we are told, a liberty for every man to do what he lists: (for who could be free, when every other man's humour might domineer over him?) but a liberty to dispose, and order as he lists, his person, actions, possessions, and his whole property, within the allowance of those laws under which he is, and therein not to be subject to the arbitrary will of another, but freely follow his own.

[...] 61. Thus we are born free, as we are born rational; not that we have actually the exercise of either: age, that brings one, brings with it the other too [...]

[...] 63. The freedom then of man, and liberty of acting according to his own will, is grounded on his having reason, which is able to instruct him in that law he is to govern himself by, and make him know how far he is left to the freedom of his own will. To turn him loose to an unrestrained liberty, before he has reason to guide him, is not the allowing him the privilege of his nature to be free; but to thrust him out amongst brutes, and abandon him to a state as wretched, and as much beneath that of a man, as their's. This is that which puts the authority into the parents hands to govern the minority of their children. [...]

[...] 67. The subjection of a minor places in the father a temporary government, which terminates with the minority of the child: and the honour due from a child, places in the parents a perpetual right to respect, reverence, support and compliance too, more or less, as the father's care, cost, and kindness in his education, has been more or less. This ends not with minority, but holds in all parts and conditions of a man's life. [...] God hath woven into the principles of human nature such a tenderness for their off-spring, that there is little fear that parents should use their power with too much rigour; the excess is seldom on the severe side, the strong byass of nature drawing the other way. [...]

CHAPTER VII: OF POLITICAL OR CIVIL SOCIETY

77. GOD having made man such a creature, that in his own judgment, it was not good for him to be alone, put him under strong obligations of necessity, convenience, and inclination to drive him into society, as well as fitted him with understanding and language to continue and enjoy it. The first society was

between man and wife, which gave beginning to that between parents and children; to which, in time, that between master and servant came to be added [...]

78. Conjugal society is made by a voluntary compact between man and woman [...]

[...] 87. Man being born, as has been proved, with a title to perfect freedom and an uncontrolled enjoyment of all the rights and privileges of the law of Nature, equally with any other man, or number of men in the world, hath by nature a power not only to preserve his property – that is, his life, liberty, and estate, against the injuries and attempts of other men, but to judge of and punish the breaches of that law in others, as he is persuaded the offence deserves, even with death itself, in crimes where the heinousness of the fact, in his opinion, requires it. But because no political society can be, nor subsist, without having in itself the power to preserve the property, and in order thereunto punish the offences of all those of that society, there, and there only, is political society where every one of the members hath quitted this natural power, resigned it up into the hands of the community in all cases that exclude him not from appealing for protection to the law established by it. And thus all private judgment of every particular member being excluded, the community comes to be umpire, and by understanding indifferent rules and men authorised by the community for their execution, decides all the differences that may happen between any members of that society concerning any matter of right, and punishes those offences which any member hath committed against the society with such penalties as the law has established; whereby it is easy to discern who are, and are not, in political society together. Those who are united into one body, and have a common established law and judicature to appeal to, with authority to decide controversies between them and punish offenders, are in civil society one with another; but those who have no such common appeal, I mean on earth, are still in the state of Nature, each being where there is no other, judge for himself and executioner; which is, as I have before showed it, the perfect state of Nature.

[...] 90. Hence it is evident, that absolute monarchy, which by some men is counted the only government in the world, is indeed inconsistent with civil society, and so can be no form of civil-government at all: for the end of civil society, being to avoid, and remedy those inconveniencies of the state of nature, which necessarily follow from every man's being judge in his own case, by setting up a known authority, to which every one of that society may appeal upon any injury received, or controversy that may arise, and which every one of the society ought to obey;[1] where-ever any persons are, who have not such an authority to appeal to, for the decision of any difference between them, there those persons are still in the state of nature; and so is every absolute prince, in respect of those who are under his dominion.

[...] 93. In absolute monarchies indeed, as well as other governments of the world, the subjects have an appeal to the law, and judges to decide any controversies, and restrain any violence that may happen betwixt the subjects themselves, one amongst another. [...] But whether this be from a true love of mankind and society, and such a charity as we owe all one to another, there is reason to doubt: for this is no more than what every man, who loves his own power, profit, or greatness, may and naturally must do, keep those animals from hurting, or destroying one another, who labour and drudge only for his pleasure and advantage; and so are taken care of, not out of any love the master has for them, but love of himself, and the profit they bring him [...]

CHAPTER VIII: OF THE BEGINNING OF POLITICAL SOCIETIES

95. MEN being, as has been said, by nature all free, equal, and independent, no one can be put out of this estate and subjected to the political power of another, without his own consent. The only way whereby one divests himself of his natural liberty, and puts on *the bonds of civil society*, is by agreeing with other men, to join and unite into a community for their comfortable, safe, and peaceable living, one amongst another, in a secure enjoyment of their properties, and a greater security against any that are not of it. This any number of men may do, because it injures not the freedom of the rest; they are left, as they were, in the liberty of the state of Nature. When any number of men have so consented to make one community or government, they are thereby presently incorporated, and make one body politic, wherein the majority have a right to act and conclude the rest.

96. For, when any number of men have, by the consent of every individual, made a community, they have thereby made that community one body, with a power to act as one body, which is only by the will and determination of the majority. For that which acts any community, being only the consent of the individuals of it, and it being one body, must move one way, it is necessary the body should move that way whither the greater force carries it, which is the consent of the majority, or else it is impossible it should act or continue one body, one community, which the consent of every individual that united into it agreed that it should; and so every one is bound by that consent to be concluded by the majority. And therefore we see that in assemblies empowered to act by positive laws where no number is set by that positive law which empowers them, the act of the majority passes for the act of the whole, and of course determines as having, by the law of Nature and reason, the power of the whole.

97. And thus every man, by consenting with others to make one body politic under one government, puts himself under an obligation to every one of that society to submit to the determination of the majority, and to be concluded by it; or else this original compact, whereby he with others incorporates into one society, would signify nothing, and be no compact if he be left free and under

no other ties than he was in before in the state of Nature. For what appearance would there be of any compact? What new engagement if he were no farther tied by any decrees of the society than he himself thought fit and did actually consent to? This would be still as great a liberty as he himself had before his compact, or any one else in the state of Nature, who may submit himself and consent to any acts of it if he thinks fit.

98. For if the consent of the majority shall not in reason be received as the act of the whole, and conclude every individual, nothing but the consent of every individual can make anything to be the act of the whole, which, considering the infirmities of health and avocations of business, which in a number though much less than that of a commonwealth, will necessarily keep many away from the public assembly; and the variety of opinions and contrariety of interests which unavoidably happen in all collections of men, it is next impossible ever to be had. And, therefore, if coming into society be upon such terms, it will be only like Cato's coming into the theatre, tantum ut exiret. Such a constitution as this would make the mighty leviathan of a shorter duration than the feeblest creatures, and not let it outlast the day it was born in, which cannot be supposed till we can think that rational creatures should desire and constitute societies only to be dissolved. For where the majority cannot conclude the rest, there they cannot act as one body, and consequently will be immediately dissolved again.

99. Whosoever, therefore, out of a state of Nature unite into a community, must be understood to give up all the power necessary to the ends for which they unite into society to the majority of the community, unless they expressly agreed in any number greater than the majority. And this is done by barely agreeing to unite into one political society, which is all the compact that is, or needs be, between the individuals that enter into or make up a commonwealth. And thus, that which begins and actually constitutes any political society is nothing but the consent of any number of freemen capable of majority, to unite and incorporate into such a society. And this is that, and that only, which did or could give beginning to any lawful government in the world.

[...] 103. [...][I]if they can give so many instances, out of history, of governments begun upon paternal right, I think (though at best an argument from what has been, to what should of right be, has no great force) one might, without any great danger, yield them the cause [...]

[...] 119. Every man being, as has been showed, naturally free, and nothing being able to put him into subjection to any earthly power, but only his own consent, it is to be considered what shall be understood to be a sufficient declaration of a man's consent to make him subject to the laws of any government. There is a common distinction of an express and a tacit consent, which will concern our present case. Nobody doubts but an express consent of any man, entering into any society, makes him a perfect member of that

society, a subject of that government. The difficulty is, what ought to be looked upon as a tacit consent, and how far it binds – i.e., how far any one shall be looked on to have consented, and thereby submitted to any government, where he has made no expressions of it at all. And to this I say, that every man that hath any possession or enjoyment of any part of the dominions of any government doth hereby give his tacit consent, and is as far forth obliged to obedience to the laws of that government, during such enjoyment, as any one under it, whether this his possession be of land to him and his heirs for ever, or a lodging only for a week; or whether it be barely travelling freely on the highway; and, in effect, it reaches as far as the very being of any one within the territories of that government.

CHAPTER IX: OF THE ENDS OF POLITICAL SOCIETY AND GOVERNMENT

123. IF man in the state of Nature be so free as has been said, if he be absolute lord of his own person and possessions, equal to the greatest and subject to nobody, why will he part with his freedom, this empire, and subject himself to the dominion and control of any other power? To which it is obvious to answer, that though in the state of Nature he hath such a right, yet the enjoyment of it is very uncertain and constantly exposed to the invasion of others; for all being kings as much as he, every man his equal, and the greater part no strict observers of equity and justice, the enjoyment of the property he has in this state is very unsafe, very insecure. This makes him willing to quit this condition which, however free, is full of fears and continual dangers; and it is not without reason that he seeks out and is willing to join in society with others who are already united, or have a mind to unite for the mutual preservation of their lives, liberties and estates, which I call by the general name – property.

124. The great and chief end, therefore, of men's uniting into commonwealths, and putting themselves under government, is the preservation of their property. To which in the state of nature there are many things wanting.

First, There wants an established, settled, known law, received and allowed by common consent to be the standard of right and wrong, and the common measure to decide all controversies between them: for though the law of nature be plain and intelligible to all rational creatures; yet men being biassed by their interest, as well as ignorant for want of study of it, are not apt to allow of it as a law binding to them in the application of it to their particular cases.

125. Secondly, In the state of nature there wants a known and indifferent judge, with authority to determine all differences according to the established law: for every one in that state being both judge and executioner of the law of nature, men being partial to themselves, passion and revenge is very apt to

carry them too far, and with too much heat, in their own cases; as well as negligence, and unconcernedness, to make them too remiss in other men's.

126. Thirdly, In the state of nature there often wants power to back and support the sentence when right, and to give it due execution, [...]

[...] 128. For in the state of Nature to omit the liberty he has of innocent delights, a man has two powers. The first is to do whatsoever he thinks fit for the preservation of himself and others within the permission of the law of Nature; by which law, common to them all, he and all the rest of mankind are one community, make up one society distinct from all other creatures, and were it not for the corruption and viciousness of degenerate men, there would be no need of any other, no necessity that men should separate from this great and natural community, and associate into lesser combinations. The other power a man has in the state of Nature is the power to punish the crimes committed against that law. Both these he gives up when he joins in a private, if I may so call it, or particular political society, and incorporates into any commonwealth separate from the rest of mankind.

129. The first power – viz., of doing whatsoever he thought fit for the preservation of himself and the rest of mankind, he gives up to be regulated by laws made by the society, so far forth as the preservation of himself and the rest of that society shall require; which laws of the society in many things confine the liberty he had by the law of Nature.

130. Secondly, the power of punishing he wholly gives up, and engages his natural force, which he might before employ in the execution of the law of Nature, by his own single authority, as he thought fit, to assist the executive power of the society as the law thereof shall require. For being now in a new state, wherein he is to enjoy many conveniencies from the labour, assistance, and society of others in the same community, as well as protection from its whole strength, he is to part also with as much of his natural liberty, in providing for himself, as the good, prosperity, and safety of the society shall require, which is not only necessary but just, since the other members of the society do the like.

131. But though men when they enter into society give up the equality, liberty, and executive power they had in the state of Nature into the hands of the society, to be so far disposed of by the legislative as the good of the society shall require, yet it being only with an intention in every one the better to preserve himself, his liberty and property (for no rational creature can be supposed to change his condition with an intention to be worse), the power of the society or legislative constituted by them can never be supposed to extend farther than the common good, but is obliged to secure every one's property by providing against those three defects above mentioned that made the state of Nature so unsafe and uneasy. And so, whoever has the legislative or supreme

power of any commonwealth, is bound to govern by established standing laws, promulgated and known to the people, and not by extemporary decrees, by indifferent and upright judges, who are to decide controversies by those laws; and to employ the force of the community at home only in the execution of such laws, or abroad to prevent or redress foreign injuries and secure the community from inroads and invasion. And all this to be directed to no other end but the peace, safety, and public good of the people.

CHAPTER XI: OF THE EXTENT OF THE LEGISLATIVE POWER

[...] 134. THE great end of men's entering into society, being the enjoyment of their properties in peace and safety, and the great instrument and means of that being the laws established in that society; the first and fundamental positive law of all commonwealths is the establishing of the legislative power; as the first and fundamental natural law, which is to govern even the legislative itself, is the preservation of the society, and (as far as will consist with the public good) of every person in it. [...]

135. Though the legislative, whether placed in one or more, whether it be always in being or only by intervals, though it be the supreme power in every commonwealth, yet, first, it is not, nor can possibly be, absolutely arbitrary over the lives and fortunes of the people. For it being but the joint power of every member of the society given up to that person or assembly which is legislator, it can be no more than those persons had in a state of Nature before they entered into society, and gave it up to the community. For nobody can transfer to another more power than he has in himself, and nobody has an absolute arbitrary power over himself, or over any other, to destroy his own life, or take away the life or property of another. A man, as has been proved, cannot subject himself to the arbitrary power of another; and having, in the state of Nature, no arbitrary power over the life, liberty, or possession of another, but only so much as the law of Nature gave him for the preservation of himself and the rest of mankind, this is all he doth, or can give up to the commonwealth, and by it to the legislative power, so that the legislative can have no more than this. Their power in the utmost bounds of it is limited to the public good of the society.[2] It is a power that hath no other end but preservation, and therefore can never have a right to destroy, enslave, or designedly to impoverish the subjects; the obligations of the law of Nature cease not in society, but only in many cases are drawn closer, and have, by human laws, known penalties annexed to them to enforce their observation. Thus the law of Nature stands as an eternal rule to all men, legislators as well as others. The rules that they make for, other men's actions must, as well as their own and other men's actions, be conformable to the law of Nature – i.e., to the will of God, of which that is a declaration, and the fundamental law of Nature being the preservation of mankind, no human sanction can be good or valid against it.

136. Secondly, the legislative or supreme authority cannot assume to itself a power to rule by extemporary arbitrary decrees, but is bound to dispense justice and decide the rights of the subject by promulgated standing laws,[3] and known authorised judges. For the law of Nature being unwritten, and so nowhere to be found but in the minds of men, they who, through passion or interest, shall miscite or misapply it, cannot so easily be convinced of their mistake where there is no established judge; and so it serves not as it aught, to determine the rights and fence the properties of those that live under it, especially where every one is judge, interpreter, and executioner of it too, and that in his own case; and he that has right on his side, having ordinarily but his own single strength, hath not force enough to defend himself from injuries or punish delinquents. To avoid these inconveniencies which disorder men's properties in the state of Nature, men unite into societies that they may have the united strength of the whole society to secure and defend their properties, and may have standing rules to bound it by which every one may know what is his. To this end it is that men give up all their natural power to the society they enter into, and the community put the legislative power into such hands as they think fit, with this trust, that they shall be governed by declared laws, or else their peace, quiet, and property will still be at the same uncertainty as it was in the state of Nature.

[...] 138. Thirdly, the supreme power cannot take from any man any part of his property without his own consent. For the preservation of property being the end of government, and that for which men enter into society, it necessarily supposes and requires that the people should have property, without which they must be supposed to lose that by entering into society which was the end for which they entered into it; too gross an absurdity for any man to own. Men, therefore, in society having property, they have such a right to the goods, which by the law of the community are theirs, that nobody hath a right to take them, or any part of them, from them without their own consent; without this they have no property at all. For I have truly no property in that which another can by right take from me when he pleases against my consent. Hence it is a mistake to think that the supreme or legislative power of any commonwealth can do what it will, and dispose of the estates of the subject arbitrarily, or take any part of them at pleasure. This is not much to be feared in governments where the legislative consists wholly or in part in assemblies which are variable, whose members upon the dissolution of the assembly are subjects under the common laws of their country, equally with the rest. But in governments where the legislative is in one lasting assembly, always in being, or in one man as in absolute monarchies, there is danger still, that they will think themselves to have a distinct interest from the rest of the community, and so will be apt to increase their own riches and power by taking what they think fit from the people. For a man's property is not at all secure, though there be good and equitable laws to set the bounds of it between him and his fellow-subjects, if he who commands those subjects have power to take from

any private man what part he pleases of his property, and use and dispose of it as he thinks good.

[...] 140. It is true governments cannot be supported without great charge, and it is fit every one who enjoys his share of the protection should pay out of his estate his proportion for the maintenance of it. But still it must be with his own consent – i.e., the consent of the majority, giving it either by themselves or their representatives chosen by them; for if any one shall claim a power to lay and levy taxes on the people by his own authority, and without such consent of the people, he thereby invades the fundamental law of property, and subverts the end of government. For what property have I in that which another may by right take when he pleases to himself?

CHAPTER XII: OF THE LEGISLATIVE, EXECUTIVE, AND FEDERATIVE POWER OF THE COMMONWEALTH

[...] 147. These two powers, executive and federative, though they be really distinct in themselves, yet one comprehending the execution of the municipal laws of the society within its self, upon all that are parts of it; the other the management of the security and interest of the public without, with all those that it may receive benefit or damage from, yet they are always almost united. [...]

CHAPTER XIV: OF PREROGATIVE

159. WHERE the legislative and executive power are in distinct hands, as they are in all moderated monarchies and well-framed governments, there the good of the society requires that several things should be left to the discretion of him that has the executive power. For the legislators not being able to foresee and provide by laws for all that may be useful to the community, the executor of the laws, having the power in his hands, has by the common law of Nature a right to make use of it for the good of the society, in many cases where the municipal law has given no direction, till the legislative can conveniently be assembled to provide for it; nay, many things there are which the law can by no means provide for, and those must necessarily be left to the discretion of him that has the executive power in his hands, to be ordered by him as the public good and advantage shall require; nay, it is fit that the laws themselves should in some cases give way to the executive power, or rather to this fundamental law of Nature and government – viz., that as much as may be all the members of the society are to be preserved. For since many accidents may happen wherein a strict and rigid observation of the laws may do harm, as not to pull down an innocent man's house to stop the fire when the next to it is burning; and a man may come sometimes within the reach of the law, which makes no distinction of persons, by an action that may deserve reward and pardon; it is fit the ruler should have a power in many cases to mitigate the severity of the law, and pardon some offenders, since the end of government

being the preservation of all as much as may be, even the guilty are to be spared where it can prove no prejudice to the innocent.

[...] 168. The old question will be asked in this matter of prerogative, "But who shall be judge when this power is made a right use of?" I answer: Between an executive power in being, with such a prerogative, and a legislative that depends upon his will for their convening, there can be no judge on earth. As there can be none between the legislative and the people, should either the executive or the legislative, when they have got the power in their hands, design, or go about to enslave or destroy them, the people have no other remedy in this, as in all other cases where they have no judge on earth, but to appeal to Heaven; for the rulers in such attempts, exercising a power the people never put into their hands, who can never be supposed to consent that anybody should rule over them for their harm, do that which they have not a right to do. And where the body of the people, or any single man, are deprived of their right, or are under the exercise of a power without right, having no appeal on earth they have a liberty to appeal to Heaven whenever they judge the cause of sufficient moment. And therefore, though the people cannot be judge, so as to have, by the constitution of that society, any superior power to determine and give effective sentence in the case, yet they have reserved that ultimate determination to themselves which belongs to all mankind, where there lies no appeal on earth, by a law antecedent and paramount to all positive laws of men, whether they have just cause to make their appeal to Heaven. And this judgement they cannot part with, it being out of a man's power so to submit himself to another as to give him a liberty to destroy him; God and Nature never allowing a man so to abandon himself as to neglect his own preservation. And since he cannot take away his own life, neither can he give another power to take it. Nor let any one think this lays a perpetual foundation for disorder; for this operates not till the inconvenience is so great that the majority feel it, and are weary of it, and find a necessity to have it amended. And this the executive power, or wise princes, never need come in the danger of; and it is the thing of all others they have most need to avoid, as, of all others, the most perilous.

CHAPTER XVI: OF CONQUEST

175. THOUGH governments can originally have no other rise than that before mentioned, nor polities be founded on any thing but the consent of the people; yet such have been the disorders ambition has filled the world with, that in the noise of war, which makes so great a part of the history of mankind, this consent is little taken notice of: and therefore many have mistaken the force of arms for the consent of the people, and reckon conquest as one of the originals of government. But conquest is as far from setting up any government, as demolishing an house is from building a new one in the place. Indeed, it often makes way for a new frame of a commonwealth, by destroying the former; but, without the consent of the people, can never erect a new one.

CHAPTER XIX: OF THE DISSOLUTION OF GOVERNMENT

211. HE that will, with any clearness, speak of the dissolution of government, ought in the first place to distinguish between the dissolution of the society and the dissolution of the government. That which makes the community, and brings men out of the loose state of Nature into one politic society, is the agreement which every one has with the rest to incorporate and act as one body, and so be one distinct commonwealth. The usual, and almost only way whereby this union is dissolved, is the inroad of foreign force making a conquest upon them. For in that case (not being able to maintain and support themselves as one entire and independent body) the union belonging to that body, which consisted therein, must necessarily cease, and so every one return to the state he was in before, with a liberty to shift for himself and provide for his own safety, as he thinks fit, in some other society. Whenever the society is dissolved, it is certain the government of that society cannot remain. Thus conquerors' swords often cut up governments by the roots, and mangle societies to pieces, separating the subdued or scattered multitude from the protection of and dependence on that society which ought to have preserved them from violence. The world is too well instructed in, and too forward to allow of this way of dissolving of governments, to need any more to be said of it; and there wants not much argument to prove that where the society is dissolved, the government cannot remain; that being as impossible as for the frame of a house to subsist when the materials of it are scattered and displaced by a whirlwind, or jumbled into a confused heap by an earthquake.

212. Besides this overturning from without, governments are dissolved from within: First. When the legislative is altered, civil society being a state of peace amongst those who are of it, from whom the state of war is excluded by the umpirage which they have provided in their legislative for the ending all differences that may arise amongst any of them; it is in their legislative that the members of a commonwealth are united and combined together into one coherent living body. This is the soul that gives form, life, and unity to the commonwealth; from hence the several members have their mutual influence, sympathy, and connection; and therefore when the legislative is broken, or dissolved, dissolution and death follows. For the essence and union of the society consisting in having one will, the legislative, when once established by the majority, has the declaring and, as it were, keeping of that will. The constitution of the legislative is the first and fundamental act of society, whereby provision is made for the continuation of their union under the direction of persons and bonds of laws, made by persons authorised thereunto, by the consent and appointment of the people, without which no one man, or number of men, amongst them can have authority of making laws that shall be binding to the rest. When any one, or more, shall take upon them to make laws whom the people have not appointed so to do, they make laws without authority, which the people are not therefore bound to obey; by which means they come again to be out of subjection, and may constitute to themselves a

new legislative, as they think best, being in full liberty to resist the force of those who, without authority, would impose anything upon them. Every one is at the disposure of his own will, when those who had, by the delegation of the society, the declaring of the public will, are excluded from it, and others usurp the place who have no such authority or delegation.

[...] 219. There is one way more whereby such a government may be dissolved, and that is: When he who has the supreme executive power neglects and abandons that charge, so that the laws already made can no longer be put in execution; this is demonstratively to reduce all to anarchy, and so effectively to dissolve the government. For laws not being made for themselves, but to be, by their execution, the bonds of the society to keep every part of the body politic in its due place and function. When that totally ceases, the government visibly ceases, and the people become a confused multitude without order or connection. Where there is no longer the administration of justice for the securing of men's rights, nor any remaining power within the community to direct the force, or provide for the necessities of the public, there certainly is no government left. Where the laws cannot be executed it is all one as if there were no laws, and a government without laws is, I suppose, a mystery in politics inconceivable to human capacity, and inconsistent with human society.

220. In these, and the like cases, when the government is dissolved, the people are at liberty to provide for themselves by erecting a new legislative differing from the other by the change of persons, or form, or both, as they shall find it most for their safety and good. For the society can never, by the fault of another, lose the native and original right it has to preserve itself, which can only be done by a settled legislative and a fair and impartial execution of the laws made by it. But the state of mankind is not so miserable that they are not capable of using this remedy till it be too late to look for any. To tell people they may provide for themselves by erecting a new legislative, when, by oppression, artifice, or being delivered over to a foreign power, their old one is gone, is only to tell them they may expect relief when it is too late, and the evil is past cure. This is, in effect, no more than to bid them first be slaves, and then to take care of their liberty, and, when their chains are on, tell them they may act like free men. This, if barely so, is rather mockery than relief, and men can never be secure from tyranny if there be no means to escape it till they are perfectly under it; and, therefore, it is that they have not only a right to get out of it, but to prevent it.

221. There is, therefore, secondly, another way whereby governments are dissolved, and that is, when the legislative, or the prince, either of them act contrary to their trust. For the legislative acts against the trust reposed in them when they endeavour to invade the property of the subject, and to make themselves, or any part of the community, masters or arbitrary disposers of the lives, liberties, or fortunes of the people.

[...] 235. [...] *Barclay* therefore, in another place, more coherently to himself, denies it to be lawful to *resist* a king in any case. But he there assigns two cases, whereby a king may un-king himself. His words are, [...]

237. "What, then, can there no case happen wherein the people may of right, and by their own authority, help themselves, take arms, and set upon their king, imperiously domineering over them? None at all whilst he remains a king. 'Honour the king,' and 'he that resists the power, resists the ordinance of God,' are Divine oracles that will never permit it. The people, therefore, can never come by a power over him unless he does something that makes him cease to be a king; for then he divests himself of his crown and dignity, and returns to the state of a private man, and the people become free and superior; the power which they had in the interregnum, before they crowned him king, devolving to them again. But there are but few miscarriages which bring the matter to this state. After considering it well on all sides, I can find but two. Two cases there are, I say, whereby a king, ipso facto, becomes no king, and loses all power and regal authority over his people, which are also taken notice of by Winzerus. The first is, if he endeavour to overturn the government – that is, if he have a purpose and design to ruin the kingdom and commonwealth, as it is recorded of Nero that he resolved to cut off the senate and people of Rome, lay the city waste with fire and sword, and then remove to some other place; and of Caligula, that he openly declared that he would be no longer a head to the people or senate, and that he had it in his thoughts to cut off the worthiest men of both ranks, and then retire to Alexandria; and he wished that the people had but one neck that he might dispatch them all at a blow. Such designs as these, when any king harbours in his thoughts, and seriously promotes, he immediately gives up all care and thought of the commonwealth, and, consequently, forfeits the power of governing his subjects, as a master does the dominion over his slaves whom he hath abandoned.

238. "The other case is, when a king makes himself the dependent of another, and subjects his kingdom, which his ancestors left him, and the people put free into his hands, to the dominion of another. For however, perhaps, it may not be his intention to prejudice the people, yet because he has hereby lost the principal part of regal dignity – viz., to be next and immediately under God, supreme in his kingdom; and also because he betrayed or forced his people, whose liberty he ought to have carefully preserved, into the power and dominion of a foreign nation. By this, as it were, alienation of his kingdom, he himself loses the power he had in it before, without transferring any the least right to those on whom he would have bestowed it; and so by this act sets the people free, and leaves them at their own disposal. One example of this is to be found in the Scotch *Annals*."

239. In these cases Barclay, the great champion of absolute monarchy, is forced to allow that a king may be resisted, and ceases to be a king. That is in short – not to multiply cases – in whatsoever he has no authority, there he is no

king, and may be resisted: for wheresoever the authority ceases, the king ceases too, and becomes like other men who have no authority. And these two cases that he instances differ little from those above mentioned, to be destructive to governments, only that he has omitted the principle from which his doctrine flows, and that is the breach of trust in not preserving the form of government agreed on, and in not intending the end of government itself, which is the public good and preservation of property. When a king has dethroned himself, and put himself in a state of war with his people, what shall hinder them from prosecuting him who is no king, as they would any other man, who has put himself into a state of war with them, Barclay, and those of his opinion, would do well to tell us. Bilson, a bishop of our Church, and a great stickler for the power and prerogative of princes, does, if I mistake not, in his treatise of "Christian Subjection," acknowledge that princes may forfeit their power and their title to the obedience of their subjects; and if there needed authority in a case where reason is so plain, I could send my reader to Bracton, Fortescue, and the author of the "Mirror," and others, writers that cannot be suspected to be ignorant of our government, or enemies to it. But I thought Hooker alone might be enough to satisfy those men who, relying on him for their ecclesiastical polity, are by a strange fate carried to deny those principles upon which he builds it. Whether they are herein made the tools of cunninger workmen, to pull down their own fabric, they were best look. This I am sure, their civil policy is so new, so dangerous, and so destructive to both rulers and people, that as former ages never could bear the broaching of it, so it may be hoped those to come, redeemed from the impositions of these Egyptian under - taskmasters, will abhor the memory of such servile flatterers, who, whilst it seemed to serve their turn, resolved all government into absolute tyranny, and would have all men born to what their mean souls fitted them for, slavery.

240. Here it is like the common question will be made: Who shall be judge whether the prince or legislative act contrary to their trust? This, perhaps, ill-affected and factious men may spread amongst the people, when the prince only makes use of his due prerogative. To this I reply, The people shall be judge; for who shall be judge whether his trustee or deputy acts well and according to the trust reposed in him, but he who deputes him and must, by having deputed him, have still a power to discard him when he fails in his trust? If this be reasonable in particular cases of private men, why should it be otherwise in that of the greatest moment, where the welfare of millions is concerned and also where the evil, if not prevented, is greater, and the redress very difficult, dear, and dangerous?

241. But, farther, this question, Who shall be judge? cannot mean that there is no judge at all. For where there is no judicature on earth to decide controversies amongst men, God in heaven is judge. He alone, it is true, is judge of the right. But every man is judge for himself, as in all other cases so in this, whether another hath put himself into a state of war with him, and whether he should appeal to the supreme judge, as Jephtha did.

242. If a controversy arise betwixt a prince and some of the people in a matter where the law is silent or doubtful, and the thing be of great consequence, I should think the proper umpire in such a case should be the body of the people. For in such cases where the prince hath a trust reposed in him, and is dispensed from the common, ordinary rules of the law, there, if any men find themselves aggrieved, and think the prince acts contrary to, or beyond that trust, who so proper to judge as the body of the people (who at first lodged that trust in him) how far they meant it should extend? But if the prince, or whoever they be in the administration, decline that way of determination, the appeal then lies nowhere but to Heaven. Force between either persons who have no known superior on earth or, which permits no appeal to a judge on earth, being properly a state of war, wherein the appeal lies only to heaven; and in that state the injured party must judge for himself when he will think fit to make use of that appeal and put himself upon it.

243. To conclude. The power that every individual gave the society when he entered into it can never revert to the individuals again, as long as the society lasts, but will always remain in the community; because without this there can be no community – no commonwealth, which is contrary to the original agreement; so also when the society hath placed the legislative in any assembly of men, to continue in them and their successors, with direction and authority for providing such successors, the legislative can never revert to the people whilst that government lasts: because, having provided a legislative with power to continue for ever, they have given up their political power to the legislative, and cannot resume it. But if they have set limits to the duration of their legislative, and made this supreme power in any person or assembly only temporary; or else when, by the miscarriages of those in authority, it is forfeited; upon the forfeiture of their rulers, or at the determination of the time set, it reverts to the society, and the people have a right to act as supreme, and continue the legislative in themselves or place it in a new form, or new hands, as they think good.

NOTES

[1] "The public power of all society is above every soul contained in the same society; and the principal use of that power is, to give laws unto all that are under it, which laws in such cases we must obey, unless there be reason shewed which may necessarily inforce, that the law of reason, or of God, doth enjoin the contrary." Hooker, *Eccl. Pol*. l. i. 16.

[2] "Two foundations there are which bear up public societies; the one a natural inclination whereby all men desire sociable life and fellowship; the other an order, expressly or secretly agreed upon, touching the manner of their union in living together. The latter is that which we call the law of a commonweal, the very soul of a politic body, the parts whereof are by law animated, held together, and set on work in such actions as the common good requireth. Laws politic, ordained for

external order and regimen amongst men, are never framed as they should be, unless presuming the will of man to be inwardly obstinate, rebellious, and averse from all obedience to the sacred laws of his nature; in a word, unless presuming man to be in regard of his depraved mind little better than a wild beast, they do accordingly provide notwithstanding, so to frame his outward actions, that they be no hindrance unto the common good, for which societies are instituted. Unless they do this they are not perfect." Hooker, *Eccl. Pol.* i. 10.

[3] "Human laws are measures in respect of men whose actions they must direct, howbeit such measures they are as have also their higher rules to be measured by, which rules are two – the law of God and the law of Nature; so that laws human must be made according to the general laws of Nature, and without contradiction to any positive law of Scripture, otherwise they are ill made." Hooker, *Eccl. Pol.* iii. 9. "To constrain men to anything inconvenient doth seem unreasonable." Ibid. i. 10.

CHAPTER III

JEAN-JACQUES ROUSSEAU (1712-78)

Biographical Information

Jean-Jacques Rousseau was born in Geneva – at the time, an independent republic – on June 28, 1712. Rousseau's mother died only a few days after his birth, and he was educated, largely at home, by his father, Isaac. His father fled Geneva in 1722 after a quarrel with another citizen, but Rousseau remained and was raised by his uncle. At the age of 13, Rousseau was apprenticed to a notary and, later, to an engraver, but left that work and the city three years later. He first went to Annecy, in France, where he met Mme Françoise-Louise de Warens, for whom he worked for several years, taking on a wide range of tasks. de Warens influenced Rousseau's conversion to Catholicism; he also became her lover. In 1742, Rousseau moved to Paris, where he hoped to establish himself as a composer. The next year, however, he went to Venice, where he served with the French Embassy. He returned to Paris in 1744. There, Rousseau came to know a number of the leading philosophers of the day, such as Étienne Bonnot de Condillac and Denis Diderot, and he wrote several articles for Diderot and Jean-Baptiste d'Alembert's *Encyclopedie*. In 1745, Rousseau met a seamstress named Thérèse Levasseur. Though barely literate, she lived with Rousseau until his death. (The couple went through a marriage ceremony in 1768, though it had no legal effect.) Between 1746 and 1752, Rousseau and Thérèse had five children together, and all were left at the Paris orphanage.

In 1750, Rousseau learned of an essay competition organized by the Academy of Dijon; the question for that year was "Has the restoration of the sciences and arts tended to purify morals?" Rousseau's response was in the negative. He won first prize, and his essay – and he – became well-known. Rousseau also maintained his interest in music and, in 1752, completed an opera, *Le Devin du Village* [*The Village Soothsayer*], which was presented to the King, Louis XV, and enjoyed a great success. In 1754, Rousseau entered another essay competition of the Dijon Academy on the topic: "What is the origin of inequality among men, and is it authorized by the natural law?" Again, Rousseau presented a rather controversial response and, while he did not win the competition, in 1755 he published his essay, the *Discours sur l'origine et les fondements de l'inégalité parmi les hommes* (*Discourse on the Origin and Basis of Inequality Among Men*) to wide acclaim.

Rousseau was of a somewhat irascible temperament, and for the next 15 years led an itinerant life. In 1754, on a visit to Geneva, he reconverted to Calvinism. In 1756, he moved to the French countryside, staying at l'Hermitage, near Montmorency, where he spent a year as a guest of the French writer and *saloniste*, Mme Louise d'Épinay. After a number of quarrels with his host, he went to stay with Charles François de

Montmorency, duc de Luxembourg and maréchal de France, whose château was also at Montmorency. There, Rousseau was able to write several books: *Julie, ou la nouvelle Héloïse* [*Julie, or the New Heloise – originally titled Lettres de deux amans habitans d'une petite ville au pied des Alpes*] (1761), which became a best seller; *Du contrat social, ou principles de droit politique* [*Of the Social Contract*] (1762), the work for which he is best known; and, later that year, *Emile, ou de l'éducation* [*Emile, or On education*] which provides an outline of Rousseau's thoughts on the topic. His views were, again, highly controversial, his books were condemned by civil and ecclesiastical authorities, and Rousseau was forced to leave France. He moved, first, to Môtiers (near Neuchâtel, today in Switzerland), and then to England, at the invitation of the British philosopher, David Hume (who was then living near London). Once again, Rousseau quarreled with his host and, after a year, in 1767, returned to France.

Rousseau moved to Paris in 1770. He earned money by copying music; this allowed him time to write the *Dialogues de Rousseau juge de Jean-Jacques* [*Rousseau: Judge of Jean-Jacques*] and *Les Rêveries du promeneur solitaire* [*Reveries of the Solitary Walker*], left incomplete at his death. In 1778 Rousseau moved to Ermenonville, a small village north east of Paris. He died of a cerebral hemorrhage on July 2, 1778. His *Confessions*, an autobiographical account in which he sought to explain and justify many of the controversies occasioned by his life and work, was published in 1782, four years after his death, and his remains were placed in the Panthéon in Paris, along with Voltaire's, in 1794.

Political Philosophy

Rousseau's political philosophy challenges the theories of Hobbes and Locke – and, more broadly, a number of individualist and liberal theories of the seventeenth and eighteenth centuries. His views may be seen as an attempt to provide a middle ground between anarchism and authoritarianism or, more precisely, to find a way of guaranteeing the liberty of individuals while, at the same time, recognizing the legitimacy of the sovereign to control the citizens. Among Rousseau's contributions to political philosophy are a distinctive account of human nature and the state of nature, a unique notion of the origin of the state and the legitimacy of political authority, and an innovative explanation of the nature of rights, both before and following the existence of the state.

Human nature and the state of nature

Much of Rousseau's work touches on issues related to human nature – what that nature is, the role of society and the state, the character and purpose of education, and human flourishing and happiness. Some central texts here are the 1750 *Discourse on the Arts and the Sciences*, the 1753 *Discourse on*

Inequality, the *Discourse on Political Economy* of 1755, *Julie or the New Heloise* (1761), the *Social Contract* (1762), and *Emile* (1762).

The first *Discourse* does not deal with human nature directly, but with the origin and effects of the sciences and arts. Rousseau argues that the arts and sciences are the product of human vice, particularly pride, and that what should have been important in the history of humanity was not their development, but the promotion of character and virtue. Rousseau's second discourse, the *Discourse on Inequality*, addresses the issue more directly, and sets the tone for much of his later writings. In the 'natural state,' Rousseau argues, human beings are very much like other animals. They seek self-preservation; they have basic physical desires to eat, sleep, and procreate, have a natural inclination to live in peace, and are frugivores. At such a level of existence, there is no fear of death. (Whether Rousseau believed that he was providing a historical account – he was aware of putative anthropological evidence for this view – or simply a heuristic, has been a matter of debate.)

In this *Second Discourse*, Rousseau refers to two basic sentiments fundamental to human beings: *l'amour de soi-même* (love of self) and *la pitié* (usually translated as 'pity'). Primary is *amour de soi* – which is, broadly, the drive to care for oneself and for self-preservation. The second basic sentiment, pity – a sympathy or empathy for others – balances the first. Pity is, Rousseau writes, a natural feeling that moderates love of oneself; it is that automatic sentiment of concern that people have when they see others in pain. It is not based on a sense of common interest or mutual recognition. It operates without rational reflection, and serves like a law in the state of nature, generally restraining people from acting in harmful ways. It can be excited in people – they can be moved to 'feel the pain' of others, and so react with pity. It is this sentiment, and not reason or argument, that would normally be the source of one's care for others – for (as Rousseau suggests in *Emile*) reason might even work against such a sentiment. As something natural, however, it is not moral but amoral.

While human beings are in many ways like animals, Rousseau acknowledges that they are different from them. Although, in the natural state, the behavior of human beings is usually determined by the physical environment alone, people also have free will and are perfectible – they can improve not only themselves but the conditions in which they live. Still, given that their resources and needs are limited in this natural condition, Rousseau claims that they would have little opportunity and little interest to leave it. Nevertheless, somehow – and Rousseau writes that it is unclear exactly how this could have occurred – human beings increasingly came into contact with one another, began to cooperate and, over time, developed agriculture and industry. These changes made them begin to see themselves in and through the perceptions of others. *Amour de soi*, then, came to be replaced by "*amour-propre*," a self-love focused on distinguishing oneself from others, that emphasizes competition and appearance, rather than what is real. This is the root of the desire for power, of inequality, and of hatred.

Private property becomes important, and eventually human beings are led to a state of social life, which serves only to continue the corruption of human nature. In summary, Rousseau's view is that inequality is not natural or the product of any natural law, and there is no necessary relation between human nature and life in society or the state.

Of the Social Contract (Du contrat social)

The *Social Contract* is generally considered to be one of the central works in political philosophy. It deals with the conditions for sovereignty and legitimate government, but also with the nature and character of political and moral freedom. While Rousseau's *Second Discourse* suggests that social life could come to exist only as the result of a series of accidents and subterfuge, in the *Social Contract* he addresses the issue in a different way, asking whether anything could justify social life and the state.

In the *Social Contract*, Rousseau speaks of human beings as born with a natural freedom – that they are (in some sense) naturally 'free' – but also notes that, when people look at the world around them, they see that they are "everywhere in chains" and subject to authority. His question, then, is whether this situation could ever be legitimate.

Rousseau's answer is that rational, self-loving beings can make a 'social pact' or 'social contract' – that is, they can construct society and order, but also morality, through an agreement, and that government can exist in a way that guarantees and maintains liberty and equality. Society and government, then, rest on consent; "no one, under any pretext whatsoever, can make any man subject without his consent" (*Social Contract*, IV.2). The terms of this contract vary from other theorists who refer to a 'social contract,' such as Hobbes and Locke. Still, Rousseau holds that these circumstances are determined by what human nature is.

According to Rousseau, the only real authority over an individual is the individual him or herself, and society has a legitimate claim on people, therefore, only when it is, or reflects, their will. Rousseau argues that the individual's will is, or leads to, what he calls the 'general will,' and claims that this notion of the general will alone can explain the legitimacy of social or political authority or, what amounts to the same thing, provide the basis of social and political obligation.

The general will and the legislator

Though the term initially appears in his *Discourse on Political Economy*, it is in the *Social Contract* that Rousseau elaborates the notion of "the general will." While Rousseau lists a number of the characteristics of the general will and explicitly distinguishes it from concepts such as the "will of all," what he means by the term is not fully spelled out. Still, the reader is told a number of things about it. When individuals take part in the social pact, they place themselves under the direction of the general will; "Each of us puts his

person and all his power in common under the supreme direction of the general will, and, in our corporate capacity, we receive each member as an indivisible part of the whole" (*ibid*, II. 6). This will aims at and reflects a common interest, and the state is to be directed by it alone. It is "toujours droite" – "always in the right" or, better, "upright" or "rightful" (*ibid*, II.3).[1] The general will is found when agreement reigns in an assembly (*ibid*, IV.2), although it is neither a sum of particular interests or individual wills, nor the will of the majority as such, nor even "the will of all" (*ibid*, II.3).

'How,' Rousseau's reader might ask, 'is the general will 'general'?' Rousseau mentions several characteristics, of which four are particularly relevant here: the general will is general in origin, in scope, in form and in object (*ibid*, II.2-4). Since this will comes from all the members of the group or community[2], one can say that it is general in origin, and it is for this reason that its actions are genuinely authoritative on these individuals – that is, are general in scope. The general will is general in form in the sense that it has nothing particular or distinctly individual about it. (Rousseau is especially emphatic that it not be just someone's "particular will" [*volonté particulière*] (*ibid*, II.4). Rousseau describes the general will as the product, though not the sum, of all the individual wills in a community, *after* the "pluses" and the "minuses" that distinguish these wills have been eliminated (*ibid*, II.3). Finally, the general will has as its goal – and this is crucial – an object which is itself general, the common good or interest of *all* of the individual wills, the universal interest of society.

The general character of this will is contrasted by Rousseau with a *prima facie* similar notion which he calls "the will of all." Like the general will, the will of all has its origin in the individuals who together constitute the group or community concerned. Its object, however, is not general, but is essentially a private interest. Even if many or all of the citizens concur about what is to be done in some specific case, each of them will have his or her own reasons or motives for doing so, and there is nothing beyond the present accord to suggest that this association among them is anything more than temporary. The will of all is not, therefore, general in form; it reflects only the domination of one private interest amid a multiplicity of essentially discrete and independent individuals. Lacking generality in object and form, there is no basis on which the "will of all" can make a legitimate claim to the obedience of these individuals; it is not general in scope.

On the analysis given above, the general will is the will, 'generalized,' of each member of a specific group. Not only does such a will have its origin in the individual, but Rousseau adds that this generalized will is a part of, and exists in every citizen.[3] One is obliged to obey the general will, therefore, because it is essentially one's own will. Political obligation thus makes sense, for it is not a question of some external force obliging the individual to act, but rather of the general will in each person asserting its authority over his or her particular will. By extension, so far as the state or sovereign represents the general will, one is obliged to obey it – to the extent that an individual may legitimately be "forced to be free."[4] It is a corollary

of this that when the will is not general in form and in object, it cannot provide an adequate basis for genuine moral or political obligation.

An important role in Rousseau's account of the general will is performed by what he calls "the legislator." Without being either a political leader or lawmaker, the legislator's function is to discern the general will, and to influence citizens to enable them to recognise the general will and to will it as their individual will. In the *Discourse on Political Economy*, for example, Rousseau writes that the first duty of the legislator is to help to ensure that the laws conform to the general will,[5] but the legislator is to do this through moral suasion rather than direct action and coercion.

Liberty, sovereignty, and government

Rousseau's political philosophy is often held to be in the tradition of (civic) republicanism, which has its roots in Roman Stoic philosophy. Republicanism – which is distinct from democratic theory as a whole – is opposed to absolutism, and favours liberty and equality. To avoid factionalism and conflict, it promotes the rule of law, civic virtue, and a common good (and so is not individualistic), and defends the sovereignty of the people or self-government.

The *raison d'être* of political life, Rousseau says, is the defence of liberty, and liberty requires equality. The end of all systems of legislation, then, is liberty and equality[6] – and a robust sense of liberty can exist only within a political community. For Rousseau, it is only in the state that liberty and equality have meaning and significance, for it is only there that one finds, he argues, the transformation of 'force' into 'duty' and 'obedience.'

Rousseau distinguishes between sovereignty and government. The people, collectively, is sovereign; the government is that to which the sovereign entrusts power. Rousseau does not, however, argue for a specific form of government, but – as the subtitle of the *Social Contract* indicates – to articulate a 'principle of political right' or a 'rule of procedure' for ensuring sovereignty of the people. But while Rousseau does not go into detail concerning the appropriate forms of government, given his view that it be based on 'will,' it need be some kind of self-government.

It is important to distinguish self-government from democratic government. Rousseau holds that, because the general will "must come from and apply to all, every voice must be counted (*ibid*, II.4). Nevertheless, democratic government is only one way of having self-government and, Rousseau holds, it is not suited to medium or large states. He is, in fact, critical of democratic regimes, as they tend to ignore the importance of civic virtue, and – to the extent that they are representative democracies – do not show any particular interest in the exercise and development of moral character by the people as a whole.

Among the criticisms frequently raised against Rousseau is the claim that there seems to be a deep ambivalence in his work concerning the relation of the sovereign to the individual. On the one hand, the sovereign

secures freedom and equality. At the same time, however, real freedom exists only in community; indeed, Rousseau claims that citizens have more liberty within the sovereign than they do outside. Moreover, as noted above, when one's private or particular will comes into conflict with the general will, one can be forced by this general will to obey it – that is "forced to be free." It is ambivalences such as these which have led to extensive debate on the precise character of Rousseau's political thought.

Summary and Influences

While Rousseau made notable contributions in the arts and educational theory, he is best known for his political philosophy, and he provides novel approaches to the understanding of human nature, the relation of the individual to the community, the nature, source and limits of rights, and the legitimacy of government.

Sentiments have an important role to play in Rousseau's ethical and political thought. Nevertheless, he insists that conscience must rise above sentiment, and that political power must be based on consent; force alone cannot justify right or authority. Rousseau maintains that the focus should be on will, particularly, what he calls 'the general will.' Political power has to be directed to the common good, and the general will expresses that good. Yet Rousseau also insisted that the nature and the value of the individual needed to be secured.

Rousseau's writings had a significant effect on the work of his contemporaries and indirectly – but not always in a way faithful to his ideas – on the French Revolution. His account also had a particularly strong influence on later philosophers, notably, on Kant, Hegel, and later 'idealist' political philosophy. Kant, for example, was influenced by Rousseau's notion of the ideal of 'perpetual peace'[7] as well as that of the general will (the latter, in his discussion of "the united Will of the people" – "der allgemeine Volkswille"[8]). Hegel also draws on this notion of the general will in the *Grundlinien der Philosophie des Rechts* (*Philosophy of Right*), though he rejects Rousseau's formulation and defence of it.[9] Rousseau's discussion of the general will also had a significant impact in the writings of later idealist thinkers in the British tradition, such as T.H. Green, Bernard Bosanquet, and A.R. Lord.

Problems and Questions to be Addressed

The focus of the selections from the *Social Contract* that follow is on human nature, the nature and limits of the state, and the nature and source of rights. It is useful to keep in mind the following questions as one reads these texts.

1. How does Rousseau understand human nature? How does this bear on his discussion of slavery?

2. What incentive is there for people to make a social compact, and how can one be sure that they observe and follow it?
3. What rights do people have? Do one's rights (and liberties, if there is a difference) exist prior to the state? Are there natural or basic duties?
4. What does Rousseau mean by 'the sovereign' and 'the body politic'?
5. Are there limits to the power of the sovereign?
6. What is the distinction between the particular will, the general will, and the will of all? In what sense does the general will exist, and what does Rousseau mean by saying that it is "indestructable"? Is the rule of the general will compatible with the freedom of the individual?
7. Why is a person obliged to follow what the state commands? Does this explanation apply to children?
8. Is Rousseau's theory an individualist theory? Is it a liberal theory? Is it a democratic theory?
9. Does the *Social Contract* solve the problems concerning the origins of social life posed by Rousseau in his other writings? Does it involve changing the nature of, or 'denaturing,' individuals?
10. What might Rousseau say is the role of religion in the state?

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NOTES

[1] The translation of "toujours droite" has been a matter of considerable debate. Understanding it to mean "upright" is arguably preferable, particularly given Rousseau's later comment that it is "constante, inaltérable et pure" ("changeless, incorruptible, and pure") (*Contrat social*, IV.1).

[2] "elle doit partir de tous pour s'appliquer à tous" ("it must both come from all and apply to all") (*Contrat social*, II.4).

[3] "Chaque individu a une volonté générale comme citoyen" (*Contrat social*, IV.1; see II.2).

[4] "Quiconque refusera d'obéir à la volonté générale y sera contraint par tout le corps : ce qui ne signifie pas autre chose sinon qu'on le forcera à être libre" (*Contrat social*, I.7).

[5] "le premier devoir du législateur est de conformer les lois à la volonté générale" (*Discours sur l'économie politique*, p. 390) in *Oeuvres de J.J. Rousseau citoyen de Genève* (Paris: Déterville et Lefèvre, 1817), Vol. 1.

[6] "Si l'on recherche en quoi consiste précisément le plus grand bien de tous, qui doit être la fin de tout système de législation, on trouvera qu'il se réduit à ces deux objets principaux, la liberté et l'égalité. La liberté, parce que toute dépendance particulière est autant de force ôtée au corps de l'État; l'égalité, parce que la liberté ne peut subsister sans elle." (*Contrat social*, II.11).

[7] See *The Plan for Perpetual Peace, On the Government of Poland, and other writings on history and politics [by Jean Jacques Rousseau]*, ed. Christopher Kelly; trans. Judith Bush and Christopher Kelly (Hanover, NH: Dartmouth College Press/University Press of New England, 2005). See also Rousseau's 1761 "*Abstract*" and (posthumously published) *"Judgement" of the Abbé de Saint-Pierre's Project for Perpetual Peace* (1782).

[8] *Die Metaphysik der Sitten* (1797), Kant's *Gesammelte Schriften* [Preussischen Akademie der Wissenschaften] (Berlin: G. Reimer, 1914), Band 6, p. 338. See *The Metaphysical Elements of Justice; Part I of The Metaphysics of Morals*,

trans. and introd. John Ladd (Indianapolis: Bobbs-Merrill, 1965), p. 109.

[9] Hegel's objections seem to be (i) that while Rousseau formally distinguishes the general will from the will of all, in the end they are conflated and, (ii) that Rousseau fails to see that the universal Will is identical to the will of the State in law and in actually existing institutions.

Of the Social Contract, or Principles of Political Right (1762)

BOOK I

I MEAN to inquire if, in the civil order, there can be any sure and legitimate rule of administration, men being taken as they are and laws as they might be. In this inquiry I shall endeavour always to unite what right sanctions with what is prescribed by interest, in order that justice and utility may in no case be divided.

I enter upon my task without proving the importance of the subject. I shall be asked if I am a prince or a legislator, to write on politics. I answer that I am neither, and that is why I do so. If I were a prince or a legislator, I should not waste time in saying what wants doing; I should do it, or hold my peace.

As I was born a citizen of a free State, and a member of the Sovereign, I feel that, however feeble the influence my voice can have on public affairs, the right of voting on them makes it my duty to study them: and I am happy, when I reflect upon governments, to find my inquiries always furnish me with new reasons for loving that of my own country.

1. SUBJECT OF THE FIRST BOOK

MAN is born free; and everywhere he is in chains. One thinks himself the master of others, and still remains a greater slave than they. How did this change come about? I do not know. What can make it legitimate? That question I think I can answer.

If I took into account only force, and the effects derived from it, I should say: "As long as a people is compelled to obey, and obeys, it does well; as soon as it can shake off the yoke, and shakes it off, it does still better; for, regaining its liberty by the same right as took it away, either it is justified in resuming it, or there was no justification for those who took it away." But the social order is a sacred right which is the basis of all other rights. Nevertheless, this right does not come from nature, and must therefore be founded on conventions. Before coming to that, I have to prove what I have just asserted.

2. THE FIRST SOCIETIES

THE most ancient of all societies, and the only one that is natural, is the family: and even so the children remain attached to the father only so long as they need him for their preservation. As soon as this need ceases, the natural bond is dissolved. The children, released from the obedience they owed to the father, and the father, released from the care he owed his

children, return equally to independence. If they remain united, they continue so no longer naturally, but voluntarily; and the family itself is then maintained only by convention.

This common liberty results from the nature of man. His first law is to provide for his own preservation, his first cares are those which he owes to himself; and, as soon as he reaches years of discretion, he is the sole judge of the proper means of preserving himself, and consequently becomes his own master.

The family then may be called the first model of political societies: the ruler corresponds to the father, and the people to the children; and all, being born free and equal, alienate their liberty only for their own advantage. The whole difference is that, in the family, the love of the father for his children repays him for the care he takes of them, while, in the State, the pleasure of commanding takes the place of the love which the chief cannot have for the peoples under him.

Grotius denies that all human power is established in favour of the governed, and quotes slavery as an example. His usual method of reasoning is constantly to establish right by fact.[1] It would be possible to employ a more logical method, but none could be more favourable to tyrants.

It is then, according to Grotius, doubtful whether the human race belongs to a hundred men, or that hundred men to the human race: and, throughout his book, he seems to incline to the former alternative, which is also the view of Hobbes. On this showing, the human species is divided into so many herds of cattle, each with its ruler, who keeps guard over them for the purpose of devouring them.

As a shepherd is of a nature superior to that of his flock, the shepherds of men, i.e., their rulers, are of a nature superior to that of the peoples under them. Thus, Philo tells us, the Emperor Caligula reasoned, concluding equally well either that kings were gods, or that men were beasts.

The reasoning of Caligula agrees with that of Hobbes and Grotius. Aristotle, before any of them, had said that men are by no means equal naturally, but that some are born for slavery, and others for dominion.

Aristotle was right; but he took the effect for the cause. Nothing can be more certain than that every man born in slavery is born for slavery. Slaves lose everything in their chains, even the desire of escaping from them: they love their servitude, as the comrades of Ulysses loved their brutish condition.[2] If then there are slaves by nature, it is because there have been slaves against nature. Force made the first slaves, and their cowardice perpetuated the condition.

I have said nothing of King Adam, or Emperor Noah, father of the three great monarchs who shared out the universe, like the children of Saturn, whom some scholars have recognised in them. I trust to getting due thanks for my moderation; for, being a direct descendant of one of these princes, perhaps of the eldest branch, how do I know that a verification of titles might not leave me the legitimate king of the human race? In any case,

there can be no doubt that Adam was sovereign of the world, as Robinson Crusoe was of his island, as long as he was its only inhabitant; and this empire had the advantage that the monarch, safe on his throne, had no rebellions, wars, or conspirators to fear.

3. THE RIGHT OF THE STRONGEST

THE strongest is never strong enough to be always the master, unless he transforms strength into right, and obedience into duty. Hence the right of the strongest, which, though to all seeming meant ironically, is really laid down as a fundamental principle. But are we never to have an explanation of this phrase? Force is a physical power, and I fail to see what moral effect it can have. To yield to force is an act of necessity, not of will — at the most, an act of prudence. In what sense can it be a duty?

Suppose for a moment that this so-called "right" exists. I maintain that the sole result is a mass of inexplicable nonsense. For, if force creates right, the effect changes with the cause: every force that is greater than the first succeeds to its right. As soon as it is possible to disobey with impunity, disobedience is legitimate; and, the strongest being always in the right, the only thing that matters is to act so as to become the strongest. But what kind of right is that which perishes when force fails? If we must obey perforce, there is no need to obey because we ought; and if we are not forced to obey, we are under no obligation to do so. Clearly, the word "right" adds nothing to force: in this connection, it means absolutely nothing.

Obey the powers that be. If this means yield to force, it is a good precept, but superfluous: I can answer for its never being violated. All power comes from God, I admit; but so does all sickness: does that mean that we are forbidden to call in the doctor? A brigand surprises me at the edge of a wood: must I not merely surrender my purse on compulsion; but, even if I could withhold it, am I in conscience bound to give it up? For certainly the pistol he holds is also a power.

Let us then admit that force does not create right, and that we are obliged to obey only legitimate powers. In that case, my original question recurs.

4. SLAVERY

SINCE no man has a natural authority over his fellow, and force creates no right, we must conclude that conventions form the basis of all legitimate authority among men.

If an individual, says Grotius, can alienate his liberty and make himself the slave of a master, why could not a whole people do the same and make itself subject to a king? There are in this passage plenty of ambiguous words which would need explaining; but let us confine ourselves to the word alienate. To alienate is to give or to sell. Now, a man who becomes the slave of another does not give himself; he sells himself, at the

least for his subsistence: but for what does a people sell itself? A king is so far from furnishing his subjects with their subsistence that he gets his own only from them; and, according to Rabelais, kings do not live on nothing. Do subjects then give their persons on condition that the king takes their goods also? I fail to see what they have left to preserve.

It will be said that the despot assures his subjects civil tranquillity. Granted; but what do they gain, if the wars his ambition brings down upon them, his insatiable avidity, and the vexatious conduct of his ministers press harder on them than their own dissensions would have done? What do they gain, if the very tranquillity they enjoy is one of their miseries? Tranquillity is found also in dungeons; but is that enough to make them desirable places to live in? The Greeks imprisoned in the cave of the Cyclops lived there very tranquilly, while they were awaiting their turn to be devoured.

To say that a man gives himself gratuitously, is to say what is absurd and inconceivable; such an act is null and illegitimate, from the mere fact that he who does it is out of his mind. To say the same of a whole people is to suppose a people of madmen; and madness creates no right.

Even if each man could alienate himself, he could not alienate his children: they are born men and free; their liberty belongs to them, and no one but they has the right to dispose of it. Before they come to years of discretion, the father can, in their name, lay down conditions for their preservation and well-being, but he cannot give them irrevocably and without conditions: such a gift is contrary to the ends of nature, and exceeds the rights of paternity. It would therefore be necessary, in order to legitimise an arbitrary government, that in every generation the people should be in a position to accept or reject it; but, were this so, the government would be no longer arbitrary.

To renounce liberty is to renounce being a man, to surrender the rights of humanity and even its duties. For him who renounces everything no indemnity is possible. Such a renunciation is incompatible with man's nature; to remove all liberty from his will is to remove all morality from his acts. Finally, it is an empty and contradictory convention that sets up, on the one side, absolute authority, and, on the other, unlimited obedience. Is it not clear that we can be under no obligation to a person from whom we have the right to exact everything? Does not this condition alone, in the absence of equivalence or exchange, in itself involve the nullity of the act? For what right can my slave have against me, when all that he has belongs to me, and, his right being mine, this right of mine against myself is a phrase devoid of meaning?

Grotius and the rest find in war another origin for the so-called right of slavery. The victor having, as they hold, the right of killing the vanquished, the latter can buy back his life at the price of his liberty; and this convention is the more legitimate because it is to the advantage of both parties.

But it is clear that this supposed right to kill the conquered is by no means deducible from the state of war. Men, from the mere fact that, while

they are living in their primitive independence, they have no mutual relations stable enough to constitute either the state of peace or the state of war, cannot be naturally enemies. War is constituted by a relation between things, and not between persons; and, as the state of war cannot arise out of simple personal relations, but only out of real relations, private war, or war of man with man, can exist neither in the state of nature, where there is no constant property, nor in the social state, where everything is under the authority of the laws.

Individual combats, duels and encounters, are acts which cannot constitute a state; while the private wars, authorised by the Establishments of Louis IX, King of France, and suspended by the Peace of God, are abuses of feudalism, in itself an absurd system if ever there was one, and contrary to the principles of natural right and to all good polity.

War then is a relation, not between man and man, but between State and State, and individuals are enemies only accidentally, not as men, nor even as citizens,[3] but as soldiers; not as members of their country, but as its defenders. Finally, each State can have for enemies only other States, and not men; for between things disparate in nature there can be no real relation.

Furthermore, this principle is in conformity with the established rules of all times and the constant practice of all civilised peoples. Declarations of war are intimations less to powers than to their subjects. The foreigner, whether king, individual, or people, who robs, kills or detains the subjects, without declaring war on the prince, is not an enemy, but a brigand. Even in real war, a just prince, while laying hands, in the enemy's country, on all that belongs to the public, respects the lives and goods of individuals: he respects rights on which his own are founded. The object of the war being the destruction of the hostile State, the other side has a right to kill its defenders, while they are bearing arms; but as soon as they lay them down and surrender, they cease to be enemies or instruments of the enemy, and become once more merely men, whose life no one has any right to take. Sometimes it is possible to kill the State without killing a single one of its members; and war gives no right which is not necessary to the gaining of its object. These principles are not those of Grotius: they are not based on the authority of poets, but derived from the nature of reality and based on reason.

The right of conquest has no foundation other than the right of the strongest. If war does not give the conqueror the right to massacre the conquered peoples, the right to enslave them cannot be based upon a right which does not exist. No one has a right to kill an enemy except when he cannot make him a slave, and the right to enslave him cannot therefore be derived from the right to kill him. It is accordingly an unfair exchange to make him buy at the price of his liberty his life, over which the victor holds no right. Is it not clear that there is a vicious circle in founding the right of life and death on the right of slavery, and the right of slavery on the right of life and death?

Even if we assume this terrible right to kill everybody, I maintain that a slave made in war, or a conquered people, is under no obligation to a master, except to obey him as far as he is compelled to do so. By taking an equivalent for his life, the victor has not done him a favour; instead of killing him without profit, he has killed him usefully. So far then is he from acquiring over him any authority in addition to that of force, that the state of war continues to subsist between them: their mutual relation is the effect of it, and the usage of the right of war does not imply a treaty of peace. A convention has indeed been made; but this convention, so far from destroying the state of war, presupposes its continuance.

So, from whatever aspect we regard the question, the right of slavery is null and void, not only as being illegitimate, but also because it is absurd and meaningless. The words slave and right contradict each other, and are mutually exclusive. It will always be equally foolish for a man to say to a man or to a people: "I make with you a convention wholly at your expense and wholly to my advantage; I shall keep it as long as I like, and you will keep it as long as I like."

5. THAT WE MUST ALWAYS GO BACK TO A FIRST CONVENTION

EVEN if I granted all that I have been refuting, the friends of despotism would be no better off. There will always be a great difference between subduing a multitude and ruling a society. Even if scattered individuals were successively enslaved by one man, however numerous they might be, I still see no more than a master and his slaves, and certainly not a people and its ruler; I see what may be termed an aggregation, but not an association; there is as yet neither public good nor body politic. The man in question, even if he has enslaved half the world, is still only an individual; his interest, apart from that of others, is still a purely private interest. If this same man comes to die, his empire, after him, remains scattered and without unity, as an oak falls and dissolves into a heap of ashes when the fire has consumed it.

A people, says Grotius, can give itself to a king. Then, according to Grotius, a people is a people before it gives itself. The gift is itself a civil act, and implies public deliberation. It would be better, before examining the act by which a people gives itself to a king, to examine that by which it has become a people; for this act, being necessarily prior to the other, is the true foundation of society.

Indeed, if there were no prior convention, where, unless the election were unanimous, would be the obligation on the minority to submit to the choice of the majority? How have a hundred men who wish for a master the right to vote on behalf of ten who do not? The law of majority voting is itself something established by convention, and presupposes unanimity, on one occasion at least.

6. THE SOCIAL COMPACT

I SUPPOSE men to have reached the point at which the obstacles in the way of their preservation in the state of nature show their power of resistance to be greater than the resources at the disposal of each individual for his maintenance in that state. That primitive condition can then subsist no longer; and the human race would perish unless it changed its manner of existence.

But, as men cannot engender new forces, but only unite and direct existing ones, they have no other means of preserving themselves than the formation, by aggregation, of a sum of forces great enough to overcome the resistance. These they have to bring into play by means of a single motive power, and cause to act in concert.

This sum of forces can arise only where several persons come together: but, as the force and liberty of each man are the chief instruments of his self-preservation, how can he pledge them without harming his own interests, and neglecting the care he owes to himself? This difficulty, in its bearing on my present subject, may be stated in the following terms:

"The problem is to find a form of association which will defend and protect with the whole common force the person and goods of each associate, and in which each, while uniting himself with all, may still obey himself alone, and remain as free as before." This is the fundamental problem of which the Social Contract provides the solution.

The clauses of this contract are so determined by the nature of the act that the slightest modification would make them vain and ineffective; so that, although they have perhaps never been formally set forth, they are everywhere the same and everywhere tacitly admitted and recognised, until, on the violation of the social compact, each regains his original rights and resumes his natural liberty, while losing the conventional liberty in favour of which he renounced it.

These clauses, properly understood, may be reduced to one — the total alienation of each associate, together with all his rights, to the whole community; for, in the first place, as each gives himself absolutely, the conditions are the same for all; and, this being so, no one has any interest in making them burdensome to others.

Moreover, the alienation being without reserve, the union is as perfect as it can be, and no associate has anything more to demand: for, if the individuals retained certain rights, as there would be no common superior to decide between them and the public, each, being on one point his own judge, would ask to be so on all; the state of nature would thus continue, and the association would necessarily become inoperative or tyrannical.

Finally, each man, in giving himself to all, gives himself to nobody; and as there is no associate over whom he does not acquire the same right as he yields others over himself, he gains an equivalent for everything he loses, and an increase of force for the preservation of what he has.

If then we discard from the social compact what is not of its essence, we shall find that it reduces itself to the following terms:

"Each of us puts his person and all his power in common under the supreme direction of the general will, and, in our corporate capacity, we receive each member as an indivisible part of the whole."

At once, in place of the individual personality of each contracting party, this act of association creates a moral and collective body, composed of as many members as the assembly contains votes, and receiving from this act its unity, its common identity, its life and its will. This public person, so formed by the union of all other persons formerly took the name of city,[4] and now takes that of Republic or body politic; it is called by its members State when passive. Sovereign when active, and Power when compared with others like itself. Those who are associated in it take collectively the name of people, and severally are called citizens, as sharing in the sovereign power, and subjects, as being under the laws of the State. But these terms are often confused and taken one for another: it is enough to know how to distinguish them when they are being used with precision.

7. THE SOVEREIGN

THIS formula shows us that the act of association comprises a mutual undertaking between the public and the individuals, and that each individual, in making a contract, as we may say, with himself, is bound in a double capacity; as a member of the Sovereign he is bound to the individuals, and as a member of the State to the Sovereign. But the maxim of civil right, that no one is bound by undertakings made to himself, does not apply in this case; for there is a great difference between incurring an obligation to yourself and incurring one to a whole of which you form a part.

Attention must further be called to the fact that public deliberation, while competent to bind all the subjects to the Sovereign, because of the two different capacities in which each of them may be regarded, cannot, for the opposite reason, bind the Sovereign to itself; and that it is consequently against the nature of the body politic for the Sovereign to impose on itself a law which it cannot infringe. Being able to regard itself in only one capacity, it is in the position of an individual who makes a contract with himself; and this makes it clear that there neither is nor can be any kind of fundamental law binding on the body of the people — not even the social contract itself. This does not mean that the body politic cannot enter into undertakings with others, provided the contract is not infringed by them; for in relation to what is external to it, it becomes a simple being, an individual.

But the body politic or the Sovereign, drawing its being wholly from the sanctity of the contract, can never bind itself, even to an outsider, to do anything derogatory to the original act, for instance, to alienate any part of itself, or to submit to another Sovereign. Violation of the act by

which it exists would be self-annihilation; and that which is itself nothing can create nothing.

As soon as this multitude is so united in one body, it is impossible to offend against one of the members without attacking the body, and still more to offend against the body without the members resenting it. Duty and interest therefore equally oblige the two contracting parties to give each other help; and the same men should seek to combine, in their double capacity, all the advantages dependent upon that capacity.

Again, the Sovereign, being formed wholly of the individuals who compose it, neither has nor can have any interest contrary to theirs; and consequently the sovereign power need give no guarantee to its subjects, because it is impossible for the body to wish to hurt all its members. We shall also see later on that it cannot hurt any in particular. The Sovereign, merely by virtue of what it is, is always what it should be.

This, however, is not the case with the relation of the subjects to the Sovereign, which, despite the common interest, would have no security that they would fulfil their undertakings, unless it found means to assure itself of their fidelity.

In fact, each individual, as a man, may have a particular will contrary or dissimilar to the general will which he has as a citizen. His particular interest may speak to him quite differently from the common interest: his absolute and naturally independent existence may make him look upon what he owes to the common cause as a gratuitous contribution, the loss of which will do less harm to others than the payment of it is burdensome to himself; and, regarding the moral person which constitutes the State as a persona ficta, because not a man, he may wish to enjoy the rights of citizenship without being ready to fulfil the duties of a subject. The continuance of such an injustice could not but prove the undoing of the body politic.

In order then that the social compact may not be an empty formula, it tacitly includes the undertaking, which alone can give force to the rest, that whoever refuses to obey the general will shall be compelled to do so by the whole body. This means nothing less than that he will be forced to be free; for this is the condition which, by giving each citizen to his country, secures him against all personal dependence. In this lies the key to the working of the political machine; this alone legitimises civil undertakings, which, without it, would be absurd, tyrannical, and liable to the most frightful abuses.

8. THE CIVIL STATE

THE passage from the state of nature to the civil state produces a very remarkable change in man, by substituting justice for instinct in his conduct, and giving his actions the morality they had formerly lacked. Then only, when the voice of duty takes the place of physical impulses and right of appetite, does man, who so far had considered only himself, find that he is

forced to act on different principles, and to consult his reason before listening to his inclinations. Although, in this state, he deprives himself of some advantages which he got from nature, he gains in return others so great, his faculties are so stimulated and developed, his ideas so extended, his feelings so ennobled, and his whole soul so uplifted, that, did not the abuses of this new condition often degrade him below that which he left, he would be bound to bless continually the happy moment which took him from it for ever, and, instead of a stupid and unimaginative animal, made him an intelligent being and a man.

Let us draw up the whole account in terms easily commensurable. What man loses by the social contract is his natural liberty and an unlimited right to everything he tries to get and succeeds in getting; what he gains is civil liberty and the proprietorship of all he possesses. If we are to avoid mistake in weighing one against the other, we must clearly distinguish natural liberty, which is bounded only by the strength of the individual, from civil liberty, which is limited by the general will; and possession, which is merely the effect of force or the right of the first occupier, from property, which can be founded only on a positive title.

We might, over and above all this, add, to what man acquires in the civil state, moral liberty, which alone makes him truly master of himself; for the mere impulse of appetite is slavery, while obedience to a law which we prescribe to ourselves is liberty. But I have already said too much on this head, and the philosophical meaning of the word liberty does not now concern us.

9. REAL PROPERTY

EACH member of the community gives himself to it, at the moment of its foundation, just as he is, with all the resources at his command, including the goods he possesses. This act does not make possession, in changing hands, change its nature, and become property in the hands of the Sovereign; but, as the forces of the city are incomparably greater than those of an individual, public possession is also, in fact, stronger and more irrevocable, without being any more legitimate, at any rate from the point of view of foreigners. For the State, in relation to its members, is master of all their goods by the social contract, which, within the State, is the basis of all rights; but, in relation to other powers, it is so only by the right of the first occupier, which it holds from its members.

The right of the first occupier, though more real than the right of the strongest, becomes a real right only when the right of property has already been established. Every man has naturally a right to everything he needs; but the positive act which makes him proprietor of one thing excludes him from everything else. Having his share, he ought to keep to it, and can have no further right against the community. This is why the right of the first occupier, which in the state of nature is so weak, claims the

respect of every man in civil society. In this right we are respecting not so much what belongs to another as what does not belong to ourselves.

In general, to establish the right of the first occupier over a plot of ground, the following conditions are necessary: first, the land must not yet be inhabited; secondly, a man must occupy only the amount he needs for his subsistence; and, in the third place, possession must be taken, not by an empty ceremony, but by labour and cultivation, the only sign of proprietorship that should be respected by others, in default of a legal title.

In granting the right of first occupancy to necessity and labour, are we not really stretching it as far as it can go? Is it possible to leave such a right unlimited? Is it to be enough to set foot on a plot of common ground, in order to be able to call yourself at once the master of it? Is it to be enough that a man has the strength to expel others for a moment, in order to establish his right to prevent them from ever returning? How can a man or a people seize an immense territory and keep it from the rest of the world except by a punishable usurpation, since all others are being robbed, by such an act, of the place of habitation and the means of subsistence which nature gave them in common? When Nunez Balboa, standing on the sea-shore, took possession of the South Seas and the whole of South America in the name of the crown of Castile, was that enough to dispossess all their actual inhabitants, and to shut out from them all the princes of the world? On such a showing, these ceremonies are idly multiplied, and the Catholic King need only take possession all at once, from his apartment, of the whole universe, merely making a subsequent reservation about what was already in the possession of other princes.

We can imagine how the lands of individuals, where they were contiguous and came to be united, became the public territory, and how the right of Sovereignty, extending from the subjects over the lands they held, became at once real and personal. The possessors were thus made more dependent, and the forces at their command used to guarantee their fidelity. The advantage of this does not seem to have been felt by ancient monarchs, who called themselves Kings of the Persians, Scythians, or Macedonians, and seemed to regard themselves more as rulers of men than as masters of a country. Those of the present day more cleverly call themselves Kings of France, Spain, England, etc.: thus holding the land, they are quite confident of holding the inhabitants.

The peculiar fact about this alienation is that, in taking over the goods of individuals, the community, so far from despoiling them, only assures them legitimate possession, and changes usurpation into a true right and enjoyment into proprietorship. Thus the possessors, being regarded as depositaries of the public good, and having their rights respected by all the members of the State and maintained against foreign aggression by all its forces, have, by a cession which benefits both the public and still more themselves, acquired, so to speak, all that they gave up. This paradox may easily be explained by the distinction between the rights which the

Sovereign and the proprietor have over the same estate, as we shall see later on.

It may also happen that men begin to unite one with another before they possess anything, and that, subsequently occupying a tract of country which is enough for all, they enjoy it in common, or share it out among themselves, either equally or according to a scale fixed by the Sovereign. However the acquisition be made, the right which each individual has to his own estate is always subordinate to the right which the community has over all: without this, there would be neither stability in the social tie, nor real force in the exercise of Sovereignty.

I shall end this chapter and this book by remarking on a fact on which the whole social system should rest: i.e., that, instead of destroying natural inequality, the fundamental compact substitutes, for such physical inequality as nature may have set up between men, an equality that is moral and legitimate, and that men, who may be unequal in strength or intelligence, become every one equal by convention and legal right.[5]

BOOK II

1. THAT SOVEREIGNTY IS INALIENABLE

THE first and most important deduction from the principles we have so far laid down is that the general will alone can direct the State according to the object for which it was instituted, i.e., the common good: for if the clashing of particular interests made the establishment of societies necessary, the agreement of these very interests made it possible. The common element in these different interests is what forms the social tie; and, were there no point of agreement between them all, no society could exist. It is solely on the basis of this common interest that every society should be governed.

I hold then that Sovereignty, being nothing less than the exercise of the general will, can never be alienated, and that the Sovereign, who is no less than a collective being, cannot be represented except by himself: the power indeed may be transmitted, but not the will.

In reality, if it is not impossible for a particular will to agree on some point with the general will, it is at least impossible for the agreement to be lasting and constant; for the particular will tends, by its very nature, to partiality, while the general will tends to equality. It is even more impossible to have any guarantee of this agreement; for even if it should always exist, it would be the effect not of art, but of chance. The Sovereign may indeed say: "I now will actually what this man wills, or at least what he says he wills"; but it cannot say: "What he wills tomorrow, I too shall will" because it is absurd for the will to bind itself for the future, nor is it incumbent on any will to consent to anything that is not for the good of the being who wills. If then the people promises simply to obey, by that very act it dissolves itself and loses what makes it a people; the moment a master

exists, there is no longer a Sovereign, and from that moment the body politic has ceased to exist.

This does not mean that the commands of the rulers cannot pass for general wills, so long as the Sovereign, being free to oppose them, offers no opposition. In such a case, universal silence is taken to imply the consent of the people. This will be explained later on.

2. THAT SOVEREIGNTY IS INDIVISIBLE

SOVEREIGNTY, for the same reason as makes it inalienable, is indivisible; for will either is, or is not, general;[6] it is the will either of the body of the people, or only of a part of it. In the first case, the will, when declared, is an act of Sovereignty and constitutes law: in the second, it is merely a particular will, or act of magistracy — at the most a decree.

But our political theorists, unable to divide Sovereignty in principle, divide it according to its object: into force and will; into legislative power and executive power; into rights of taxation, justice and war; into internal administration and power of foreign treaty. Sometimes they confuse all these sections, and sometimes they distinguish them; they turn the Sovereign into a fantastic being composed of several connected pieces: it is as if they were making man of several bodies, one with eyes, one with arms, another with feet, and each with nothing besides. We are told that the jugglers of Japan dismember a child before the eyes of the spectators; then they throw all the members into the air one after another, and the child falls down alive and whole. The conjuring tricks of our political theorists are very like that; they first dismember the Body politic by an illusion worthy of a fair, and then join it together again we know not how.

This error is due to a lack of exact notions concerning the Sovereign authority, and to taking for parts of it what are only emanations from it. Thus, for example, the acts of declaring war and making peace have been regarded as acts of Sovereignty; but this is not the case, as these acts do not constitute law, but merely the application of a law, a particular act which decides how the law applies, as we shall see clearly when the idea attached to the word law has been defined.

If we examined the other divisions in the same manner, we should find that, whenever Sovereignty seems to be divided, there is an illusion: the rights which are taken as being part of Sovereignty are really all subordinate, and always imply supreme wills of which they only sanction the execution.

It would be impossible to estimate the obscurity this lack of exactness has thrown over the decisions of writers who have dealt with political right, when they have used the principles laid down by them to pass judgment on the respective rights of kings and peoples. Every one can see, in Chapters III and IV of the First Book of Grotius, how the learned man and his translator, Barbeyrac, entangle and tie themselves up in their

own sophistries, for fear of saying too little or too much of what they think, and so offending the interests they have to conciliate. Grotius, a refugee in France, ill-content with his own country, and desirous of paying his court to Louis XIII, to whom his book is dedicated, spares no pains to rob the peoples of all their rights and invest kings with them by every conceivable artifice. This would also have been much to the taste of Barbeyrac, who dedicated his translation to George I of England. But unfortunately the expulsion of James II, which he called his "abdication," compelled him to use all reserve, to shuffle and to tergiversate, in order to avoid making William out a usurper. If these two writers had adopted the true principles, all difficulties would have been removed, and they would have been always consistent; but it would have been a sad truth for them to tell, and would have paid court for them to no one save the people. Moreover, truth is no road to fortune, and the people dispenses neither ambassadorships, nor professorships, nor pensions.

3. WHETHER THE GENERAL WILL IS FALLIBLE

IT follows from what has gone before that the general will is always right and tends to the public advantage; but it does not follow that the deliberations of the people are always equally correct. Our will is always for our own good, but we do not always see what that is; the people is never corrupted, but it is often deceived, and on such occasions only does it seem to will what is bad.

There is often a great deal of difference between the will of all and the general will; the latter considers only the common interest, while the former takes private interest into account, and is no more than a sum of particular wills: but take away from these same wills the pluses and minuses that cancel one another,[7] and the general will remains as the sum of the differences.

If, when the people, being furnished with adequate information, held its deliberations, the citizens had no communication one with another, the grand total of the small differences would always give the general will, and the decision would always be good. But when factions arise, and partial associations are formed at the expense of the great association, the will of each of these associations becomes general in relation to its members, while it remains particular in relation to the State: it may then be said that there are no longer as many votes as there are men, but only as many as there are associations. The differences become less numerous and give a less general result. Lastly, when one of these associations is so great as to prevail over all the rest, the result is no longer a sum of small differences, but a single difference; in this case there is no longer a general will, and the opinion which prevails is purely particular.

It is therefore essential, if the general will is to be able to express itself, that there should be no partial society within the State, and that each citizen should think only his own thoughts:[8] which was indeed the sublime

and unique system established by the great Lycurgus. But if there are partial societies, it is best to have as many as possible and to prevent them from being unequal, as was done by Solon, Numa and Servius. These precautions are the only ones that can guarantee that the general will shall be always enlightened, and that the people shall in no way deceive itself.

4. THE LIMITS OF THE SOVEREIGN POWER

IF the State is a moral person whose life is in the union of its members, and if the most important of its cares is the care for its own preservation, it must have a universal and compelling force, in order to move and dispose each part as may be most advantageous to the whole. As nature gives each man absolute power over all his members, the social compact gives the body politic absolute power over all its members also; and it is this power which, under the direction of the general will, bears, as I have said, the name of Sovereignty.

But, besides the public person, we have to consider the private persons composing it, whose life and liberty are naturally independent of it. We are bound then to distinguish clearly between the respective rights of the citizens and the Sovereign,[9] and between the duties the former have to fulfil as subjects, and the natural rights they should enjoy as men.

Each man alienates, I admit, by the social compact, only such part of his powers, goods and liberty as it is important for the community to control; but it must also be granted that the Sovereign is sole judge of what is important.

Every service a citizen can render the State he ought to render as soon as the Sovereign demands it; but the Sovereign, for its part, cannot impose upon its subjects any fetters that are useless to the community, nor can it even wish to do so; for no more by the law of reason than by the law of nature can anything occur without a cause.

The undertakings which bind us to the social body are obligatory only because they are mutual; and their nature is such that in fulfilling them we cannot work for others without working for ourselves. Why is it that the general will is always in the right, and that all continually will the happiness of each one, unless it is because there is not a man who does not think of "each" as meaning him, and consider himself in voting for all? This proves that equality of rights and the idea of justice which such equality creates originate in the preference each man gives to himself, and accordingly in the very nature of man. It proves that the general will, to be really such, must be general in its object as well as its essence; that it must both come from all and apply to all; and that it loses its natural rectitude when it is directed to some particular and determinate object, because in such a case we are judging of something foreign to us, and have no true principle of equity to guide us.

Indeed, as soon as a question of particular fact or right arises on a point not previously regulated by a general convention, the matter becomes

contentious. It is a case in which the individuals concerned are one party, and the public the other, but in which I can see neither the law that ought to be followed nor the judge who ought to give the decision. In such a case, it would be absurd to propose to refer the question to an express decision of the general will, which can be only the conclusion reached by one of the parties and in consequence will be, for the other party, merely an external and particular will, inclined on this occasion to injustice and subject to error. Thus, just as a particular will cannot stand for the general will, the general will, in turn, changes its nature, when its object is particular, and, as general, cannot pronounce on a man or a fact. When, for instance, the people of Athens nominated or displaced its rulers, decreed honours to one, and imposed penalties on another, and, by a multitude of particular decrees, exercised all the functions of government indiscriminately, it had in such cases no longer a general will in the strict sense; it was acting no longer as Sovereign, but as magistrate. This will seem contrary to current views; but I must be given time to expound my own.

It should be seen from the foregoing that what makes the will general is less the number of voters than the common interest uniting them; for, under this system, each necessarily submits to the conditions he imposes on others: and this admirable agreement between interest and justice gives to the common deliberations an equitable character which at once vanishes when any particular question is discussed, in the absence of a common interest to unite and identify the ruling of the judge with that of the party.

From whatever side we approach our principle, we reach the same conclusion, that the social compact sets up among the citizens an equality of such a kind, that they all bind themselves to observe the same conditions and should therefore all enjoy the same rights. Thus, from the very nature of the compact, every act of Sovereignty, i.e., every authentic act of the general will, binds or favours all the citizens equally; so that the Sovereign recognises only the body of the nation, and draws no distinctions between those of whom it is made up. What, then, strictly speaking, is an act of Sovereignty? It is not a convention between a superior and an inferior, but a convention between the body and each of its members. It is legitimate, because based on the social contract, and equitable, because common to all; useful, because it can have no other object than the general good, and stable, because guaranteed by the public force and the supreme power. So long as the subjects have to submit only to conventions of this sort, they obey no-one but their own will; and to ask how far the respective rights of the Sovereign and the citizens extend, is to ask up to what point the latter can enter into undertakings with themselves, each with all, and all with each.

We can see from this that the sovereign power, absolute, sacred and inviolable as it is, does not and cannot exceed the limits of general conventions, and that every man may dispose at will of such goods and liberty as these conventions leave him; so that the Sovereign never has a right to lay more charges on one subject than on another, because, in that

case, the question becomes particular, and ceases to be within its competency.

When these distinctions have once been admitted, it is seen to be so untrue that there is, in the social contract, any real renunciation on the part of the individuals, that the position in which they find themselves as a result of the contract is really preferable to that in which they were before. Instead of a renunciation, they have made an advantageous exchange: instead of an uncertain and precarious way of living they have got one that is better and more secure; instead of natural independence they have got liberty, instead of the power to harm others security for themselves, and instead of their strength, which others might overcome, a right which social union makes invincible. Their very life, which they have devoted to the State, is by it constantly protected; and when they risk it in the State's defence, what more are they doing than giving back what they have received from it? What are they doing that they would not do more often and with greater danger in the state of nature, in which they would inevitably have to fight battles at the peril of their lives in defence of that which is the means of their preservation? All have indeed to fight when their country needs them; but then no one has ever to fight for himself. Do we not gain something by running, on behalf of what gives us our security, only some of the risks we should have to run for ourselves, as soon as we lost it?

5. THE RIGHT OF LIFE AND DEATH

THE question is often asked how individuals, having no right to dispose of their own lives, can transfer to the Sovereign a right which they do not possess. The difficulty of answering this question seems to me to lie in its being wrongly stated. Every man has a right to risk his own life in order to preserve it. Has it ever been said that a man who throws himself out of the window to escape from a fire is guilty of suicide? Has such a crime ever been laid to the charge of him who perishes in a storm because, when he went on board, he knew of the danger?

The social treaty has for its end the preservation of the contracting parties. He who wills the end wills the means also, and the means must involve some risks, and even some losses. He who wishes to preserve his life at others' expense should also, when it is necessary, be ready to give it up for their sake. Furthermore, the citizen is no longer the judge of the dangers to which the law-desires him to expose himself; and when the prince says to him: "It is expedient for the State that you should die," he ought to die, because it is only on that condition that he has been living in security up to the present, and because his life is no longer a mere bounty of nature, but a gift made conditionally by the State.

The death-penalty inflicted upon criminals may be looked on in much the same light: it is in order that we may not fall victims to an assassin that we consent to die if we ourselves turn assassins. In this treaty, so far

from disposing of our own lives, we think only of securing them, and it is not to be assumed that any of the parties then expects to get hanged.

Again, every malefactor, by attacking social rights, becomes on forfeit a rebel and a traitor to his country; by violating its laws be ceases to be a member of it; he even makes war upon it. In such a case the preservation of the State is inconsistent with his own, and one or the other must perish; in putting the guilty to death, we slay not so much the citizen as an enemy. The trial and the judgment are the proofs that he has broken the social treaty, and is in consequence no longer a member of the State. Since, then, he has recognised himself to be such by living there, he must be removed by exile as a violator of the compact, or by death as a public enemy; for such an enemy is not a moral person, but merely a man; and in such a case the right of war is to kill the vanquished.

But, it will be said, the condemnation of a criminal is a particular act. I admit it: but such condemnation is not a function of the Sovereign; it is a right the Sovereign can confer without being able itself to exert it. All my ideas are consistent, but I cannot expound them all at once.

We may add that frequent punishments are always a sign of weakness or remissness on the part of the government. There is not a single ill-doer who could not be turned to some good. The State has no right to put to death, even for the sake of making an example, any one whom it can leave alive without danger.

The right of pardoning or exempting the guilty from a penalty imposed by the law and pronounced by the judge belongs only to the authority which is superior to both judge and law, i.e., the Sovereign; each its right in this matter is far from clear, and the cases for exercising it are extremely rare. In a well-governed State, there are few punishments, not because there are many pardons, but because criminals are rare; it is when a State is in decay that the multitude of crimes is a guarantee of impunity. Under the Roman Republic, neither the Senate nor the Consuls ever attempted to pardon; even the people never did so, though it sometimes revoked its own decision. Frequent pardons mean that crime will soon need them no longer, and no one can help seeing whither that leads. But I feel my heart protesting and restraining my pen; let us leave these questions to the just man who has never offended, and would himself stand in no need of pardon.

6. LAW

BY the social compact we have given the body politic existence and life; we have now by legislation to give it movement and will. For the original act by which the body is formed and united still in no respect determines what it ought to do for its preservation.

What is well and in conformity with order is so by the nature of things and independently of human conventions. All justice comes from God, who is its sole source; but if we knew how to receive so high an

inspiration, we should need neither government nor laws. Doubtless, there is a universal justice emanating from reason alone; but this justice, to be admitted among us, must be mutual. Humanly speaking, in default of natural sanctions, the laws of justice are ineffective among men: they merely make for the good of the wicked and the undoing of the just, when the just man observes them towards everybody and nobody observes them towards him. Conventions and laws are therefore needed to join rights to duties and refer justice to its object. In the state of nature, where everything is common, I owe nothing to him whom I have promised nothing; I recognise as belonging to others only what is of no use to me. In the state of society all rights are fixed by law, and the case becomes different.

But what, after all, is a law? As long as we remain satisfied with attaching purely metaphysical ideas to the word, we shall go on arguing without arriving at an understanding; and when we have defined a law of nature, we shall be no nearer the definition of a law of the State.

I have already said that there can be no general will directed to a particular object. Such an object must be either within or outside the State. If outside, a will which is alien to it cannot be, in relation to it, general; if within, it is part of the State, and in that case there arises a relation between whole and part which makes them two separate beings, of which the part is one, and the whole minus the part the other. But the whole minus a part cannot be the whole; and while this relation persists, there can be no whole, but only two unequal parts; and it follows that the will of one is no longer in any respect general in relation to the other.

But when the whole people decrees for the whole people, it is considering only itself; and if a relation is then formed, it is between two aspects of the entire object, without there being any division of the whole. In that case the matter about which the decree is made is, like the decreeing will, general. This act is what I call a law.

When I say that the object of laws is always general, I mean that law considers subjects en masse and actions in the abstract, and never a particular person or action. Thus the law may indeed decree that there shall be privileges, but cannot confer them on anybody by name. It may set up several classes of citizens, and even lay down the qualifications for membership of these classes, but it cannot nominate such and such persons as belonging to them; it may establish a monarchical government and hereditary succession, but it cannot choose a king, or nominate a royal family. In a word, no function which has a particular object belongs to the legislative power.

On this view, we at once see that it can no longer be asked whose business it is to make laws, since they are acts of the general will; nor whether the prince is above the law, since he is a member of the State; nor whether the law can be unjust, since no one is unjust to himself; nor how we can be both free and subject to the laws, since they are but registers of our wills.

We see further that, as the law unites universality of will with universality of object, what a man, whoever he be, commands of his own motion cannot be a law; and even what the Sovereign commands with regard to a particular matter is no nearer being a law, but is a decree, an act, not of sovereignty, but of magistracy.

I therefore give the name "Republic" to every State that is governed by laws, no matter what the form of its administration may be: for only in such a case does the public interest govern, and the res publica rank as a reality. Every legitimate government is republican;[10] what government is I will explain later on.

Laws are, properly speaking, only the conditions of civil association. The people, being subject to the laws, ought to be their author: the conditions of the society ought to be regulated solely by those who come together to form it. But how are they to regulate them? Is it to be by common agreement, by a sudden inspiration? Has the body politic an organ to declare its will? Who can give it the foresight to formulate and announce its acts in advance? Or how is it to announce them in the hour of need? How can a blind multitude, which often does not know what it wills, because it rarely knows what is good for it, carry out for itself so great and difficult an enterprise as a system of legislation? Of itself the people wills always the good, but of itself it by no means always sees it. The general will is always in the right, but the judgment which guides it is not always enlightened. It must be got to see objects as they are, and sometimes as they ought to appear to it; it must be shown the good road it is in search of, secured from the seductive influences of individual wills, taught to see times and spaces as a series, and made to weigh the attractions of present and sensible advantages against the danger of distant and hidden evils. The individuals see the good they reject; the public wills the good it does not see. All stand equally in need of guidance. The former must be compelled to bring their wills into conformity with their reason; the latter must be taught to know what it wills. If that is done, public enlightenment leads to the union of understanding and will in the social body: the parts are made to work exactly together, and the whole is raised to its highest power. This makes a legislator necessary.

7. THE LEGISLATOR

IN order to discover the rules of society best suited to nations, a superior intelligence beholding all the passions of men without experiencing any of them would be needed. This intelligence would have to be wholly unrelated to our nature, while knowing it through and through; its happiness would have to be independent of us, and yet ready to occupy itself with ours; and lastly, it would have, in the march of time, to look forward to a distant glory, and, working in one century, to be able to enjoy in the next.[11] It would take gods to give men laws.

What Caligula argued from the facts, Plato, in the dialogue called the Politicus, argued in defining the civil or kingly man, on the basis of right. But if great princes are rare, how much more so are great legislators? The former have only to follow the pattern which the latter have to lay down. The legislator is the engineer who invents the machine, the prince merely the mechanic who sets it up and makes it go. "At the birth of societies," says Montesquieu, "the rulers of Republics establish institutions, and afterwards the institutions mould the rulers."[12]

He who dares to undertake the making of a people's institutions ought to feel himself capable, so to speak, of changing human nature, of transforming each individual, who is by himself a complete and solitary whole, into part of a greater whole from which he in a manner receives his life and being; of altering man's constitution for the purpose of strengthening it; and of substituting a partial and moral existence for the physical and independent existence nature has conferred on us all. He must, in a word, take away from man his own resources and give him instead new ones alien to him, and incapable of being made use of without the help of other men. The more completely these natural resources are annihilated, the greater and the more lasting are those which he acquires, and the more stable and perfect the new institutions; so that if each citizen is nothing and can do nothing without the rest, and the resources acquired by the whole are equal or superior to the aggregate of the resources of all the individuals, it may be said that legislation is at the highest possible point of perfection.

The legislator occupies in every respect an extraordinary position in the State. If he should do so by reason of his genius, he does so no less by reason of his office, which is neither magistracy, nor Sovereignty. This office, which sets up the Republic, nowhere enters into its constitution; it is an individual and superior function, which has nothing in common with human empire; for if he who holds command over men ought not to have command over the laws, he who has command over the laws ought not any more to have it over men; or else his laws would be the ministers of his passions and would often merely serve to perpetuate his injustices: his private aims would inevitably mar the sanctity of his work.

When Lycurgus gave laws to his country, he began by resigning the throne. It was the custom of most Greek towns to entrust the establishment of their laws to foreigners. The Republics of modern Italy in many cases followed this example; Geneva did the same and profited by it.[13] Rome, when it was most prosperous, suffered a revival of all the crimes of tyranny, and was brought to the verge of destruction, because it put the legislative authority and the sovereign power into the same hands.

Nevertheless, the decemvirs themselves never claimed the right to pass any law merely on their own authority. "Nothing we propose to you," they said to the people, "can pass into law without your consent. Romans, be yourselves the authors of the laws which are to make you happy."

He, therefore, who draws up the laws has, or should have, no right of legislation, and the people cannot, even if it wishes, deprive itself of this

incommunicable right, because, according to the fundamental compact, only the general will can bind the individuals, and there can be no assurance that a particular will is in conformity with the general will, until it has been put to the free vote of the people. This I have said already; but it is worth while to repeat it.

Thus in the task of legislation we find together two things which appear to be incompatible: an enterprise too difficult for human powers, and, for its execution, an authority that is no authority.

There is a further difficulty that deserves attention. Wise men, if they try to speak their language to the common herd instead of its own, cannot possibly make themselves understood. There are a thousand kinds of ideas which it is impossible to translate into popular language. Conceptions that are too general and objects that are too remote are equally out of its range: each individual, having no taste for any other plan of government than that which suits his particular interest, finds it difficult to realise the advantages he might hope to draw from the continual privations good laws impose. For a young people to be able to relish sound principles of political theory and follow the fundamental rules of statecraft, the effect would have to become the cause; the social spirit, which should be created by these institutions, would have to preside over their very foundation; and men would have to be before law what they should become by means of law. The legislator therefore, being unable to appeal to either force or reason, must have recourse to an authority of a different order, capable of constraining without violence and persuading without convincing.

This is what has, in all ages, compelled the fathers of nations to have recourse to divine intervention and credit the gods with their own wisdom, in order that the peoples, submitting to the laws of the State as to those of nature, and recognising the same power in the formation of the city as in that of man, might obey freely, and bear with docility the yoke of the public happiness.

This sublime reason, far above the range of the common herd, is that whose decisions the legislator puts into the mouth of the immortals, in order to constrain by divine authority those whom human prudence could not move.[14] But it is not anybody who can make the gods speak, or get himself believed when he proclaims himself their interpreter. The great soul of the legislator is the only miracle that can prove his mission. Any man may grave tablets of stone, or buy an oracle, or feign secret intercourse with some divinity, or train a bird to whisper in his ear, or find other vulgar ways of imposing on the people. He whose knowledge goes no further may perhaps gather round him a band of fools; but he will never found an empire, and his extravagances will quickly perish with him. Idle tricks form a passing tie; only wisdom can make it lasting. The Judaic law, which still subsists, and that of the child of Ishmael, which, for ten centuries, has ruled half the world, still proclaim the great men who laid them down; and, while the pride of philosophy or the blind spirit of faction sees in them no more than lucky impostures, the true political theorist admires, in the institutions

they set up, the great and powerful genius which presides over things made to endure.

We should not, with Warburton, conclude from this that politics and religion have among us a common object, but that, in the first periods of nations, the one is used as an instrument for the other.

8. THE PEOPLE

AS, before putting up a large building, the architect surveys and sounds the site to see if it will bear the weight, the wise legislator does not begin by laying down laws good in themselves, but by investigating the fitness of the people, for which they are destined, to receive them. Plato refused to legislate for the Arcadians and the Cyrenæans, because he knew that both peoples were rich and could not put up with equality; and good laws and bad men were found together in Crete, because Minos had inflicted discipline on a people already burdened with vice.

A thousand nations have achieved earthly greatness, that could never have endured good laws; even such as could have endured them could have done so only for a very brief period of their long history. Most peoples, like most men, are docile only in youth; as they grow old they become incorrigible. When once customs have become established and prejudices inveterate, it is dangerous and useless to attempt their reformation; the people, like the foolish and cowardly patients who rave at sight of the doctor, can no longer bear that any one should lay hands on its faults to remedy them.

There are indeed times in the history of States when, just as some kinds of illness turn men's heads and make them forget the past, periods of violence and revolutions do to peoples what these crises do to individuals: horror of the past takes the place of forgetfulness, and the State, set on fire by civil wars, is born again, so to speak, from its ashes, and takes on anew, fresh from the jaws of death, the vigour of youth. Such were Sparta at the time of Lycurgus, Rome after the Tarquins, and, in modern times, Holland and Switzerland after the expulsion of the tyrants.

But such events are rare; they are exceptions, the cause of which is always to be found in the particular constitution of the State concerned. They cannot even happen twice to the same people, for it can make itself free as long as it remains barbarous, but not when the civic impulse has lost its vigour. Then disturbances may destroy it, but revolutions cannot mend it: it needs a master, and not a liberator. Free peoples, be mindful of this maxim: “Liberty may be gained, but can never be recovered.”

Youth is not infancy. There is for nations, as for men, a period of youth, or, shall we say, maturity, before which they should not be made subject to laws; but the maturity of a people is not always easily recognisable, and, if it is anticipated, the work is spoilt. One people is amenable to discipline from the beginning; another, not after ten centuries. Russia will never be really civilised, because it was civilised too soon. Peter

had a genius for imitation; but he lacked true genius, which is creative and makes all from nothing. He did some good things, but most of what he did was out of place. He saw that his people was barbarous, but did not see that it was not ripe for civilisation: he wanted to civilise it when it needed only hardening. His first wish was to make Germans or Englishmen, when he ought to have been making Russians; and he prevented his subjects from ever becoming what they might have been by persuading them that they were what they are not. In this fashion too a French teacher turns out his pupil to be an infant prodigy, and for the rest of his life to be nothing whatsoever. The empire of Russia will aspire to conquer Europe, and will itself be conquered. The Tartars, its subjects or neighbours, will become its masters and ours, by a revolution which I regard as inevitable. Indeed, all the kings of Europe are working in concert to hasten its coming.

9. THE PEOPLE (continued)

As nature has set bounds to the stature of a well-made man, and, outside those limits, makes nothing but giants or dwarfs, similarly, for the constitution of a State to be at its best, it is possible to fix limits that will make it neither too large for good government, nor too small for self-maintenance. In every body politic there is a maximum strength which it cannot exceed and which it only loses by increasing in size. Every extension of the social tie means its relaxation; and, generally speaking, a small State is stronger in proportion than a great one.

A thousand arguments could be advanced in favour of this principle. First, long distances make administration more difficult, just as a weight becomes heavier at the end of a longer lever. Administration therefore becomes more and more burdensome as the distance grows greater; for, in the first place, each city has its own, which is paid for by the people: each district its own, still paid for by the people: then comes each province, and then the great governments, satrapies, and vice-royalties, always costing more the higher you go, and always at the expense of the unfortunate people. Last of all comes the supreme administration, which eclipses all the rest. All these over charges are a continual drain upon the subjects; so far from being better governed by all these different orders, they are worse governed than if there were only a single authority over them. In the meantime, there scarce remain resources enough to meet emergencies; and, when recourse must be had to these, the State is always on the eve of destruction.

This is not all; not only has the government less vigour and promptitude for securing the observance of the laws, preventing nuisances, correcting abuses, and guarding against seditious undertakings begun in distant places; the people has less affection for its rulers, whom it never sees, for its country, which, to its eyes, seems like the world, and for its fellow-citizens, most of whom are unknown to it. The same laws cannot suit so many diverse provinces with different customs, situated in the most

various climates, and incapable of enduring a uniform government. Different laws lead only to trouble and confusion among peoples which, living under the same rulers and in constant communication one with another, intermingle and intermarry, and, coming under the sway of new customs, never know if they can call their very patrimony their own. Talent is buried, virtue unknown and vice unpunished, among such a multitude of men who do not know one another, gathered together in one place at the seat of the central administration. The leaders, overwhelmed with business, see nothing for themselves; the State is governed by clerks. Finally, the measures which have to be taken to maintain the general authority, which all these distant officials wish to escape or to impose upon, absorb all the energy of the public, so that there is none left for the happiness of the people. There is hardly enough to defend it when need arises, and thus a body which is too big for its constitution gives way and falls crushed under its own weight.

Again, the State must assure itself a safe foundation, if it is to have stability, and to be able to resist the shocks it cannot help experiencing, as well as the efforts it will be forced to make for its maintenance; for all peoples have a kind of centrifugal force that makes them continually act one against another, and tend to aggrandise themselves at their neighbours' expense, like the vortices of Descartes. Thus the weak run the risk of being soon swallowed up; and it is almost impossible for any one to preserve itself except by putting itself in a state of equilibrium with all, so that the pressure is on all sides practically equal.

It may therefore be seen that there are reasons for expansion and reasons for contraction; and it is no small part of the statesman's skill to hit between them the mean that is most favourable to the preservation of the State. It may be said that the reason for expansion, being merely external and relative, ought to be subordinate to the reasons for contraction, which are internal and absolute. A strong and healthy constitution is the first thing to look for; and it is better to count on the vigour which comes of good government than on the resources a great territory furnishes.

It may be added that there have been known States so constituted that the necessity of making conquests entered into their very constitution, and that, in order to maintain themselves, they were forced to expand ceaselessly. It may be that they congratulated themselves greatly on this fortunate necessity, which none the less indicated to them, along with the limits of their greatness, the inevitable moment of their fall.

10. THE PEOPLE (continued)

A BODY politic may be measured in two ways — either by the extent of its territory, or by the number of its people; and there is, between these two measurements, a right relation which makes the State really great. The men make the State, and the territory sustains the men; the right relation therefore is that the land should suffice for the maintenance of the

inhabitants, and that there should be as many inhabitants as the land can maintain. In this proportion lies the maximum strength of a given number of people; for, if there is too much land, it is troublesome to guard and inadequately cultivated, produces more than is needed, and soon gives rise to wars of defence; if there is not enough, the State depends on its neighbours for what it needs over and above, and this soon gives rise to wars of offence. Every people, to which its situation gives no choice save that between commerce and war, is weak in itself: it depends on its neighbours, and on circumstances; its existence can never be more than short and uncertain. It either conquers others, and changes its situation, or it is conquered and becomes nothing. Only insignificance or greatness can keep it free.

No fixed relation can be stated between the extent of territory and the population that are adequate one to the other, both because of the differences in the quality of land, in its fertility, in the nature of its products, and in the influence of climate, and because of the different tempers of those who inhabit it; for some in a fertile country consume little, and others on an ungrateful soil much. The greater or less fecundity of women, the conditions that are more or less favourable in each country to the growth of population, and the influence the legislator can hope to exercise by his institutions, must also be taken into account. The legislator therefore should not go by what he sees, but by what he foresees; he should stop not so much at the state in which he actually finds the population, as at that to which it ought naturally to attain. Lastly, there are countless cases in which the particular local circumstances demand or allow the acquisition of a greater territory than seems necessary. Thus, expansion will be great in a mountainous country, where the natural products, i.e., woods and pastures, need less labour, where we know from experience that women are more fertile than in the plains, and where a great expanse of slope affords only a small level tract that can be counted on for vegetation. On the other hand, contraction is possible on the coast, even in lands of rocks and nearly barren sands, because there fishing makes up to a great extent for the lack of land-produce, because the inhabitants have to congregate together more in order to repel pirates, and further because it is easier to unburden the country of its superfluous inhabitants by means of colonies.

To these conditions of law-giving must be added one other which, though it cannot take the place of the rest, renders them all useless when it is absent. This is the enjoyment of peace and plenty; for the moment at which a State sets its house in order is, like the moment when a battalion is forming up, that when its body is least capable of offering resistance and easiest to destroy. A better resistance could be made at a time of absolute disorganisation than at a moment of fermentation, when each is occupied with his own position and not with the danger. If war, famine, or sedition arises at this time of crisis, the State will inevitably be overthrown.

Not that many governments have not been set up during such storms; but in such cases these governments are themselves the State's

destroyers. Usurpers always bring about or select troublous times to get passed, under cover of the public terror, destructive laws, which the people would never adopt in cold blood. The moment chosen is one of the surest means of distinguishing the work of the legislator from that of the tyrant.

What people, then, is a fit subject for legislation? One which, already bound by some unity of origin, interest, or convention, has never yet felt the real yoke of law; one that has neither customs nor superstitions deeply ingrained, one which stands in no fear of being overwhelmed by sudden invasion; one which, without entering into its neighbours' quarrels, can resist each of them single-handed, or get the help of one to repel another; one in which every member may be known by every other, and there is no need to lay on any man burdens too heavy for a man to bear; one which can do without other peoples, and without which all others can do;[15] one which is neither rich nor poor, but self-sufficient; and, lastly, one which unites the consistency of an ancient people with the docility of a new one. Legislation is made difficult less by what it is necessary to build up than by what has to be destroyed; and what makes success so rare is the impossibility of finding natural simplicity together with social requirements. All these conditions are indeed rarely found united, and therefore few States have good constitutions.

There is still in Europe one country capable of being given laws — Corsica. The valour and persistency with which that brave people has regained and defended its liberty well deserves that some wise man should teach it how to preserve what it has won. I have a feeling that some day that little island will astonish Europe.

11. THE VARIOUS SYSTEMS OF LEGISLATION

IF we ask in what precisely consists the greatest good of all, which should be the end of every system of legislation, we shall find it reduce itself to two main objects, liberty and equality — liberty, because all particular dependence means so much force taken from the body of the State and equality, because liberty cannot exist without it.

I have already defined civil liberty; by equality, we should understand, not that the degrees of power and riches are to be absolutely identical for everybody; but that power shall never be great enough for violence, and shall always be exercised by virtue of rank and law; and that, in respect of riches, no citizen shall ever be wealthy enough to buy another, and none poor enough to be forced to sell himself:[16] which implies, on the part of the great, moderation in goods and position, and, on the side of the common sort, moderation in avarice and covetousness.

Such equality, we are told, is an unpractical ideal that cannot actually exist. But if its abuse is inevitable, does it follow that we should not at least make regulations concerning it? It is precisely because the force of circumstances tends continually to destroy equality that the force of legislation should always tend to its maintenance.

But these general objects of every good legislative system need modifying in every country in accordance with the local situation and the temper of the inhabitants; and these circumstances should determine, in each case, the particular system of institutions which is best, not perhaps in itself, but for the State for which it is destined. If, for instance, the soil is barren and unproductive, or the land too crowded for its inhabitants, the people should turn to industry and the crafts, and exchange what they produce for the commodities they lack. If, on the other hand, a people dwells in rich plains and fertile slopes, or, in a good land, lacks inhabitants, it should give all its attention to agriculture, which causes men to multiply, and should drive out the crafts, which would only result in depopulation, by grouping in a few localities the few inhabitants there are.[17] If a nation dwells on an extensive and convenient coast-line, let it cover the sea with ships and foster commerce and navigation. It will have a life that will be short and glorious. If, on its coasts, the sea washes nothing but almost inaccessible rocks, let it remain barbarous and ichthyophagous: it will have a quieter, perhaps a better, and certainly a happier life. In a word, besides the principles that are common to all, every nation has in itself something that gives them a particular application, and makes its legislation peculiarly its own. Thus, among the Jews long ago and more recently among the Arabs, the chief object was religion, among the Athenians letters, at Carthage and Tyre commerce, at Rhodes shipping, at Sparta war, at Rome virtue. The author of The Spirit of the Laws has shown with many examples by what art the legislator directs the constitution towards each of these objects. What makes the constitution of a State really solid and lasting is the due observance of what is proper, so that the natural relations are always in agreement with the laws on every point, and law only serves, so to speak, to assure, accompany and rectify them. But if the legislator mistakes his object and adopts a principle other than circumstances naturally direct; if his principle makes for servitude while they make for liberty, or if it makes for riches, while they make for populousness, or if it makes for peace, while they make for conquest — the laws will insensibly lose their influence, the constitution will alter, and the State will have no rest from trouble till it is either destroyed or changed, and nature has resumed her invincible sway.

12. THE DIVISION OF THE LAWS

IF the whole is to be set in order, and the commonwealth put into the best possible shape, there are various relations to be considered. First, there is the action of the complete body upon itself, the relation of the whole to the whole, of the Sovereign to the State; and this relation, as we shall see, is made up of the relations of the intermediate terms.

The laws which regulate this relation bear the name of political laws, and are also called fundamental laws, not without reason if they are wise. For, if there is, in each State, only one good system, the people that is in possession of it should hold fast to this; but if the established order is bad,

why should laws that prevent men from being good be regarded as fundamental? Besides, in any case, a people is always in a position to change its laws, however good; for, if it choose to do itself harm, who can have a right to stop it?

The second relation is that of the members one to another, or to the body as a whole; and this relation should be in the first respect as unimportant, and in the second as important, as possible. Each citizen would then be perfectly independent of all the rest, and at the same time very dependent on the city; which is brought about always by the same means, as the strength of the State can alone secure the liberty of its members. From this second relation arise civil laws.

We may consider also a third kind of relation between the individual and the law, a relation of disobedience to its penalty. This gives rise to the setting up of criminal laws, which, at bottom, are less a particular class of law than the sanction behind all the rest.

Along with these three kinds of law goes a fourth, most important of all, which is not graven on tablets of marble or brass, but on the hearts of the citizens. This forms the real constitution of the State, takes on every day new powers, when other laws decay or die out, restores them or takes their place, keeps a people in the ways in which it was meant to go, and insensibly replaces authority by the force of habit. I am speaking of morality, of custom, above all of public opinion; a power unknown to political thinkers, on which none the less success in everything else depends. With this the great legislator concerns himself in secret, though he seems to confine himself to particular regulations; for these are only the arc of the arch, while manners and morals, slower to arise, form in the end its immovable keystone.

Among the different classes of laws, the political, which determine the forms of the government, are alone relevant to my subject.

BOOK IV

1. THAT THE GENERAL WILL IS INDESTRUCTIBLE

AS long as several men in assembly regard themselves as a single body, they have only a single will which is concerned with their common preservation and general well-being. In this case, all the springs of the State are vigorous and simple and its rules clear and luminous; there are no embroilments or conflicts of interests; the common good is everywhere clearly apparent, and only good sense is needed to perceive it. Peace, unity and equality are the enemies of political subtleties. Men who are upright and simple are difficult to deceive because of their simplicity; lures and ingenious pretexts fail to impose upon them, and they are not even subtle enough to be dupes. When, among the happiest people in the world, bands of peasants are seen regulating affairs of State under an oak, and always acting wisely, can we help scorning the ingenious methods of other nations,

which make themselves illustrious and wretched with so much art and mystery?

A State so governed needs very few laws; and, as it becomes necessary to issue new ones, the necessity is universally seen. The first man to propose them merely says what all have already felt, and there is no question of factions or intrigues or eloquence in order to secure the passage into law of what every one has already decided to do, as soon as he is sure that the rest will act with him.

Theorists are led into error because, seeing only States that have been from the beginning wrongly constituted, they are struck by the impossibility of applying such a policy to them. They make great game of all the absurdities a clever rascal or an insinuating speaker might get the people of Paris or London to believe. They do not know that Cromwell would have been put to "the bells" by the people of Berne, and the Duc de Beaufort on the treadmill by the Genevese.

But when the social bond begins to be relaxed and the State to grow weak, when particular interests begin to make themselves felt and the smaller societies to exercise an influence over the larger, the common interest changes and finds opponents: opinion is no longer unanimous; the general will ceases to be the will of all; contradictory views and debates arise; and the best advice is not taken without question.

Finally, when the State, on the eve of ruin, maintains only a vain, illusory and formal existence, when in every heart the social bond is broken, and the meanest interest brazenly lays hold of the sacred name of "public good," the general will becomes mute: all men, guided by secret motives, no more give their views as citizens than if the State had never been; and iniquitous decrees directed solely to private interest get passed under the name of laws.

Does it follow from this that the general will is exterminated or corrupted? Not at all: it is always constant, unalterable and pure; but it is subordinated to other wills which encroach upon its sphere. Each man, in detaching his interest from the common interest, sees clearly that he cannot entirely separate them; but his share in the public mishaps seems to him negligible beside the exclusive good he aims at making his own. Apart from this particular good, he wills the general good in his own interest, as strongly as any one else. Even in selling his vote for money, he does not extinguish in himself the general will, but only eludes it. The fault he commits is that of changing the state of the question, and answering something different from what he is asked. Instead of saying, by his vote, "It is to the advantage of the State," he says, "It is of advantage to this or that man or party that this or that view should prevail." Thus the law of public order in assemblies is not so much to maintain in them the general will as to secure that the question be always put to it, and the answer always given by it.

I could here set down many reflections on the simple right of voting in every act of Sovereignty – a right which no one can take from the citizens

– and also on the right of stating views, making proposals, dividing and discussing, which the government is always most careful to leave solely to its members, but this important subject would need a treatise to itself, and it is impossible to say everything in a single work.

2. VOTING

IT may be seen, from the last chapter, that the way in which general business is managed may give a clear enough indication of the actual state of morals and the health of the body politic. The more concert reigns in the assemblies, that is, the nearer opinion approaches unanimity, the greater is the dominance of the general will. On the other hand, long debates, dissensions and tumult proclaim the ascendancy of particular interests and the decline of the State.

This seems less clear when two or more orders enter into the constitution, as patricians and plebeians did at Rome; for quarrels between these two orders often disturbed the comitia, even in the best days of the Republic. But the exception is rather apparent than real; for then, through the defect that is inherent in the body politic, there were, so to speak, two States in one, and what is not true of the two together is true of either separately. Indeed, even in the most stormy times, the plebiscita of the people, when the Senate did not interfere with them, always went through quietly and by large majorities. The citizens having but one interest, the people had but a single will.

At the other extremity of the circle, unanimity recurs; this is the case when the citizens, having fallen into servitude, have lost both liberty and will. Fear and flattery then change votes into acclamation; deliberation ceases, and only worship or malediction is left. Such was the vile manner in which the senate expressed its views under the Emperors. It did so sometimes with absurd precautions. Tacitus observes that, under Otho, the senators, while they heaped curses on Vitellius, contrived at the same time to make a deafening noise, in order that, should he ever become their master, he might not know what each of them had said.

On these various considerations depend the rules by which the methods of counting votes and comparing opinions should be regulated, according as the general will is more or less easy to discover, and the State more or less in its decline.

There is but one law which, from its nature, needs unanimous consent. This is the social compact; for civil association is the most voluntary of all acts. Every man being born free and his own master, no one, under any pretext whatsoever, can make any man subject without his consent. To decide that the son of a slave is born a slave is to decide that he is not born a man.

If then there are opponents when the social compact is made, their opposition does not invalidate the contract, but merely prevents them from being included in it. They are foreigners among citizens. When the State is

instituted, residence constitutes consent; to dwell within its territory is to submit to the Sovereign.[18]

Apart from this primitive contract, the vote of the majority always binds all the rest. This follows from the contract itself. But it is asked how a man can be both free and forced to conform to wills that are not his own. How are the opponents at once free and subject to laws they have not agreed to?

I retort that the question is wrongly put. The citizen gives his consent to all the laws, including those which are passed in spite of his opposition, and even those which punish him when he dares to break any of them. The constant will of all the members of the State is the general will; by virtue of it they are citizens and free.[19] When in the popular assembly a law is proposed, what the people is asked is not exactly whether it approves or rejects the proposal, but whether it is in conformity with the general will, which is their will. Each man, in giving his vote, states his opinion on that point; and the general will is found by counting votes. When therefore the opinion that is contrary to my own prevails, this proves neither more nor less than that I was mistaken, and that what I thought to be the general will was not so. If my particular opinion had carried the day I should have achieved the opposite of what was my will; and it is in that case that I should not have been free.

This presupposes, indeed, that all the qualities of the general will still reside in the majority: when they cease to do so, whatever side a man may take, liberty is no longer possible.

In my earlier demonstration of how particular wills are substituted for the general will in public deliberation, I have adequately pointed out the practicable methods of avoiding this abuse; and I shall have more to say of them later on. I have also given the principles for determining the proportional number of votes for declaring that will. A difference of one vote destroys equality; a single opponent destroys unanimity; but between equality and unanimity, there are several grades of unequal division, at each of which this proportion may be fixed in accordance with the condition and the needs of the body politic.

There are two general rules that may serve to regulate this relation. First, the more grave and important the questions discussed, the nearer should the opinion that is to prevail approach unanimity. Secondly, the more the matter in hand calls for speed, the smaller the prescribed difference in the numbers of votes may be allowed to become: where an instant decision has to be reached, a majority of one vote should be enough. The first of these two rules seems more in harmony with the laws, and the second with practical affairs. In any case, it is the combination of them that gives the best proportions for determining the majority necessary.

…

9. CONCLUSION

Now that I have laid down the true principles of political right, and tried to give the State a basis of its own to rest on, I ought next to strengthen it by its external relations, which would include the law of nations, commerce, the right of war and conquest, public right, leagues, negotiations, treaties, etc. But all this forms a new subject that is far too vast for my narrow scope. I ought throughout to have kept to a more limited sphere.

NOTES

[1] "Learned inquiries into public right are often only the history of past abuses; and troubling to study them too deeply is a profitless infatuation" (*Essay on the Interests of France in Relation to its Neighbours*, by the Marquis d'Argenson). This is exactly what Grotius has done.

[2] See a short treatise of Plutarch's entitled *That Animals Reason*.

[3] The Romans, who understood and respected the right of war more than any other nation on earth, carried their scruples on this head so far that a citizen was not allowed to serve as a volunteer without engaging himself expressly against the enemy, and against such and such an enemy by name. A legion in which the younger Cato was seeing his first service under Popilius having been reconstructed, the elder Cato wrote to Popilius that, if he wished his son to continue serving under him, he must administer to him a new military oath, because, the first having been annulled, he was no longer able to bear arms against the enemy. The same Cato wrote to his son telling him to take great care not to go into battle before taking this new oath. I know that the siege of Clusium and other isolated events can be quoted against me; but I am citing laws and customs. The Romans are the people that least often transgressed its laws; and no other people has had such good ones.

[4] The real meaning of this word has been almost wholly lost in modern times; most people mistake a town for a city, and a townsman for a citizen. They do not know that houses make a town, but citizens a city. The same mistake long ago cost the Carthaginians dear. I have never read of the title of citizens being given to the subjects of any prince, not even the ancient Macedonians or the English of to-day, though they are nearer liberty than any one else. The French alone everywhere familiarly adopt the name of citizens, because, as can be seen from their dictionaries, they have no idea of its meaning; otherwise they would be guilty in usurping it, of the crime of lèse-majesté: among them, the name expresses a virtue, and not a right. When Bodin spoke of our citizens and townsmen, he fell into a bad blunder in taking the one class for the other. M. d'Alembert has avoided the error, and, in his article on Geneva, has clearly distinguished the four orders of men (or even five, counting mere foreigners) who dwell in our town, of which two only compose the Republic. No other French writer, to my knowledge, has understood the real meaning of the word citizen.

[5] Under bad governments, this equality is only apparent and illusory: it serves only to-keep the pauper in his poverty and the rich man in the position he has usurped. In fact, laws are always of use to those who possess and harmful to those who have nothing: from which it follows that the social state is advantageous to men only when all have something and none too much.

[6] To be general, a will need not always be unanimous; but every vote must be counted: any exclusion is a breach of generality.

[7] "Every interest," says the Marquis d'Argenson, "has different principles. The agreement of two particular interests is formed by opposition to a third." He might have added that the agreement of all interests is formed by opposition to that of each. If there were no different interests, the common interest would be barely felt, as it would encounter no obstacle; all would go on of its own accord, and politics would cease to be an art.

[8] "In fact," says Machiavelli, "there are some divisions that are harmful to a Republic and some that are advantageous. Those which stir up sects and parties are harmful; those attended by neither are advantageous. Since, then, the founder of a Republic cannot help enmities arising, he ought at least to prevent them from growing into sects" (History of Florence, Book vii).

[9] Attentive readers, do not, I pray, be in a hurry to charge me with contradicting myself. The terminology made it unavoidable, considering the poverty of the language; but wait and see.

[10] I understand by this word, not merely an aristocracy or a democracy, but generally any government directed by the general will, which is the law. To be legitimate, the government must be, not one with the Sovereign, but its minister. In such a case even a monarchy is a Republic. This will be made clearer in the following book.

[11] A people becomes famous only when its legislation begins to decline. We do not know for how many centuries the system of Lycurgus made the Spartans happy before the rest of Greece took any notice of it.

[12] Montesquieu, *The Greatness and Decadence of the Romans*, ch. i.

[13] Those who know Calvin only as a theologian much under-estimate the extent of his genius. The codification of our wise edicts, in which he played a large part, does him no less honour than his *Institute*. Whatever revolution time may bring in our religion, so long as the spirit of patriotism and liberty still lives among us, the memory of this great man will be for ever blessed.

[14] "In truth," says Machiavelli, "there has never been, in any country, an extraordinary legislator who has not had recourse to God; for otherwise his laws would not have been accepted: there are, in fact, many useful truths of which a wise man may have knowledge without their having in themselves such clear reasons for their being so as to be able to convince others" (*Discourses on Livy*, Bk. v, ch. xi).

[15] If there were two neighbouring peoples, one of which could not do without the other, it would be very hard on the former, and very dangerous for the latter. Every wise nation, in such a case, would make haste to free the other from dependence. The Republic of Thiascala, enclosed by the Mexican Empire, preferred doing without salt to buying from the Mexicans, or even getting it from them as a gift. The Thiascalans were wise enough to see the snare hidden under such liberality. They kept their freedom, and that little State, shut up in that great Empire, was finally the instrument of its ruin.

[16] If the object is to give the State consistency, bring the two extremes as near to each other as possible; allow neither rich men nor beggars. These two estates, which are naturally inseparable, are equally fatal to the common good; from the one come the friends of tyranny, and from the other tyrants. It is always between them that public liberty is put up to auction; the one buys, and the other sells.

[17] "Any branch of foreign commerce," says M. d'Argenson, "creates on the whole only apparent advantage for the kingdom in general; it may enrich some individuals, or even some towns; but the nation as a whole gains nothing by it, and the people is no better off."

[18] This should of course be understood as applying to a free State; for elsewhere family, goods, lack of a refuge, necessity, or violence may detain a man in a country against his will; and then his dwelling there no longer by itself implies his consent to the contract or to its violation.

[19] At Genoa, the word *Liberty* may be read over the front of the prisons and on the chains of the galley-slaves. This application of the device is good and just. It is indeed only malefactors of all estates who prevent the citizen from being free. In the country in which all such men were in the galleys, the most perfect liberty would be enjoyed.

CHAPTER IV

IMMANUEL KANT (1724-1804)

Biographical Information

Immanuel Kant was born in Königsberg, East Prussia (now Kaliningrad, Russia), on April 22, 1724. Kant's parents were Pietists – followers of a Lutheran religious movement which placed an emphasis on personal devotion and ethics, rather than theological doctrine. Kant attended the Collegium Albertinum (the University of Königsberg), where he studied sciences (physics) and arts (classics and philosophy). During his studies, Kant was particularly influenced by the work of G.W.F. Leibniz, Isaac Newton, and Christian Wolff. Other philosophers who influenced him later include David Hume, Adam Smith, and – particularly in political philosophy – Jean-Jacques Rousseau.

Kant left the University in 1746, when his father died. He served as a private tutor for 10 years, before obtaining his Masters degree at Königsberg (1755). From 1755 to 1770, Kant taught as a *Privatdozent* (instructor) at the University in the areas of physics, mathematics, and physical geography, as well as in metaphysics and logic; his earliest writings were in the sciences as well as in philosophy. It was only after 1760 that Kant's philosophical interests became dominant. Throughout his work, however, Kant insists that there is a consistency and coherence between philosophy and the sciences.

At the age of 46, in 1770, Kant was appointed Professor of Logic and Metaphysics at Königsberg; for the next 10 years, however, there was virtual literary silence. This silence was broken in 1781, when, at the age of 57, Kant published his magnum opus, the *Kritik der reinen Vernunft* [*Critique of Pure Reason*] – a study of the powers of human reason. The work showed Kant's prowess at articulating an architectonic – a technical and schematic system.

In 1785, Kant published the *Grundlegung zur Metaphysik der Sitten* [*Groundwork of the Metaphysic of Morals*] – which, though published at the age of 61, was a relatively early work – followed by a second edition of the *Critique of Pure Reason* in 1787. In 1788, he completed the *Kritik der praktischen Vernunft* [*Critique of Practical Reason*], which provided a more extensive account of his moral philosophy, and, in 1790, *Die metaphysische Anfangsgründe der Rechtslehre* [*The Doctrine of Right*], the first part of his (1797) *Metaphysik der Sitten* [*Metaphysics of Morals*]. It is in this latter work, and in his 1795 *Zum ewigen Frieden. Ein philosophischer Entwurf* [*Perpetual Peace: A Philosophical Sketch*] that Kant's political philosophy is primarily found. Though Kant was clearly a 'systematic' philosopher, many of these latter works can be read without a close familiarity with Kant's system.

Kant retired from teaching in 1796, and in his final years, after 1800, showed a clear mental decline. He died on 12 February 1804 in Königsberg. He never married, never travelled more than 100 kilometres from his home, and became the stuff of legend for his punctuality, through he had a far from quiet life and career.

Kant and the Enlightenment

Kant is one of the central figures in the philosophy of "The Enlightenment," and in western philosophy overall. In many respects he is also a defining figure of 'modernity,' and his work continues to have an important influence. The key to Kant's work is his 'critical' approach. Kant's 'motto' was "*sapere aude*" – dare to know – and, for Kant (as for the other leading figures of the Enlightenment), tradition and past practice carried no weight in and of themselves. Instead, it is reason that must be the foundation of knowledge.

Kant made major contributions to many of the central fields of philosophy: metaphysics, epistemology, ethics, aesthetics, and political philosophy. Yet he did not see these fields as radically distinct from one another, and there were important connexions as well between the sciences and the arts. For example, Kant held that just as there are laws in physics, so there are universal and absolute laws of moral behavior. In both cases, these laws can be discovered by, and apply to, all rational beings. Nevertheless, Kant also held that there were important differences between moral philosophy and the sciences. As W.H. Walsh writes, Kant "wished to insist on the authority of science and yet preserve the autonomy of morals."[1]

Moral Philosophy

Kant's moral philosophy is closely related to his political philosophy, and the lengthiest statement of his political thought appears in the first part of the *Metaphysics of Morals*.

Perhaps the best-known statement by Kant is one which appears near the end of his *Critique of Practical Reason*: "Two things fill the mind with ever new and increasing admiration and awe […]: the starry heavens above and the moral law within me."[2] For Kant, the starry heavens reveal that everything in the universe has a cause; this is the foundation for knowledge of the natural world. The "moral law within" – the sense of moral duty that human beings have – indicates that there is an objective moral law for human beings, but also that human beings have free will.

In both the sciences and moral philosophy, then, Kant's view is that one can arrive at knowledge *by reason alone*; the principles that people use are universally and absolutely true – that is, apply to all situations and, thus, go beyond accumulated experience. Ethics, therefore, cannot be based on experience, such as the observation of human behavior or human nature. If it were based on experience, all that one would have is knowledge of what

people *do*, *not* what they *ought to do*. The basic principle of morality is what Kant calls "the categorical imperative." Expressed in various ways – all of which Kant believed to be equivalent – this principle is "Act only on that maxim through which you can at the same time will that it should become a universal law"[3] or "So act as to treat humanity, whether in your own person or in that of any other, in every case as an end withal, never as a means only."[4] This principle, Kant believed, can be known only by reason.

Kant's moral philosophy presupposes that human beings are fundamentally free and rational beings. Rationality and freedom are essential to being a person and it is because one is a person that he or she must be treated as an "end-in itself" – that is, never *only* as a means to anything else. This also lies at the root of human dignity and moral worth.

Political Philosophy and Philosophy of Law

Kant's political philosophy is one of the lesser-studied areas of his corpus and, for some time, work on it tended to be on narrow or on comparative themes, rather than on the system of the 'philosophy of right' as such. Often these studies focussed on Kant's strong, retributivist view of punishment. Sometimes they concentrated on what some consider an idiosyncratic aspect of Kant – idiosyncratic because of Kant's reputation as a liberal – and that is his apparent rejection of the view that it is sometimes legitimate to resist political authority.[5] Periodically, scholars turned to Kant's political philosophy for his analysis of freedom. For some time, however, interest in Kant's political philosophy was due to its bearing on the *Groundwork of the Metaphysics of Morals*, the standard introduction to Kant's ethics.

Kant's political philosophy and philosophy of law appear in a number of texts (e.g., "An Answer to the Question: What is Enlightenment?" [*Beantwortung der Frage: Was ist Aufklärung?*, 1784], "On the proverb: that may be true in theory but it is of no practical use" [*Über den Gemeinspruch: Das mag in der Theorie richtig sein, taugt aber nicht für die Praxis*, 1793], and *Perpetual Peace*, but its most extensive account is to be found in the *Metaphysics of Morals*.[6]

Kant is frequently described as being part of the "republican" tradition. Rooted in classical Roman thought, particularly Cicero, republicanism has also been associated with Machiavelli, Milton, Montesquieu, Thomas Jefferson, and James Madison. The term is frequently used rather broadly but, in general, republicanism emphasises "the importance of civic virtue and political participation, the dangers of corruption, [and] the benefits of a mixed constitution and the rule of law."[7] Although Kant held that there should be representative government and that the legislature should be separate from and independent of the executive, he did not, however, insist on such standard democratic institutions as universal suffrage.

What Kant brings to the theory of republicanism are distinctive accounts of rights, of the relation of the individual and the state, and of the

source of political authority. He also sees it as related to a broader project of a "cosmo-political" order and, eventually, "perpetual peace."[8]

Right and rights

In the first part of his *Metaphysics of Morals*, the *Doctrine of Right*, Kant advances a detailed account of right, law, and rights.[9]

By 'right,' Kant does not mean what is morally correct, although it is connected with this. Right is a matter of law. Kant states that it is a theoretical and a practical study that concerns "the whole of the conditions under which the voluntary actions of any one person can be harmonized in reality with the voluntary actions of every other person, according to a universal law of freedom."[10] The 'doctrine of right,' which focuses on theoretical principles, not practical applications, has as its object "the principles of all the laws which it is possible to promulgate by external legislation."[11]

Kant holds that there is an innate right that is possessed by all human beings. This right, and the rights that follow from it, have a fundamental moral character, but they also have the character of a legal right. This innate right is the right to freedom; thus, the aim of law is the preservation of freedom – i.e., of free will – and the exercise of practical reason. This right applies to all rational beings – or, to be more precise, to all beings possessing moral personality.[12] Underlying Kant's political philosophy, then, is an anthropology or a theory of human nature.

The notion of innate or natural rights is also commonly associated with that of a state of nature, and it is no surprise to find the latter term in Kant. Kant, however, understands the term in a distinctive way. He describes the state of nature as a "state of society" in which "each will have his own right to do what *seems just and good to him*."[13] It is not a state of war or of injustice, though it is "a state of society in which justice is absent."[14] While Kant speaks of people choosing to leave this 'state' through an original contract into civil society, he allows that they may also rightly be *compelled* to enter it.[15] On Kant's view, as in Rousseau, there is no loss of rights in this transition to civil society, for "all the people give up their external freedom in order to take it back immediately as members of a commonwealth, that is, the people regarded as the state."[16] Yet, while Kant does employ the notions of a state of nature and a social contract, neither is in fact crucial to Kant's account.

It is because persons are rational and free, and have the capacity (as autonomous beings) to function in accordance with reason, that they have rights. Nevertheless, it is clear to Kant that the source of these rights is not simply something about individuals as such, in isolation from other persons. Kant notes that right requires that "an acknowledgement of being reciprocally bound to everyone else to [exercise] a similar and equal restraint with respect to what is theirs."[17] The existence of rights involves a relation to others.

One's innate right, and what follows from it, are not without limits. Rights are limited by people's (perfect) duties to themselves and to others.[18] The perfect duty to the humanity in oneself would clearly limit any so-called right to do with one's body as one chooses. Again, one's innate right is limited by the like right of others to freedom and to equity in treatment. A right can also be limited so far as it violates or threatens peace, given that peace is the ultimate purpose of law.

As beings possessing moral personality, human beings have dignity and rights. Since rights are also part of a system of law, however, Kant is called to explain how rights arise and are ascribed, and what their relation is to the state. Here, Kant's account is quite distinct from that of earlier thinkers.

The political community and the state

According to Kant, there must be a political order. All rights – those acquired and the innate right to freedom – require peace and security to enjoy them.[19] Moreover, for rights to exist, there must also be a prior social recognition, both of the beings involved and of the activities engaged in. People, therefore, not only have the right to establish a state, but a right to demand that others who have some relationship to them – conjugal, paternal, domestic, and so on – join.

By 'state,' Kant does not mean 'government' and certainly not the legislature, executive, and judiciary of the day. The state is simply "a union of a multitude of men under laws of justice [or right]."[20] While Kant, like many other modern political philosophers, presents the state as a representative institution, he notes that not everyone need have an active voice in it (e.g., the right to vote). There is an element of consent involved in establishing the state, although the character of this 'consent' is close to the notion of rational choice and is rather different from that found in earlier views. Kant holds that no consent *as such* is required for entering civil society.

Kant allows that, in a state of nature, there can be organized social life. Nevertheless, there can be no guarantees for private property here; this requires something more. Kant argues, then, that even though people can live without civil society, given the importance of a system of mutual rights, they ought to establish a state even if they do not wish to – i.e., they *must* "enter into a condition under which what is one's own is guaranteed to each person against everyone else."[21] Having rights – not only one's acquired rights, but one's innate or inherent rights – rationally requires willing that which is necessary to securing them. It is wrong, therefore, to want to remain in a state where there is no system of law, no legitimate means of resolving disputes, and where there is no security against the violence that is inevitable in a "state of external lawless freedom."[22] Kant calls this the postulate of public law: "If you are so situated as to be unavoidably side by side with others, you ought to abandon the state of nature and enter, with all

others, a juridical state of affairs, that is, a state of distributive legal justice."[23] He concludes that there is not only a need for, but a fundamental right to, the existence of the state. For Kant, where there is no political authority or law, there is no justice.[24] Although the state does not 'create' rights, it is necessary in order to articulate the conditions for rights and to secure them.[25]

The general will

On Kant's view the legitimacy of the state, and of law in general, is derived from will. By 'will,' Kant does not mean one's free choice (i.e., *Willkür*) or the will of the individual [*die Wille*], but a "general" will. It is on the general or "united" will that Kant draws, when he writes of the basis of the state, of the possibility of possession of property and, by extension, of any acquired right.

This general will – "der allgemeine Volkswille" ["the united Will of the people"][26] – is the ultimate legislative authority in the state. The influence of Rousseau's notion of the general will or "volonté générale"[27] is evident here. As in Rousseau, the general will is essential to the state. It is through this general will that there is, as one scholar notes, a "rational connection between finite wills" and "a connection [among individuals] that resembles what Hegel will later call recognition."[28] Kant's general will is not some hypostasized entity, but neither is it merely a turn of phrase or a fiction.

For Kant, the general will is the unifying principle of the state and secures rights, but it also legitimates the use of force; for Kant, "lawful force is found only in the general Will."[29] The state, then, is a product of reason and the general will, not merely desire (as in Hobbes) or utility (as in later thinkers). The general will is also necessary to freedom. What the general will does is take freedom in the sense of *Willkür* or freedom of choice and action (e.g., physical freedom), and reconstitute it as a freedom that has both moral and legal weight through a process of rational recognition and through law.

Perpetual peace, hospitality, and cosmopolitanism

Kant believes that the state, in guaranteeing law and rights, has as its objective the elimination of war and conflict. In *The Doctrine of Right*, Kant writes that "the establishment of a universal and enduring peace is not just a part, but rather constitutes the whole, of the ultimate purpose of law [*Rechtslehre*]."[30] This idea of a perpetual peace is grounded in duty and in the rights of both human beings and the state. Kant's 1795 essay, *Perpetual Peace*, begins by listing six steps that need to be taken immediately, in order to reduce or eliminate existing hostilities, and then proceeds to provide three articles that must be followed in order for peace to be established; 1. that "The civil constitution of every state should be republican"; 2. that "The law

of nations shall be founded on a federation of free states", and 3., that "The law of world citizenship shall be limited to conditions of universal hospitality." (This hospitality is "the Right of a stranger in ... another country, not to be treated ... as an enemy ... so long as he conducts himself peacefully."[31])

The freedom to emigrate – and to move to another state – is a necessary part of this project of enduring peace. For Kant, this entails an obligation to 'universal hospitality' which is grounded in right because, he notes, in the beginning, no one had a right to the earth greater than anyone else.[32] Another condition for such a peace is the creation of a "cosmo-political system" which respects 'universal hospitality.' Such a "confederation" or "league of nations" is not a universal state but, rather, a union of republican states. A major task for Kant is to elaborate both what this hospitality involves, but also what the characteristics are of such a union of states.

This ideal of a cosmo-political system and of an enduring peace mirrors the notion of a kingdom of ends that one find in Kant's ethics. Some critics have asked whether such a cosmopolitanism and perpetual peace are attainable, or whether they serve only as a heuristic or as an ideal – something that people seek, but which can never be fully achieved. It is at this place in Kant's political philosophy that some scholars see a connexion between politics and religion.

Politics and Religion

According to Kant, all rational beings have a duty to work for the highest good. This is the ground of human autonomy and dignity. That such a good can ever be attained is challenged, however, by the fact of human finitude. How can Kant reconcile the call to achieve a perfect destiny with the fact that human beings are imperfect? In the *Metaphysics of Morals*, Kant acknowledges that this cannot be done – that such a good cannot be achieved.[33] This is not, however, the case in *Perpetual Peace*. Some scholars have argued that one way of solving this, for Kant, would be for him to show that there must be a God who can establish and maintain an ethical community as a supplement to humanity's efforts, who can strengthen autonomy and the resolve to pursue perfection, who can restructure institutions, and who gives people hope in their action. These notions of the ethical community, human dignity, and the value of freedom (at least, of the freedom to pursue the truth) are central to the contemporary understanding of democracy – and, for Kant, they reflect his view that democracy and religion go together.

Summary and Influences

Kant's political philosophy had a significant influence on later thinkers – not only on Hegel, but also on nineteenth-century British idealism.

Moreover, interest in Kant's political thought has recently experienced a revival. One reason for this renewed interest is that Kant's work bears on contemporary 'social contract' and rights theories, and a number of leading political philosophers in the late twentieth century (e.g., John Rawls and Alan Gewirth) claimed to have drawn explicitly on Kant. More importantly, perhaps, Kant's political thought may plausibly be said to occupy a middle place between two of the dominant traditions in contemporary political philosophy, i.e., between individualism and collectivism. While remaining in the liberal tradition, Kant's account of right leads to some non-individualist conclusions. At the same time, Kant's political philosophy anticipates elements of the Hegelian critique of contract theories without proposing absolutist or collectivist consequences. Recognising these features of Kant's political philosophy also helps to address charges made concerning some later accounts of rights, such as those found in the idealists T.H. Green and Bernard Bosanquet – that there are tensions in their moral and political theories to the extent that they follow a Kantian view of the individual moral agent while, at the same time, adopt a teleological (Hegelian) account of the importance of a common good.[34]

Some propose, therefore, a 'return to Kant' – in whom we find both a clear defense of individual autonomy and an account of the necessity of life in community[35] – in order to see whether there is an alternative to dominant views. Kant's views also have been influential in contemporary "cosmopolitanism," particularly that of the Danish philosopher, Peter Kemp, and the American philosopher Martha Nussbaum.[36]

Problems and Questions to be Addressed

The text that follows focuses on the purpose of social and political life, the nature, source, and limits of the state, and the nature of 'cosmopolitan right.' It is useful, then, to keep in mind the following questions as one reads this material.

1. What, exactly, is meant by "perpetual peace"? What is the nature of the peace that Kant has in mind here?
2. Why does Kant hold that a republican constitution is needed for perpetual peace? Explain how a federation of republics is also required.
3. Kant sometimes refers to a "state of nature." What does he mean by this? 4. Explain how Kant's policy for peace is not just prudential but rationally required.
4. What does Kant mean by cosmopolitan right, and what is its relevance to his argument for perpetual peace?
5. What is "hospitality," and why does Kant insist that it is essential to perpetual peace?
6. Explain what Kant means by "the law of nations." What, if anything, does this imply about there being transnational or international moral principles?

7. Are Kant's articles of peace reasonable and practicable? Is the account of hospitality appropriate to contemporary phenomena such as refugees and economic immigration?

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NOTES

[1] W.H. Walsh, "Immanuel Kant," in *The Encyclopedia of Philosophy*, ed. Paul Edwards (New York: The Free Press, 1967), Vol. 4.

[2] *Kant's Critique of Practical Reason and Other Works on the Theory of Ethics*, trans. Thomas Kingsmill Abbott (London: Longmans, Green & Co., 1879), p. 376.

[3] *Die Grundlegung zur Metaphysik der Sitten* in *Kant Werke* [Akademie-

Ausgabe] (Berlin: Walter de Gruyter, 1968), Bd. IV, s. 421 [see *The Moral Law or Kant's Groundwork of the Metaphysic of Morals*, tr. H.J. Paton (New York: Hutchinson's University Library, 1953), p. 88]

[4] *Die Grundlegung zur Metaphysik der Sitten*, s. 429; *The Moral Law or Kant's Groundwork of the Metaphysic of Morals*, p. 96.

[5] *Die Metaphysik der Sitten* [*Metaphysics of Morals*], Band 6, *Kant's Gesammelte Schriften* [Preussischen Akademie der Wissenschaften] (Berlin: G. Reimer, 1914), pp 319-323. For further discussion here, see, for example, Peter Nicholson, "Kant on the Duty Never to Resist the Sovereign," *Ethics*, 86 (1976): 214-230, and Sven Arntzen, "Kant on Duty to Oneself and Resistance to Political Authority," *Journal of the History of Philosophy*, 34 (1996): 409-424.

[6] Translated as *The Metaphysics of Morals*, introd., trans., and notes by Mary Gregor (Cambridge: Cambridge University Press, 1991) and as *The Metaphysical Elements of Justice*; *Part I of The Metaphysics of Morals*, trans. and introd. John Ladd (Indianapolis: Bobbs-Merrill, 1965).

[7] See Frank Lovett, "Republicanism," *The Stanford Encyclopedia of Philosophy* (Summer 2010 Edition), Edward N. Zalta (ed.), URL = <http://plato.stanford.edu/archives/sum2010/entries/republicanism/>.

[8] In addition to *Perpetual Peace*, see his *Idea of a Universal History on a Cosmo-Political Plan* (1784).

[9] Kant deals with both objective and subjective right. Objective right, however, deals with the corpus of law; it is the latter – subjective right – that deals with the rights of persons and that approximates our contemporary notion of human rights.

[10] *Metaphysik der Sitten*, Introduction, §3; *Kant's Philosophy of Law*, trans. William Hastie (Edinburgh: T &T Clarke, 1887), p. 45.

[11] *Metaphysik der Sitten*, Introduction, §1; *Kant's Philosophy of Law*, p. 43.

[12] For Kant, "moral personality is nothing but the freedom of a rational being under moral laws" *Metaphysik der Sitten*, p. 223, Ladd trans., p. 24.

[13] *Metaphysik der Sitten*, p. 312, Ladd trans., p. 76; See *Metaphysik der Sitten* § 47, pp. 315-316.

[14] *Metaphysik der Sitten*, p. 312, Ladd trans., p. 76.

[15] See *Metaphysik der Sitten*, p. 237 and pp. 306ff, and note 35 below.

[16] *Metaphysik der Sitten*, p. 315, Ladd trans., p. 80. Compare, here, Rousseau's view : "Chacun de nous met en commun sa personne et toute sa puissance sous la suprême direction de la volonté générale; et nous recevons en corps chaque membre comme partie indivisible du tout" (*Contrat social*, I, 6).

[17] *Metaphysik der Sitten*, p. 255, Ladd trans., p. 64.

[18] Cf *Metaphysik der Sitten*, p. 240 and pp. 389-90.

[19] Kant deals with both objective and subjective right. Objective right, however, deals with the corpus of law; it is the latter – subjective right – that deals with the rights of persons and that approximates our contemporary notion of human rights.

[20] *Metaphysik der Sitten*, p. 313, see Ladd trans., p. 77.

[21] *Metaphysik der Sitten*, p. 237, Ladd trans., p. 43.

[22] *Metaphysik der Sitten*, p. 307, Ladd trans., p. 72.

[23] *Metaphysik der Sitten*, p. 307, Ladd trans., p. 71.

[24] Kant writes that this also explains why the people cannot complain of injustice. He notes that, in a controversy between the people and the sovereign, the people may "want to act as judge of their own cause," but adds that this "is absurd" (*Metaphysik der Sitten*, p. 320; cf. p. 312).

[25] Kant argues that the state must not only give legal recognition of rights, but must provide "... the conditions under which alone everyone is able to *enjoy* his rights..." (*Metaphysik der Sitten*, p. 306, Gregor trans., p. 120). This is necessary to public justice.

[26] *Metaphysik der Sitten*, p. 338, Ladd trans., p. 109. See also *Zum ewigen Frieden*, ch. 2, § 23.

[27] Rousseau, *Contrat Social*, IV.1,; see II.2.

[28] Susan Shell, *The Rights of Reason* (Toronto: University of Toronto Press, 1980), p. 130.

[29] *Metaphysik der Sitten*, p. 257, Ladd trans., p. 66.

[30] *Metaphysik der Sitten*, p. 355, Ladd trans., p. 128.

[31] See Kant's discussion of the third definite article of perpetual peace, below.

[32] Kant writes: "our common claim to the face of the earth"; again, see Kant's discussion of the third definite article of perpetual peace, below.

[33] Kant writes: "perpetual peace, the ultimate goal of the whole right of nations, is indeed an unachievable idea." *Metaphysics of Morals*, tr. Gregor, § 6, p. 119.

[34] According to W.H. Walsh, Bosanquet's political and ethical theory "was wrong in a serious way: [because] he did not see the contradiction between adopting the Hegelian standpoint and continuing to lay stress on the individual will" (*Hegelian Ethics* [London: Macmillan, 1969], p. 75). Vincent argues that this tension is present in Hegel himself (See Andrew Vincent, "The Individual in Hegelian Thought," *Idealistic Studies* 12 (1982): 156-168, at pp. 165-166).

[35] See James F. Bohman, "Participating in Enlightenment," in *Knowledge and Politics*, ed. Marcelo Dascal, (Boulder: Westview Press, 1989), pp. 264-289.

Bohman suggests that the views of Jürgen Habermas suggest a normative democratic theory that would be highly cognitive and based on a free, uncoerced consensus that resembles a Kantian general will.

[36] See her "Patriotism and Cosmopolitanism" (in *Boston Review* 19:5 (October-November 1994); reprinted in *For Love of Country?* (Boston: Beacon Press, 2002). See also her Castle Lectures delivered at Yale University in 2000, entitled *The Cosmopolitan Tradition*.

Perpetual Peace[1]:
A Philosophical Sketch[2] (1795)

WE need not try to decide whether this satirical inscription (once found on a Dutch innkeeper's sign-board above the picture of a churchyard) is aimed at mankind in general, or at the rulers of states in particular, unwearying in their love of war, or perhaps only at the philosophers who cherish the sweet dream of perpetual peace. The author of the present sketch would make one stipulation, however. The practical politician stands upon a definite footing with the theorist: with great self-complacency he looks down upon him as a mere pedant whose empty ideas can threaten no danger to the state (starting as it does from principles derived from experience), and who may always be permitted to knock down his eleven skittles at once without a worldly-wise statesman needing to disturb himself. Hence, in the event of a quarrel arising between the two, the practical statesman must always act consistently, and not scent danger to the state behind opinions ventured by the theoretical politician at random and publicly expressed. With which saving clause (*clausula salvatoria*) the author will herewith consider himself duly and expressly protected against all malicious misinterpretation.

FIRST SECTION

CONTAINING THE PRELIMINARY ARTICLES OF PERPETUAL PEACE BETWEEN STATES

I. – "No treaty of peace shall be regarded as valid, if made with the secret reservation of material for a future war."

For then it would be a mere truce, a mere suspension of hostilities, not peace. A peace signifies the end of all hostilities and to attach to it the epithet "eternal" is not only a verbal pleonasm, but matter of suspicion. The causes of a future war existing, although perhaps not yet known to the high contracting parties themselves, are entirely annihilated by the conclusion of peace, however acutely they may be ferreted out of documents in the public archives. There may be a mental reservation of old claims to be thought out at a future time, which are, none of them, mentioned at this stage, because both parties are too much exhausted to continue the war, while the evil intention remains of using the first favourable opportunity for further hostilities. Diplomacy of this kind only Jesuitical casuistry can justify: it is beneath the dignity of a ruler, just as acquiescence in such processes of reasoning is beneath the dignity of his minister, if one judges the facts as they really are.[3]

If, however, according to present enlightened ideas of political wisdom, the true glory of a state lies in the uninterrupted development of its

power by every possible means, this judgment must certainly strike one as scholastic and pedantic.

2. – "No state having an independent existence – whether it be great or small – shall be acquired by another through inheritance, exchange, purchase or donation."[4]

For a state is not a property (*patrimonium*) as may be the ground on which its people are settled. It is a society of human beings over whom no one but itself has the right to rule and to dispose. Like the trunk of a tree, it has its own roots, and to graft it on to another state is to do away with its existence as a moral person, and to make of it a thing. Hence it is in contradiction to the idea of the original contract without which no right over a people is thinkable.[5] Everyone knows to what danger the bias in favour of these modes of acquisition has brought Europe (in other parts of the world it has never been known). The custom of marriage between states, as if they were individuals, has survived even up to the most recent times,[6] and is regarded partly as a new kind of industry by which ascendency may be acquired through family alliances, without any expenditure of strength ; partly as a device for territorial expansion. Moreover, the hiring out of the troops of one state to another to fight against an enemy not at war with their native country is to be reckoned in this connection; for the subjects are in this way used and abused at will as personal property.

3. – "Standing armies (*miles perpetuus*) shall be abolished in course of time."

For they are always threatening other states with war by appearing to be in constant readiness to fight. They incite the various states to outrival one another in the number of their soldiers, and to this number no limit can be set. Now, since owing to the sums devoted to this purpose, peace at last becomes even more oppressive than a short war, these standing armies are themselves the cause of wars of aggression, undertaken in order to get rid of this burden. To which we must add that the practice of hiring men to kill or to be killed seems to imply a use of them as mere machines and instruments in the hand of another (namely, the state) which cannot easily be reconciled with the right of humanity in our own person.[7] The matter stands quite differently in the case of voluntary periodical military exercise on the part of citizens of the state, who thereby seek to secure themselves and their country against attack from without.

The accumulation of treasure in a state would in the same way be regarded by other states as a menace of war, and might compel them to anticipate this by striking the first blow. For of the three forces, the power of arms, the power of alliance and the power of money, the last might well become the most reliable instrument of war, did not the difficulty of ascertaining the amount stand in the way.

4. – "No national debts shall be contracted in connection with the external affairs of the state."

This source of help is above suspicion, where assistance is sought outside or within the state, on behalf of the economic administration of the country (for instance, the improvement of the roads, the settlement and support of new colonies, the establishment of granaries to provide against seasons of scarcity, and so on). But, as a common weapon used by the Powers against one another, a credit system under which debts go on indefinitely increasing and are yet always assured against immediate claims (because all the creditors do not put in their claim at once) is a dangerous money power. This ingenious invention of a commercial people in the present century is, in other words, a treasure for the carrying on of war which may exceed the treasures of all the other states taken together, and can only be exhausted by a threatening deficiency in the taxes – an event, however, which will long be kept off by the very briskness of commerce resulting from the reaction of this system on industry and trade. The ease, then, with which war may be waged, coupled with the inclination of rulers towards it – an inclination which seems to be implanted in human nature – is a great obstacle in the way of perpetual peace. The prohibition of this system must be laid down as a preliminary article of perpetual peace, all the more necessarily because the final inevitable bankruptcy of the state in question must involve in the loss many who are innocent; and this would be a public injury to these states. Therefore other nations are at least justified in uniting themselves against such an one and its pretensions.

5. – "No state shall violently interfere with the constitution and administration of another."

For what can justify it in so doing? The scandal which is here presented to the subjects of another state? The erring state can much more serve as a warning by exemplifying the great evils which a nation draws down on itself through its own lawlessness. Moreover, the bad example which one free person gives another, (as *scandalum acceptum*) does no injury to the latter. In this connection, it is true, we cannot count the case of a state which has become split up through internal corruption into two parts, each of them representing by itself an individual state which lays claim to the whole. Here the yielding of assistance to one faction could not be reckoned as interference on the part of a foreign state with the constitution of another, for here anarchy prevails. So long, however, as the inner strife has not yet reached this stage the interference of other powers would be a violation of the rights of an independent nation which is only struggling with internal disease.[8] It would therefore itself cause a scandal, and make the autonomy of all states insecure.

6. – "No state at war with another shall countenance such modes of hostility as would make mutual confidence impossible in a subsequent state of peace: such are the employment of assassins (*percussores*) or of poisoners (*venefici*), breaches of capitulation, the instigating and making use of treachery (*perduellio*) in the hostile state."

These are dishonourable stratagems. For some kind of confidence in the disposition of the enemy must exist even in the midst of war, as otherwise peace could not be concluded, and the hostilities would pass into a war of extermination (*bellum internecinum*). War, however, is only our wretched expedient of asserting a right by force, an expedient adopted in the state of nature, where no court of justice exists which could settle the matter in dispute. In circumstances like these, neither of the two parties can be called an unjust enemy, because this form of speech presupposes a legal decision: the issue of the conflict – just as in the case of the so-called judgments of God – decides on which side right is. Between states, however, no punitive war (*bellum punitivum*) is thinkable, because between them a relation of superior and inferior does not exist. Whence it follows that a war of extermination, where the process of annihilation would strike both parties at once and all right as well, would bring about perpetual peace only in the great graveyard of the human race. Such a war then, and therefore also the use of all means which lead to it, must be absolutely forbidden. That the methods just mentioned do inevitably lead to this result is obvious from the fact that these infernal arts, already vile in themselves, on coming into use, are not long confined to the sphere of war. Take, for example, the use of spies (*uti exploratoribus*). Here only the dishonesty of others is made use of; but vices such as these, when once encouraged, cannot in the nature of things be stamped out and would be carried over into the state of peace, where their presence would be utterly destructive to the purpose of that state.

Although the laws stated are, objectively regarded, (*i.e*. in so far as they affect the action of rulers) purely prohibitive laws (*leges prohibitivæ*), some of them (*leges strictæ*) are strictly valid without regard to circumstances and urgently require to be enforced. Such are Nos. 1, 5, 6. Others, again, (like Nos. 2, 3, 4) although not indeed exceptions to the maxims of law, yet in respect of the practical application of these maxims allow subjectively of a certain latitude to suit particular circumstances. The enforcement of these *leges latæ* may be legitimately put off, so long as we do not lose sight of the ends at which they aim. This purpose of reform does not permit of the deferment of an act of restitution (as, for example, the restoration to certain states of freedom of which they have been deprived in the manner described in article 2) to an infinitely distant date – as Augustus used to say, to the "Greek Kalends", a day that will never come. This would be to sanction non-restitution. Delay is permitted only with the intention that restitution should not be made too precipitately and so defeat the purpose we have in view. For the prohibition refers here only to the mode of

acquisition which is to be no longer valid, and not to the fact of possession which, although indeed it has not the necessary title of right, yet at the time of so-called acquisition was held legal by all states, in accordance with the public opinion of the time.[9]

SECOND SECTION

CONTAINING THE DEFINITIVE ARTICLES OF A PERPETUAL PEACE BETWEEN STATES

A state of peace among men who live side by side is not the natural state (*status naturalis*) which is rather to be described as a state of war:[10] that is to say, although there is not perhaps always actual open hostility, yet there is a constant threatening that an outbreak may occur. Thus the state of peace must be *established*.[11] For the mere cessation of hostilities is no guarantee of continued peaceful relations, and unless this guarantee is given by every individual to his neighbour – which can only be done in a state of society regulated by law – one man is at liberty to challenge another and treat him as an enemy.[12]

FIRST DEFINITIVE ARTICLE OF PERPETUAL PEACE

I. – "The civil constitution of each state shall be republican."

The only constitution which has its origin in the idea of the original contract, upon which the lawful legislation of every nation must be based, is the republican.[13] It is a constitution, in the first place, founded in accordance with the principle of the freedom of the members of society as human beings: secondly, in accordance with the principle of the dependence of all, as subjects, on a common legislation: and, thirdly, in accordance with the law of the equality of the members as citizens. It is then, looking at the question of right, the only constitution whose fundamental principles lie at the basis of every form of civil constitution. And the only question for us now is, whether it is also the one constitution which can lead to perpetual peace.

Now the republican constitution apart from the soundness of its origin, since it arose from the pure source of the concept of right, has also the prospect of attaining the desired result, namely, perpetual peace. And the reason is this. If, as must be so under this constitution, the consent of the subjects is required to determine whether there shall be war or not, nothing is more natural than that they should weigh the matter well, before undertaking such a bad business. For in decreeing war, they would of necessity be resolving to bring down the miseries of war upon their country. This implies: they must fight themselves; they must hand over the costs of the war out of their own property; they must do their poor best to make good the devastation which it leaves behind; and finally, as a crowning ill,

they have to accept a burden of debt which will embitter even peace itself, and which they can never pay off on account of the new wars which are always impending. On the other hand, in a government where the subject is not a citizen holding a vote, (*i.e*. in a constitution which is not republican), the plunging into war is the least serious thing in the world. For the ruler is not a citizen, but the owner of the state, and does not lose a whit by the war, while he goes on enjoying the delights of his table or sport, or of his pleasure palaces and gala days. He can therefore decide on war for the most trifling reasons, as if it were a kind of pleasure party.[14] Any justification of it that is necessary for the sake of decency he can leave without concern to the diplomatic corps who are always only too ready with their services.

* * *

The following remarks must be made in order that we may not fall into the common error of confusing the republican with the democratic constitution. The forms of the state (*civitas*)[15] may be classified according to either of two principles of division: – the difference of the persons who hold the supreme authority in the state, and the manner in which the people are governed by their ruler whoever he may be. The first is properly called the form of sovereignty (*forma imperii*), and there can be only three constitutions differing in this respect: where, namely, the supreme authority belongs to only one, to several individuals working together, or to the whole people constituting the civil society. Thus we have autocracy or the sovereignty of a monarch, aristocracy or the sovereignty of the nobility, and democracy or the sovereignty of the people. The second principle of division is the form of government (*forma regiminis*), and refers to the way in which the state makes use of its supreme power: for the manner of government is based on the constitution, itself the act of that universal will which transforms a multitude into a nation. In this respect the form of government is either republican or despotic. Republicanism is the political principle of severing the executive power of the government from the legislature. Despotism is that principle in pursuance of which the state arbitrarily puts into effect laws which it has itself made: consequently it is the administration of the public will, but this is identical with the private will of the ruler. Of these three forms of a state, democracy, in the proper sense of the word, is of necessity despotism, because it establishes an executive power, since all decree regarding – and, if need be, against – any individual who dissents from them. Therefore the "whole people", so-called, who carry their measure are really not all, but only a majority: so that here the universal will is in contradiction with itself and with the principle of freedom.

Every form of government in fact which is not representative is really no true constitution at all, because a law-giver may no more be, in one and the same person, the administrator of his own will, than the universal major premise of a syllogism may be, at the same time, the subsumption under

itself of the particulars contained in the minor premise. And, although the other two constitutions, autocracy and aristocracy, are always defective in so far as they leave the way open for such a form of government, yet there is at least always a possibility in these cases, that they may take the form of a government in accordance with the spirit of a representative system. Thus Frederick the Great used at least to say that he was "merely the highest servant of the state."[16] The democratic constitution, on the other hand, makes this impossible, because under such a government every one wishes to be master. We may therefore say that the smaller the staff of the executive – that is to say, the number of rulers – and the more real, on the other hand, their representation of the people, so much the more is the government of the state in accordance with a possible republicanism; and it may hope by gradual reforms to raise itself to that standard. For this reason, it is more difficult under an aristocracy than under a monarchy – while under a democracy it is impossible except by a violent revolution – to attain to this, the one perfectly lawful constitution. The kind of government,[17] however, is of infinitely more importance to the people than the kind of constitution, although the greater or less aptitude of a people for this ideal greatly depends upon such external form. The form of government, however, if it is to be in accordance with the idea of right, must embody the representative system in which alone a republican form of administration is possible and without which it is despotic and violent, be the constitution what it may. None of the ancient so-called republics were aware of this, and they necessarily slipped into absolute despotism which, of all despotisms, is most endurable under the sovereignty of one individual.

SECOND DEFINITIVE ARTICLE OF PERPETUAL PEACE

II. – "The law of nations shall be founded on a federation of free states."

Nations, as states, may be judged like individuals who, living in the natural state of society – that is to say, uncontrolled by external law – injure one another through their very proximity.[18] Every state, for the sake of its own security, may – and ought to – demand that its neighbour should submit itself to conditions, similar to those of the civil society where the right of every individual is guaranteed. This would give rise to a federation of nations which, however, would not have to be a State of nations.[19] That would involve a contradiction. For the term "state" implies the relation of one who rules to those who obey – that is to say, of lawgiver to the subject people: and many nations in one state would constitute only one nation, which contradicts our hypothesis, since here we have to consider the right of one nation against another, in so far as they are so many separate states and are not to be fused into one.

The attachment of savages to their lawless liberty, the fact that they would rather be at hopeless variance with one another than submit themselves to a legal authority constituted by themselves, that they therefore

prefer their senseless freedom to a reason-governed liberty, is regarded by us with profound contempt as barbarism and uncivilisation and the brutal degradation of humanity. So one would think that civilised races, each formed into a state by itself, must come out of such an abandoned condition as soon as they possibly can. On the contrary, however, every state thinks rather that its majesty (the "majesty" of a people is an absurd expression) lies just in the very fact that it is subject to no external legal authority; and the glory of the ruler consists in this, that, without his requiring to expose himself to danger, thousands stand at his command ready to let themselves be sacrificed for a matter of no concern to them.[20] The difference between the savages of Europe and those of America lies chiefly in this, that, while many tribes of the latter have been entirely devoured by their enemies, Europeans know a better way of using the vanquished than by eating them; and they prefer to increase through them the number of their subjects, and so the number of instruments at their command for still more widely spread war.

The depravity of human nature[21] shows itself without disguise in the unrestrained relations of nations to each other, while in the law-governed civil state much of this is hidden by the check of government. This being so, it is astonishing that the word "right" has not yet been entirely banished from the politics of war as pedantic, and that no state has yet ventured to publicly advocate this point of view. For Hugo Grotius, Puffendorf, Vattel and others – Job's comforters, all of them – are always quoted in good faith to justify an attack, although their codes, whether couched in philosophical or diplomatic terms, have not – nor can have – the slightest legal force, because states, as such, are under no common external authority; and there is no instance of a state having ever been moved by argument to desist from its purpose, even when this was backed up by the testimony of such great men. This homage which every state renders – in words at least – to the idea of right, proves that, although it may be slumbering, there is, notwithstanding, to be found in man a still higher natural moral capacity by the aid of which he will in time gain the mastery over the evil principle in his nature, the existence of which he is unable to deny. And he hopes the same of others; for otherwise the word "right" would never be uttered by states who wish to wage war, unless to deride it like the Gallic Prince who declared: – "The privilege which nature gives the strong is that the weak must obey them."[22]

The method by which states prosecute their rights can never be by process of law – as it is where there is an external tribunal – but only by war. Through this means, however, and its favourable issue, victory, the question of right is never decided. A treaty of peace makes, it may be, an end to the war of the moment, but not to the conditions of war which at any time may afford a new pretext for opening hostilities; and this we cannot exactly condemn as unjust, because under these conditions everyone is his own judge. Notwithstanding, not quite the same rule applies to states according to the law of nations as holds good of individuals in a lawless

condition according to the law of nature, namely, "that they ought to advance out of this condition." This is so, because, as states, they have already within themselves a legal constitution, and have therefore advanced beyond the stage at which others, in accordance with their ideas of right, can force them to come under a wider legal constitution. Meanwhile, however, reason, from her throne of the supreme law-giving moral power, absolutely condemns war[23] as a morally lawful proceeding, and makes a state of peace, on the other hand, an immediate duty. Without a compact between the nations, however, this state of peace cannot be established or assured. Hence there must be an alliance of a particular kind which we may call a covenant of peace (*foedus pacificum*) which would differ from a treaty of peace (*pactum pacis*) in this respect, that the latter merely puts an end to one war, while the former would seek to put an end to war for ever. This alliance does not aim at the gain of any power whatsoever of the state, but merely at the preservation and security of the freedom of the state for itself and of other allied states at the same time.[24] The latter do not, however, require, for this reason, to submit themselves like individuals in the state of nature to public laws and coercion. The practicability or objective reality of this idea of federation which is to extend gradually over all states and so lead to perpetual peace can be shewn. For, if Fortune ordains that a powerful and enlightened people should form a republic, – which by its very nature is inclined to perpetual peace – this would serve as a centre of federal union for other states wishing to join, and thus secure conditions of freedom among the states in accordance with the idea of the law of nations. Gradually, through different unions of this kind, the federation would extend further and further.

It is quite comprehensible that a people should say: – "There shall be no war among us, for we shall form ourselves into a state, that is to say, constitute for ourselves a supreme legislative, administrative and judicial power which will settle our disputes peaceably." But if this state says: – "There shall be no war between me and other states, although I recognise no supreme law-giving power which will secure me. my rights and whose rights I will guarantee;" then it is not at all clear upon what grounds I could base my confidence in my right, unless it were the substitute for that compact on which civil society is based – namely, free federation which reason must necessarily connect with the idea of the law of nations, if indeed any meaning is to be left in that concept at all.

There is no intelligible meaning in the idea of the law of nations as giving a right to make war; for that must be a right to decide what is just, not in accordance with universal, external laws limiting the freedom of each individual, but by means of one-sided maxims applied by force. We must then understand by this that men of such ways of thinking are quite justly served, when they destroy one another, and thus find perpetual peace in the wide grave which covers all the abominations of acts of violence as well as the authors of such deeds. For states, in their relation to one another, there can be, according to reason, no other way of advancing from that lawless

condition which unceasing war implies, than by giving up their savage lawless freedom, just as individual men have done, and yielding to the coercion of public laws. Thus they can form a State of nations (*civitas gentium*), one, too; which will be ever increasing and would finally embrace all the peoples of the earth. States, however, in accordance with their understanding of the law of nations, by no means desire this, and therefore reject *in hypothesi* what is correct *in thesi*. Hence, instead of the positive idea of a world-republic, if all is not to be lost, only the negative substitute for it, a federation averting war, maintaining its ground and ever extending over the world may stop the current of this tendency to war and shrinking from the control of law. But even then there will be a constant danger that this propensity may break out.[25]

"Furor impius intus – fremit horddus oro cruento." (Virgil)[26]

THIRD DEFINITIVE ARTICLE OF PERPETUAL PEACE

III. – "The rights of men, as citizens of the world, shall be limited to the conditions of universal hospitality."

We are speaking here, as in the previous articles, not of philanthropy, but of right; and in this sphere hospitality signifies the claim of a stranger entering foreign territory to be treated by its owner without hostility. The latter may send him away again, if this can be done without causing his death; but, so long as he conducts himself peaceably, he must not be treated as an enemy. It is not a right to be treated as a guest to which the stranger can lay claim – a special friendly compact on his behalf would be required to make him for a given time an actual inmate – but he has a right of visitation. This right[27] to present themselves to society belongs to all mankind in virtue of our common right of possession on the surface of the earth on which, as it is a globe, we cannot be infinitely scattered, and must in the end reconcile ourselves to existence side by side: at the same time, originally no one individual had more right than another to live in any one particular spot. Uninhabitable portions of the surface, ocean and desert, split up the human community, but in such a way that ships and camels – "the ship of the desert" – make it possible for men to come into touch with one another across these unappropriated regions and to take advantage of our common claim to the face of the earth with a view to a possible intercommunication. The inhospitality of the inhabitants of certain sea coasts – as, for example, the coast of Barbary – in plundering ships in neighbouring seas or making slaves of shipwrecked mariners; or the behaviour of the Arab Bedouins in the deserts, who think that proximity to nomadic tribes constitutes a right to rob, is thus contrary to the law of nature. This right to hospitality, however – that is to say, the privilege of strangers arriving on foreign soil – does not amount to more than what is implied in a permission to make an attempt at intercourse with the original inhabitants. In this way far distant territories

may enter into peaceful relations with one another. These relations may at last come under the public control of law, and thus the human race may be brought nearer the realisation of a cosmopolitan constitution.

Let us look now, for the sake of comparison, at the inhospitable behaviour of the civilised nations, especially the commercial states of our continent. The injustice which they exhibit on visiting foreign lands and races – this being equivalent in their eyes to conquest – is such as to fill us with horror. America, the negro countries, the Spice Islands, the Cape etc. were, on being discovered, looked upon as countries which belonged to nobody; for the native inhabitants were reckoned as nothing. In Hindustan, under the pretext of intending to establish merely commercial depots, the Europeans introduced foreign troops; and, as a result, the different states of Hindustan were stirred up to far-spreading wars. Oppression of the natives followed, famine, insurrection, perfidy and all the rest of the litany of evils which can afflict mankind.

China[28] and Japan (Nipon) which had made an attempt at receiving guests of this kind, have now taken a prudent step. Only to a single European people, the Dutch, has China given the right of access to her shores (but not of entrance into the country), while Japan has granted both these concessions; but at the same time they exclude the Dutch who enter, as if they were prisoners, from social intercourse with the inhabitants. The worst, or from the standpoint of ethical judgment the best, of all this is that no satisfaction is derived from all this violence, that all these trading companies stand on the verge of ruin, that the Sugar Islands, that seat of the most horrible and deliberate slavery, yield no real profit, but only have their use indirectly and for no very praiseworthy object – namely, that of furnishing men to be trained as sailors for the men-of-war and thereby contributing to the carrying on of war in Europe. And this has been done by nations who make a great ado about their piety, and who, while they are quite ready to commit injustice, would like, in their orthodoxy, to be considered among the elect. The intercourse, more or less close, which has been everywhere steadily increasing between the nations of the earth, has now extended so enormously that a violation of right in one part of the world is felt all over it. Hence the idea of a cosmopolitan right is no fantastical, high-flown notion of right, but a complement of the unwritten code of law – constitutional as well as international law – necessary for the public rights of mankind in general and thus for the realisation of perpetual peace. For only by endeavouring to fulfil the conditions laid down by this cosmopolitan law can we flatter ourselves that we are gradually approaching that ideal.

FIRST SUPPLEMENT

CONCERNING THE GUARANTEE OF PERPETUAL PEACE

THIS guarantee is given by no less a power than the great artist nature (*natura dædala rerum*) in whose mechanical course is clearly exhibited a predetermined design to make harmony spring from human discord, even against the will of man. Now this design, although called Fate when looked upon as the compelling force of a cause, the laws of whose operation are unknown to us, is, when considered as the purpose manifested in the course of nature, called Providence,[29] as the deep-lying wisdom of a Higher Cause, directing itself towards the ultimate practical end of the human race and predetermining the course of things with a view to its realisation. This Providence we do not, it is true, perceive in the cunning contrivances [*Kunstanstalten*] of nature; nor can we even conclude from the fact of their existence that it is there; but, as in every relation between the form of things and their final cause, we can, and must, supply the thought of a Higher Wisdom, in order that we may be able to form an idea of the possible existence of these products after the analogy of human works of art [*Kunsthandlungen*].[30] The representation to ourselves of the relation and agreement of these formations of nature to the moral purpose for which they were made and which reason directly prescribes to us, is an Idea, it is true, which is in theory superfluous; but in practice it is dogmatic, and its objective reality is well established.[31] Thus we see, for example, with regard to the ideal [*Pflichtbegriff*] of perpetual peace, that it is our duty to make use of the mechanism of nature for the realisation of that end. Moreover, in a case like this where we are interested merely in the theory and not in the religious question, the use of the word "nature " is more appropriate than that of "providence", in view of the limitations of human reason, which, in considering the relation of effects to their causes, must keep within the limits of possible experience. And the term "nature" is also less presumptuous than the other. To speak of a Providence knowable by us would be boldly to put on the wings of Icarus in order to draw near to the mystery of its unfathomable purpose.

Before we determine the surety given by nature more exactly, we must first look at what ultimately makes this guarantee of peace necessary – the circumstances in which nature has carefully placed the actors in her great theatre. In the next place, we shall proceed to consider the manner in which she gives this surety.

The provisions she has made are as follow: (1) she has taken care that men *can* live in all parts of the world; (2) she has scattered them by means of war in all directions, even into the most inhospitable regions, so that these too might be populated; (3) by this very means she has forced them to enter into relations more or less controlled by law. It is surely wonderful that, on the cold wastes round the Arctic Ocean, there is always to be found moss for the reindeer to scrape out from under the snow, the reindeer itself

either serving as food or to draw the sledge of the Ostiak or Samoyedes. And salt deserts which would otherwise be left unutilised have the camel, which seems as if created for travelling in such lands. This evidence of design in things, however, is still more clear when we come to know that, besides the fur-clad animals of the shores of the Arctic Ocean, there are seals, walruses and whales whose flesh furnishes food and whose oil fire for the dwellers in these regions. But the providential care of nature excites our wonder above all, when we hear of the driftwood which is carried – whence no one knows – to these treeless shores: for without the aid of this material the natives could neither construct their craft, nor weapons, nor huts for shelter. Here too they have so much to do, making war against wild animals, that they live at peace with one another. But what drove them originally into these regions was probably nothing but war.

Of animals, used by us as instruments of war, the horse was the first which man learned to tame and domesticate during the period of the peopling of the earth; the elephant belongs to the later period of the luxury of states already established. In the same way, the art of cultivating certain grasses called cereals – no longer known to us in their original form – and also the multiplication and improvement, by transplanting and grafting, of the original kinds of fruit – in Europe, probably only two species, the crab-apple and wild pear – could only originate under the conditions accompanying established states where the rights of property are assured. That is to say it would be after man, hitherto existing in lawless liberty, had advanced beyond the occupations of a hunter,[32] a fisherman or a shepherd to the life of a tiller of the soil, when salt and iron were discovered, – to become, perhaps, the first articles of commerce between different peoples, – and were sought far and near. In this way the peoples would be at first brought into peaceful relation with one another, and so come to an understanding and the enjoyment of friendly intercourse, even with their most distant neighbours.

Now while nature provided that men could live on all parts of the earth, she also at the same time despotically willed that they *should* live everywhere on it, although against their own inclination and even although this imperative did not presuppose an idea of duty which would compel obedience to nature with the force of a moral law. But, to attain this end, she has chosen war. So we see certain peoples, widely separated, whose common descent is made evident by affinity in their languages. Thus, for instance, we find the Samoyedes on the Arctic Ocean, and again a people speaking a similar language on the Altai Mts., 200 miles [*Meilen*][33] off, between whom has pressed in a mounted tribe, war-like in character and of Mongolian origin, which has driven one branch of the race far from the other, into the most inhospitable regions where their own inclination would certainly not have carried them.[34] In the same way, through the intrusion of the Gothic and Sarmatian tribes, the Finns in the most northerly regions of Europe, whom we call Laplanders, have been separated by as great a distance from the Hungarians, with whose language their own is allied. And

what but war can have brought the Esquimos to the north of America, a race quite distinct from those of that country and probably European adventurers of prehistoric times? And war too, nature's method of populating the earth, must have driven the Pescherais[35] in South America as far as Patagonia. War itself, however, is in need of no special stimulating cause, but seems engrafted in human nature, and is even regarded as something noble in itself to which man is inspired by the love of glory apart from motives of self-interest. Hence, among the savages of America as well as those of Europe in the age of chivalry, martial courage is looked upon as of great value in itself, not merely when a war is going on, as is reasonable enough, but in order that there should be war: and thus war is often entered upon merely to exhibit this quality. So that an intrinsic dignity is held to attach to war in itself, and even philosophers eulogise it as an ennobling, refining influence on humanity, unmindful of the Greek proverb, "War is evil, in so far as it makes more bad people than it takes away."

So much, then, of what nature does for her own ends with regard to the human race as members of the animal world. Now comes the question which touches the essential points in this design of a perpetual peace: – "What does nature do in this respect with reference to the end which man's own reason sets before him as a duty? and consequently what does she do to further the realisation of his moral purpose? How does she guarantee that what man, by the laws of freedom, ought to do and yet fails to do, he will do, without any infringement of his freedom by the compulsion of nature and that, moreover, this shall be done in accordance with the three forms of public right – constitutional or political law, international law and cosmopolitan law?" When I say of nature that she *wills* that this or that should take place, I do not mean that she imposes upon us the duty to do it – for only the free, unrestrained, practical reason can do that – but that she does it herself, whether we will or not. "*Fata volentem ducunt, nolentem trahunt*."

1. Even if a people were not compelled through internal discord to submit to the restraint of public laws, war would bring this about, working from without. For, according to the contrivance of nature which we have mentioned, every people finds another tribe in its neighbourhood, pressing upon it in such a manner that it is compelled to form itself internally into a state to be able to defend itself as a power should. Now the republican constitution is the only one which is perfectly adapted to the rights of man, but it is also the most difficult to establish and still more to maintain. So generally is this recognised that people often say the members of a republican state would require to be angels,[36] because men, with their self-seeking propensities, are not fit for a constitution of so sublime a form. But now nature comes to the aid of the universal, reason-derived will which, much as we honour it, is in practice powerless. And this she does, by means of these very self-seeking propensities, so that it only depends – and so much lies within the power of man – on a good organisation of the state for

their forces to be so pitted against one another, that the one may check the destructive activity of the other or neutralise its effect. And hence, from the standpoint of reason, the result will be the same as if both forces did not exist, and each individual is compelled to be, if not a morally good man, yet at least a good citizen. The problem of the formation of the state, hard as it may sound, is not insoluble, even for a race of devils, granted that they have intelligence. It may be put thus: – "Given a multitude of rational beings who, in a body, require general laws for their own preservation, but each of whom, as an individual, is secretly inclined to exempt himself from this restraint: how are we to order their affairs and how establish for them a constitution such that, although their private dispositions may be really antagonistic, they may yet so act as a check upon one another, that, in their public relations, the effect is the same as if they had no such evil sentiments." Such a problem must be capable of solution. For it deals, not with the moral reformation of mankind, but only with the mechanism of nature; and the problem is to learn how this mechanism of nature can be applied to men, in order so to regulate the antagonism of conflicting interests in a people that they may even compel one another to submit to compulsory laws and thus necessarily bring about the state of peace in which laws have force. We can see, in states actually existing, although very imperfectly organised, that, in externals, they already approximate very nearly to what the Idea of right prescribes, although the principle of morality is certainly not the cause. A good political constitution, however, is not to be expected as a result of progress in morality; but rather, conversely, the good moral condition of a nation is to be looked for, as one of the first fruits of such a constitution. Hence the mechanism of nature, working through the self-seeking propensities of man (which of course counteract one another in their external effects), may be used by reason as a means of making way for the realisation of her own purpose, the empire of right, and, as far as is in the power of the state, to promote and secure in this way internal as well as external peace. We may say, then, that it is the irresistible will of nature that right shall at last get the supremacy. What one here fails to do will be accomplished in the long run, although perhaps with much inconvenience to us. As Bouterwek says, "If you bend the reed too much it breaks: he who would do too much does nothing."

2. The idea of international law presupposes the separate existence of a number of neighbouring and independent states; and, although such a condition of things is in itself already a state of war, (if a federative union of these nations does not prevent the outbreak of hostilities) yet, according to the Idea of reason, this is better than that all the states should be merged into one under a power which has gained the ascendency over its neighbours and gradually become a universal monarchy.[37] For the wider the sphere of their jurisdiction, the more laws lose in force; and soulless despotism, when it has choked the seeds of good, at last sinks into anarchy. Nevertheless it is the desire of every state, or of its ruler, to attain to a permanent condition of peace in this very way; that is to say, by subjecting the whole world as far as

possible to its sway. But nature wills it otherwise. She employs two means to separate nations, and prevent them from intermixing: namely, the differences of language and of religion.[38] These differences bring with them a tendency to mutual hatred, and furnish pretexts for waging war. But, none the less, with the growth of culture and the gradual advance of men to greater unanimity of principle, they lead to concord in a state of peace which, unlike the despotism we have spoken of, (the churchyard of freedom) does not arise from the weakening of all forces, but is brought into being and secured through the equilibrium of these forces in their most active rivalry.

3. As nature wisely separates nations which the will of each state, sanctioned even by the principles of international law, would gladly unite under its own sway by stratagem or force; in the same way, on the other hand, she unites nations whom the principle of a cosmopolitan right would not have secured against violence and war. And this union she brings about through an appeal to their mutual interests. The commercial spirit cannot co-exist with war, and sooner or later it takes possession of every nation. For, of all the forces which lie at the command of a state, the power of money is probably the most reliable. Hence states find themselves compelled – not, it is true, exactly from motives of morality – to further the noble end of peace and to avert war, by means of mediation, wherever it threatens to break out, just as if they had made a permanent league for this purpose. For great alliances with a view to war can, from the nature of things, only very rarely occur, and still more seldom succeed.

In this way nature guarantees the coming of perpetual peace, through the natural course of human propensities: not indeed with sufficient certainty to enable us to prophesy the future of this ideal theoretically, but yet clearly enough for practical purposes. And thus this guarantee of nature makes it a duty that we should labour for this end, an end which is no mere chimera.

SECOND SUPPLEMENT

A SECRET ARTICLE FOR PERPETUAL PEACE

A SECRET article in negotiations concerning public right is, when looked at objectively or with regard to the meaning of the term, a contradiction. When we view it, however, from the subjective standpoint, with regard to the character and condition of the person who dictates it, we see that it might quite well involve some private consideration, so that he would regard it as hazardous to his dignity to acknowledge such an article as originating from him.

The only article of this kind is contained in the following proposition: – "The opinions of philosophers, with regard to the conditions of the possibility of a public peace, shall be taken into consideration by states armed for war."

It seems, however, to be derogatory to the dignity of the legislative authority of a state – to which we must of course attribute all wisdom – to ask advice from subjects (among whom stand philosophers) about the rules of its behaviour to other states. At the same time, it is very advisable that this should be done. Hence the state will silently invite suggestion for this purpose, while at the same time keeping the fact secret. This amounts to saying that the state will allow philosophers to discuss freely and publicly the universal principles governing the conduct of war and establishment of peace; for they will do this of their own accord, if no prohibition is laid upon them.[39] The arrangement between states, on this point, does not require that a special agreement should be made, merely for this purpose; for it is already involved in the obligation imposed by the universal reason of man which gives the moral law. We would not be understood to say that the state must give a preference to the principles of the philosopher, rather than to the opinions of the jurist, the representative of state authority; but only that he should be heard. The latter, who has chosen for a symbol the scales of right and the sword of justice,[40] generally uses that sword not merely to keep off all outside influences from the scales; for, when one pan of the balance will not go down, he throws his sword into it; and then *Væ victis!* The jurist, not being a moral philosopher, is under the greatest temptation to do this, because it is his business only to apply existing laws and not to investigate whether these are not themselves in need of improvement; and this actually lower function of his profession he looks upon as the nobler, because it is linked to power (as is the case also in both the other faculties, theology and medicine). Philosophy occupies a very low position compared with this combined power. So that it is said, for example, that she is the handmaid of theology; and the same has been said of her position with regard to law and medicine. It is not quite clear, however, "whether she bears the torch before these gracious ladies, or carries the train."

That kings should philosophise, or philosophers become kings, is not to be expected. But neither is it to be desired; for the possession of power is inevitably fatal to the free exercise of reason. But it is absolutely indispensable, for their enlightenment as to the full significance of their vocations, that both kings and sovereign nations, which rule themselves in accordance with laws of equality, should not allow the class of philosophers to disappear, nor forbid the expression of their opinions, but should allow them to speak openly. And since this class of men, by their very nature, are incapable of instigating rebellion or forming unions for purposes of political agitation, they should not be suspected of propagandism.

APPENDIX I

ON THE DISAGREEMENT BETWEEN MORALS AND POLITICS WITH REFERENCE TO PERPETUAL PEACE

IN an objective sense, morals is a practical science, as the sum of laws exacting unconditional obedience, in accordance with which we *ought* to act. Now, once we have admitted the authority of this idea of duty, it is evidently inconsistent that we should think of saying that we cannot act thus. For, in this case, the idea of duty falls to the ground of itself; "*ultra posse nemo obligatur*" Hence there can be no quarrel between politics, as the practical science of right, and morals, which is also a science of right, but theoretical. That is, theory cannot come into conflict with practice. For, in that case, we would need to understand under the term "ethics" or "morals" a universal doctrine of expediency, or, in other words, a theory of precepts which may guide us in choosing the best means for attaining ends calculated for our advantage. This is to deny that a science of morals exists.

Politics says, "Be wise as serpents"; morals adds the limiting condition, "and guileless as doves." If these precepts cannot stand together in one command, then there is a real quarrel between politics and morals.[41] But if they can be completely brought into accord, then the idea of any antagonism between them is absurd, and the question of how best to make a compromise between the two points of view ceases to be even raised. Although the saying, "Honesty is the best policy," expresses a theory which, alas, is often contradicted in practice, yet the likewise theoretical maxim, "Honesty is better than any policy," is exalted high above every possible objection, is indeed the necessary condition of all politics.

The Terminus of morals does not yield to Jupiter, the Terminus of force; for the latter remains beneath the sway of Fate. In other words, reason is not sufficiently enlightened to survey the series of predetermining causes which would make it possible for us to predict with certainty the good or bad results of human action, as they follow from the mechanical laws of nature; although we may hope that things will turn out as we should desire. But what we have to do, in order to remain in the path of duty guided by the rules of wisdom, reason makes everywhere perfectly clear, and does this for the purpose of furthering her ultimate ends.

The practical man, however, for whom morals is mere theory, even while admitting that what ought to be can be, bases his dreary verdict against our well-meant hopes really on this: he pretends that he can foresee from his observation of human nature, that men will never be willing to do what is required in order to bring about the wished-for results leading to perpetual peace. It is true that the will of all individual men to live under a legal constitution according to the principles of liberty – that is to say, the distributive unity of the wills of all – is not sufficient to attain this end. We must have the collective unity of their united will: all as a body must determine these new conditions. The solution of this difficult problem is

required in order that civil society should be a whole. To all this diversity of individual wills there must come a uniting cause, in order to produce a common will which no distributive will is able to give. Hence, in the practical realisation of that idea, no other beginning of a law-governed society can be counted upon than one that is brought about by force: upon this force, too, public law afterwards rests. This state of things certainly prepares us to meet considerable deviation in actual experience from the theoretical idea of perpetual peace, since we cannot take into account the moral character and disposition of a law-giver in this connection, or expect that, after he has united a wild multitude into one people, he will leave it to them to bring about a legal constitution by their common will.

It amounts to this. Any ruler who has once got the power in his hands will not let the people dictate laws for him. A state which enjoys an independence of the control of external law will not submit to the judgment of the tribunals of other states, when it has to consider how to obtain its rights against them. And even a continent, when it feels its superiority to another, whether this be in its way or not, will not fail to take advantage of an opportunity offered of strengthening its power by the spoliation or even conquest of this territory. Hence all theoretical schemes, connected with constitutional, international or cosmopolitan law, crumble away into empty impracticable ideals. While, on the other hand, a practical science, based on the empirical principles of human nature, which does not disdain to model its maxims on an observation of actual life, can alone hope to find a sure foundation on which to build up a system of national policy.

Now certainly, if there is neither freedom nor a moral law founded upon it, and every actual or possible event happens in the mere mechanical course of nature, then politics, as the art of making use of this physical necessity in things for the government of men, is the whole of practical wisdom and the idea of right is an empty concept. If, on the other hand, we find that this idea of right is necessarily to be conjoined with politics and even to be raised to the position of a limiting condition of that science, then the possibility of reconciling them must be admitted. I can thus imagine a moral politician, that is to say, one who understands the principles of statesmanship to be such as do not conflict with morals; but I cannot conceive of a political moralist who fashions for himself such a system of ethics as may serve the interest of statesmen.

The moral politician will always act upon the following principle: – "If certain defects which could not have been avoided are found in the political constitution or foreign relations of a state, it is a duty for all, especially for the rulers of the state, to apply their whole energy to correcting them as soon as possible, and to bringing the constitution and political relations on these points into conformity with the Law of Nature, as it is held up as a model before us in the idea of reason; and this they should do even at a sacrifice of their own interest." Now it is contrary to all politics – which is, in this particular, in agreement with morals – to dissever any of the links binding citizens together in the state or nations in cosmopolitan

union, before a better constitution is there to take the place of what has been thus destroyed. And hence it would be absurd indeed to demand that every imperfection in political matters must be violently altered on the spot. But, at the same time, it may be required of a ruler at least that he should earnestly keep the maxim in mind which points to the necessity of such a change; so that he may go on constantly approaching the end to be realised, namely, the best possible constitution according to the laws of right. Even although it is still under despotic rule, in accordance with its constitution as then existing, a state may govern itself on republican lines, until the people gradually become capable of being influenced by the mere idea of the authority of law, just as if it had physical power. And they become accordingly capable of self-legislation, their faculty for which is founded on original right. But if, through the violence of revolution, the product of a bad government, a constitution more in accord with the spirit of law were attained even by unlawful means, it should no longer be held justifiable to bring the people back to the old constitution, although, while the revolution was going on, every one who took part in it by use of force or stratagem, may have been justly punished as a rebel. As regards the external relations of nations, a state cannot be asked to give up its constitution, even although that be a despotism (which is, at the same time, the strongest constitution where foreign enemies are concerned), so long as it runs the risk of being immediately swallowed up by other states. Hence, when such a proposal is made, the state whose constitution is in question must at least be allowed to defer acting upon it until a more convenient time.[42]

It is always possible that moralists who rule despotically, and are at a loss in practical matters, will come into collision with the rules of political wisdom in many ways, by adopting measures without sufficient deliberation which show themselves afterwards to have been overestimated. When they thus offend against nature, experience must gradually lead them into a better track. But, instead of this being the case, politicians who are fond of moralising do all they can to make moral improvement impossible and to perpetuate violations of law, by extenuating political principles which are antagonistic to the idea of right, on the pretext that human nature is not capable of good, in the sense of the ideal which reason prescribes.

These politicians, instead of adopting an open, straightforward way of doing things (as they boast), mix themselves up in intrigue. They get at the authorities in power and say what will please them; their sole bent is to sacrifice the nation, or even, if they can, the whole world, with the one end in view that their own private interest may be forwarded. This is the manner of regular jurists (I mean the journeyman lawyer not the legislator), when they aspire to politics. For, as it is not their business to reason too nicely over legislation, but only to enforce the laws of the country, every legal constitution in its existing form and, when this is changed by the proper authorities, the one which takes its place, will always seem to them the best possible. And the consequence is that everything is purely mechanical. But this adroitness in suiting themselves to any circumstances may lead them to

the delusion that they are also capable of giving an opinion about the principles of political constitutions in general, in so far as they conform to ideas of right, and are therefore not empirical, but *a priori*. And they may therefore brag about their knowledge of men, – which indeed one expects to find, since they have to deal with so many – without really knowing the nature of man and what can be made of it, to gain which knowledge a higher standpoint of anthropological observation than theirs is required. Filled with ideas of this kind, if they trespass outside their own sphere on the boundaries of political and international law, looked upon as ideals which reason holds before us, they can do so only in the spirit of chicanery. For they will follow their usual method of making everything conform mechanically to compulsory laws despotically made and enforced, even here, where the ideas of reason recognise the validity of a legal compulsory force, only when it is in accordance with the principles of freedom through which a permanently valid constitution becomes first of all possible. The would-be practical man, leaving out of account this idea of reason, thinks that he can solve this problem empirically by looking to the way in which those constitutions which have best survived the test of time were established, even although the spirit of these may have been generally contrary to the idea of right. The principles which he makes use of here, although indeed he does not make them public, amount pretty much to the following sophistical maxims.

1. **Fac et excusa**. Seize the most favourable opportunity for arbitrary usurpation – either of the authority of the state over its own people or over a neighbouring people; the justification of the act and extenuation of the use of force will come much more easily and gracefully, when the deed is done, than if one has to think out convincing reasons for taking this step and first hear through all the objections which can be made against it. This is especially true in the first case mentioned, where the supreme power in the state also controls the legislature which we must obey without any reasoning about it. Besides, this show of audacity in a statesman even lends him a certain semblance of inward conviction of the justice of his action; and once he has got so far the god of success (*bonus eventus*) is his best advocate.

2. **Si fecisti, nega.** As for any crime you have committed, such as has, for instance, brought your people to despair and thence to insurrection, deny that it has happened owing to any fault of yours. Say rather that it is all caused by the insubordination of your subjects, or, in the case of your having usurped a neighbouring state, that human nature is to blame; for, if a man is not ready to use force and steal a march upon his neighbour, he may certainly count on the latter forestalling him and taking him prisoner.

3. **Divide et impera**. That is to say, if there are certain privileged persons, holding authority among the people, who have merely chosen you for their sovereign as *primus inter pares*, bring about a quarrel among them, and make mischief between them and the people. Now back up the people with a dazzling promise of greater freedom; everything will now depend

unconditionally on your will. Or again, if there is a difficulty with foreign states, then to stir up dissension among them is a pretty sure means of subjecting first one and then the other to your sway, under the pretext of aiding the weaker.

It is true that nowadays no body is taken in by these political maxims, for they are all familiar to everyone. Moreover, there is no need of being ashamed of them, as if their injustice were too patent. For the great Powers never feel shame before the judgment of the common herd, but only before one another; so that as far as this matter goes, it is not the revelation of these guiding principles of policy that can make rulers ashamed, but only the unsuccessful use of them. For as to the morality of these maxims, politicians are all agreed. Hence there is always left political prestige on which they can safely count; and this means the glory of increasing their power by any means that offer.[43]

* * *

In all these twistings and turnings of an immoral doctrine of expediency which aims at substituting a state of peace for the warlike conditions in which men are placed by nature, so much at least is clear; – that men cannot get away from the idea of right in their private any more than in their public relations; and that they do not dare (this is indeed most strikingly seen in the concept of an international law) to base politics merely on the manipulations of expediency and therefore to refuse all obedience to the idea of a public right. On the contrary, they pay all fitting honour to the idea of right in itself, even although they should, at the same time, devise a hundred subterfuges and excuses to avoid it in practice, and should regard force, backed up by cunning, as having the authority which comes from being the source and unifying principle of all right. It will be well to put an end to this sophistry, if not to the injustice it extenuates, and to bring the false advocates of the mighty of the earth to confess that it is not right but might in whose interest they speak, and that it is the worship of might from which they take their cue, as if in this matter they had a right to command. In order to do this, we must first expose the delusion by which they deceive themselves and others; then discover the ultimate principle from which their plans for a perpetual peace proceed; and thence show that all the evil which stands in the way of the realisation of that ideal springs from the fact that the political moralist begins where the moral politician rightly ends and that, by subordinating principles to an end or putting the cart before the horse, he defeats his intention of bringing politics into harmony with morals.

In order to make practical philosophy consistent with itself, we must first decide the following question: – In dealing with the problems of practical reason must we begin from its material principle – the end as the object of free choice – or from its formal principle which is based merely on freedom in its external relation? – from which comes the following law:

"Act so that thou canst will that thy maxim should be a universal law, be the end of thy action what it will."[44]

Without doubt, the latter determining principle of action must stand first; for, as a principle of right, it carries unconditional necessity with it, whereas the former is obligatory only if we assume the empirical conditions of the end set before us, – that is to say, that it is an end capable of being practically realised. And if this end – as, for example, the end of perpetual peace – should be also a duty, this same duty must necessarily have been deduced from the formal principle governing the maxims which guide external action. Now the first principle is the principle of the political moralist; the problems of constitutional, international and cosmopolitan law are mere technical problems (*problema technicum*). The second or formal principle, on the other hand, as the principle of the moral politician who regards it as a moral problem (*problema morale*), differs widely from the other principle in its methods of bringing about perpetual peace, which we desire not only as a material good, but also as a state of things resulting from our recognition of the precepts of duty.[45]

To solve the first problem – that, namely, of political expediency – much knowledge of nature is required, that her mechanical laws may be employed for the end in view. And yet the result of all knowledge of this kind is uncertain, as far as perpetual peace is concerned. This we find to be so, whichever of the three departments of public law we take. It is uncertain whether a people could be better kept in obedience and at the same time prosperity by severity or by baits held out to their vanity; whether they would be better governed under the sovereignty of a single individual or by the authority of several acting together; whether the combined authority might be better secured merely, say, by an official nobility or by the power of the people within the state; and, finally, whether such conditions could be long maintained. There are examples to the contrary in history in the case of all forms of government, with the exception of the only true republican constitution, the idea of which can occur only to a moral politician. Still more uncertain is a law of nations, ostensibly established upon statutes devised by ministers; for this amounts in fact to mere empty words, and rests on treaties which, in the very act of ratification, contain a secret reservation of the right to violate them. On the other hand, the solution of the second problem – the problem of political wisdom – forces itself, we may say, upon us; it is quite obvious to every one, and puts all crooked dealings to shame; it leads, too, straight to the desired end, while at the same time, discretion warns us not to drag in the conditions of perpetual peace by force, but to take time and approach this ideal gradually as favourable circumstances permit.

This may be expressed in the following maxim: – "Seek ye first the kingdom of pure practical reason and its righteousness, and the object of your endeavour, the blessing of perpetual peace, will be added unto you." For the science of morals generally has this peculiarity, – and it has it also with regard to the moral principles of public law, and therefore with regard

to a science of politics knowable *a priori*, that the less it makes a man's conduct depend on the end he has set before him, his purposed material or moral gain, so much the more, nevertheless, does it conform in general to this end. The reason for this is that it is just the universal will, given *a priori*, which exists in a people or in the relation of different peoples to one another, that alone determines what is lawful among men. This union of individual wills, however, if we proceed consistently in practice, in observance of the mechanical laws of nature, may be at the same time the cause of bringing about the result intended and practically realizing the idea of right. Hence it is, for example, a principle of moral politics that a people should unite into a state according to the only valid concepts of right, the ideas of freedom and equality; and this principle is not based on expediency, but upon duty. Political moralists, however, do not deserve a hearing, much and sophistically as they may reason about the existence, in a multitude of men forming a society, of certain natural tendencies which would weaken those principles and defeat their intention. They may endeavour to prove their assertion by giving instances of badly organised constitutions, chosen both from ancient and modern times, (as, for example, democracies without a representative system); but such arguments are to be treated with contempt, all the more, because a pernicious theory of this kind may perhaps even bring about the evil which it prophesies. For, in accordance with such reasoning, man is thrown into a class with all other living machines which only require the consciousness that they are not free creatures to make them in their own judgment the most miserable of all beings.

Fiat justitia, pereat mundus. This saying has become proverbial, and although it savours a little of boastfulness, is also true. We may translate it thus: – "Let justice rule on earth, although all the rogues in the world should go to the bottom." It is a good, honest principle of right cutting off all the crooked ways made by knavery or violence. It must not, however, be misunderstood as allowing anyone to exercise his own rights with the utmost seventy, a course in contradiction to our moral duty; but we must take it to signify an obligation, binding upon rulers, to refrain from refusing to yield anyone his rights or from curtailing them, out of personal feeling or sympathy for others. For this end, in particular, we require, firstly, that a state should have an internal political constitution, established according to the pure principles of right; secondly, that a union should be formed between this state and neighbouring or distant nations for a legal settlement of their differences, after the analogy of the universal state. This proposition means nothing more than this: – Political maxims must not start from the idea of a prosperity and happiness which are to be expected from observance of such precepts in every state; that is, not from the end which each nation makes the object of its will as the highest empirical principle of political wisdom; but they must set out from the pure concept of the duty of right, from the "*ought*" whose principle is given *a priori* through pure reason. This is the law, whatever the material consequences may be. The

world will certainly not perish by any means, because the number of wicked people in it is becoming fewer. The morally bad has one peculiarity, inseparable from its nature; – in its purposes, especially in relation to other evil influences, it is in contradiction with itself, and counteracts its own natural effect, and thus makes room for the moral principle of good, although advance in this direction may be slow.

Hence objectively, in theory, there is no quarrel between morals and politics. But subjectively, in the self-seeking tendencies of men (which we cannot actually call their morality, as we would a course of action based on maxims of reason,) this disagreement in principle exists and may always survive; for it serves as a whetstone to virtue. According to the principle, *Tu ne cede malis, sed contra audentior ito*, the true courage of virtue in the present case lies not so much in facing the evils and self-sacrifices which must be met here as in firmly confronting the evil principle in our own nature and conquering its wiles. For this is a principle far more dangerous, false, treacherous and sophistical which puts forward the weakness in human nature as a justification for every transgression.

In fact the political moralist may say that a ruler and people, or nation and nation do *one another* no wrong, when they enter on a war with violence or cunning, although they do wrong, generally speaking, in refusing to respect the idea of right which alone could establish peace for all time. For, as both are equally wrongly disposed to one another, each transgressing the duty he owes to his neighbour, they are both quite rightly served, when they are thus destroyed in war. This mutual destruction stops short at the point of extermination, so that there are always enough of the race left to keep this game going on through all the ages, and a far-off posterity may take warning by them. The Providence that orders the course of the world is hereby justified. For the moral principle in mankind never becomes extinguished, and human reason, fitted for the practical realisation of ideas of right according to that principle, grows continually in fitness for that purpose with the ever advancing march of culture; while at the same time, it must be said, the guilt of transgression increases as well. But it seems that, by no theodicy or vindication of the justice of God, can we justify Creation in putting such a race of corrupt creatures into the world at all, if, that is, we assume that the human race neither will nor can ever be in a happier condition than it is now. This standpoint, however, is too high a one for us to judge from, or to theorise, with the limited concepts we have at our command, about the wisdom of that supreme Power which is unknowable by us. We are inevitably driven to such despairing conclusions as these, if we do not admit that the pure principles of right have objective reality – that is to say, are capable of being practically realised – and consequently that action must be taken on the part of the people of a state and, further, by states in relation to one another, whatever arguments empirical politics may bring forward against this course. Politics in the real sense cannot take a step forward without first paying homage to the principles of morals. And, although politics, *per se*, is a difficult art, [46] in its

union with morals no art is required; for in the case of a conflict arising between the two sciences, the moralist can cut asunder the knot which politics is unable to untie. Right must be held sacred by man, however great the cost and sacrifice to the ruling power. Here is no half-and-half course. We cannot devise a happy medium between right and expediency, a right pragmatically conditioned. But all politics must bend the knee to the principle of right, and may, in that way, hope to reach, although slowly perhaps, a level whence it may shine upon men for all time.

APPENDIX II

CONCERNING THE HARMONY OF POLITICS WITH MORALS ACCORDING TO THE TRANSCENDENTAL IDEA OF PUBLIC RIGHT.

IF I look at public right from the point of view of most professors of law, and abstract from its *matter* or its empirical elements, varying according to the circumstances given in our experience of individuals in a state or of states among themselves, then there remains the *form* of publicity. The possibility of this publicity, every legal title implies. For without it there could be no justice, which can only be thought as before the eyes of men; and, without justice, there would be no right, for, from justice only, right can come.

This characteristic of publicity must belong to every legal title. Hence, as, in any particular case that occurs, there is no difficulty in deciding whether this essential attribute is present or not, (whether, that is, it is reconcilable with the principles of the agent or not), it furnishes an easily applied criterion which is to be found *a priori* in the reason, so that in the particular case we can at once recognise the falsity or illegality of a proposed claim (*praetensio juris*), as it were by an experiment of pure reason.

Having thus, as it were, abstracted from all the empirical elements contained in the concept of a political and international law, such as, for instance, the evil tendency in human nature which makes compulsion necessary, we may give the following proposition as the *transcendental formula* of public right: – "All actions relating to the rights of other men are wrong, if the maxims from which they follow are inconsistent with publicity."

This principle must be regarded not merely as ethical, as belonging to the doctrine of virtue, but also as juridical, referring to the rights of men. For there is something wrong in a maxim of conduct which I cannot divulge without at once defeating my purpose, a maxim which must therefore be kept secret, if it is to succeed, and which I could not publicly acknowledge without infallibly stirring up the opposition of everyone. This necessary and universal resistance with which everyone meets me, a resistance therefore evident a priori, can be due to no other cause than the injustice with which

such a maxim threatens everyone. Further, this testing principle is merely negative; that is, it serves only as a means by which we may know when an action is unjust to others. Like axioms, it has a certainty incapable of demonstration; it is besides easy of application as appears from the following examples of public right.

1. – **Constitutional Law**. Let us take in the first place the public law of the state (*jus civitatis*), particularly in its application to matters within the state. Here a question arises which many think difficult to answer, but which the transcendental principle of publicity solves quite readily: – "Is revolution a legitimate means for a people to adopt, for the purpose of throwing off the oppressive yoke of a so-called tyrant (*non titulo, sed exercitio talis*)?" The rights of a nation are violated in a government of this kind, and no wrong is done to the tyrant in dethroning him. Of this there is no doubt. None the less, it is in the highest degree wrong of the subjects to prosecute their rights in this way; and they would be just as little justified in complaining, if they happened to be defeated in their attempt and had to endure the severest punishment in consequence.

A great many reasons for and against both sides of this question may be given, if we seek to settle it by a dogmatic deduction of the principles of right. But the transcendental principle of the publicity of public right can spare itself this diffuse argumentation. For, according to that principle, the people would ask themselves, before the civil contract was made, whether they could venture to publish maxims, proposing insurrection when a favourable opportunity should present itself. It is quite clear that if, when a constitution is established, it were made a condition that force may be exercised against the sovereign under certain circumstances, the people would be obliged to claim a lawful authority higher than his. But in that case, the so-called sovereign would be no longer sovereign: or, if both powers, that of the sovereign and that of the people, were made a condition of the constitution of the state, then its establishment (which was the aim of the people) would be impossible. The wrongfulness of revolution is quite obvious from the fact that openly to acknowledge maxims which justify this step would make attainment of the end at which they aim impossible. We are obliged to keep them secret. But this secrecy would not be necessary on the part of the head of the state. He may say quite plainly that the ringleaders of every rebellion will be punished by death, even although they may hold that it was he who first transgressed the fundamental law. For, if a ruler is conscious of possessing irresistible sovereign power (and this must be assumed in every civil constitution, because a sovereign who has not power to protect any individual member of the nation against his neighbour has also not the right to exercise authority over him), then he need have no fear that making known the maxims which guide him will cause the defeat of his plans. And it is quite consistent with this view to hold that, if the people are successful in their insurrection, the sovereign must return to the rank of a subject, and refrain from inciting rebellion with a view to

regaining his lost sovereignty. At the same time he need have no fear of being called to account for his former administration.[47]

2. – **International Law**. There can be no question of an international law, except on the assumption of some kind of a law-governed state of things, the external condition under which any right can belong to man. For the very idea of international law, as public right, implies the publication of a universal will determining the rights and property of each individual nation; and this *status juridicus* must spring out of a contract of some sort which may not, like the contract to which the state owes its origin, be founded upon compulsory laws, but may be, at the most, the agreement of a permanent free association such as the federation of the different states, to which we have alluded above. For, without the control of law to some extent, to serve as an active bond of union among different merely natural or moral individuals, – that is to say, in a state of nature, – there can only be private law. And here we find a disagreement between morals, regarded as the science of right, and politics. The criterion, obtained by observing the effect of publicity on maxims, is just as easily applied, but only when we understand that this agreement binds the contracting states solely with the object that peace may be preserved among them, and between them and other states; in no sense with a view to the acquisition of new territory or power. The following instances of antinomy occur between politics and morals, which are given here with the solution in each case.

a. "When either of these states has promised something to another, (as, for instance, assistance, or a relinquishment of certain territory, or subsidies and such like), the question may arise whether, in a case where the safety of the state thus bound depends on its evading the fulfilment of this promise, it can do so by maintaining a right to be regarded as a double person: – firstly, as sovereign and accountable to no one in the state of which that sovereign power is head; and, secondly, merely as the highest official in the service of that state, who is obliged to answer to the state for every action. And the result of this is that the state is acquitted in its second capacity of any obligation to which it has committed itself in the first." But, if a nation or its sovereign proclaimed these maxims, the natural consequence would be that every other would flee from it, or unite with other states to oppose such pretensions. And this is a proof that politics, with all its cunning, defeats its own ends, if the test of making principles of action public, which we have indicated, be applied. Hence the maxim we have quoted must be wrong.

b. "If a state which has increased its power to a formidable extent (*potentia tremenda*) excites anxiety in its neighbours, is it right to assume that, since it has the means, it will also have the will to oppress others; and does that give less powerful states a right to unite and attack the greater nation without any definite cause of offence?" A state which would here answer openly in the affirmative would only bring the evil about more surely and speedily. For the greater power would forestall those smaller nations, and their union would be but a weak reed of defence against a state

which knew how to apply the maxim, *divide et impera*. This maxim of political expediency then, when openly acknowledged, necessarily defeats the end at which it aims, and is therefore wrong.

c. "If a smaller state by its geographical position breaks up the territory of a greater, so as to prevent a unity necessary to the preservation of that state, is the latter not justified in subjugating its less powerful neighbour and uniting the territory in question with its own?" We can easily see that the greater state dare not publish such a maxim beforehand; for either all smaller states would without loss of time unite against it, or other powers would contend for this booty. Hence the impracticability of such a maxim becomes evident under the light of publicity. And this is a sign that it is wrong, and that in a very great degree; for, although the victim of an act of injustice may be of small account, that does not prevent the injustice done from being very great.

3. – **Cosmopolitan Law**. We may pass over this department of right in silence, for, owing to its analogy with international law, its maxims arc easily specified and estimated.

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In this principle of the incompatibility of the maxims of international law with their publicity, we have a good indication of the non-agreement between politics and morals, regarded as a science of right. Now we require to know under what conditions these maxims do agree with the law of nations. For we cannot conclude that the converse holds, and that all maxims which can bear publicity are therefore just. For anyone who has a decided supremacy has no need to make any secret about his maxims. The condition of a law of nations being possible at all is that, in the first place, there should be a law-governed state of things. If this is not so, there can be no public right, and all right which we can think of outside the law-governed state, – that is to say, in the state of nature, – is mere private right. Now we have seen above that something of the nature of a federation between nations, for the sole purpose of doing away with war, is the only rightful condition of things reconcilable with their individual freedom. Hence the agreement of politics and morals is only possible in a federative union, a union which is necessarily given *a priori*, according to the principles of right. And the lawful basis of all politics can only be the establishment of this union in its widest possible extent. Apart from this end, all political sophistry is folly and veiled injustice. Now this sham politics has a casuistry, not to be excelled in the best Jesuit school. It has its mental reservation (*reservatio mentalis*): as in the drawing up of a public treaty in such terms as we can, if we will, interpret when occasion serves to our advantage; for example, the distinction between the *status quo* in fact (*de fait*) and in right (*de droit*). Secondly, it has its probabilism; when it pretends to discover evil intentions in another, or makes the probability of their possible future ascendency a lawful reason for bringing about the

destruction of other peaceful states. Finally, it has its philosophical sin (*percatum philosophicum, peccatillum, bagatelle*) which is that of holding it a trifle easily pardoned that a smaller state should be swallowed up, if this be to the gain of a nation much more powerful; for such an increase in power is supposed to tend to the greater prosperity of the whole world.[48]

Duplicity gives politics the advantage of using one branch or the other of morals, just as suits its own ends. The love of our fellowmen is a duty: so too is respect for their rights. But the former is only conditional: the latter, on the other hand, an unconditional, absolutely imperative duty; and anyone who would give himself up to the sweet consciousness of well-doing must be first perfectly assured that he has not transgressed its commands. Politics has no difficulty in agreeing with morals in the first sense of the term, as ethics, to secure that men should give to superiors their rights. But when it comes to morals, in its second aspect, as the science of right before which politics must bow the knee, the politician finds it prudent to have nothing to do with compacts and rather to deny all reality to morals in this sense, and reduce all duty to mere benevolence. Philosophy could easily frustrate the artifices of a politics like this, which shuns the light of criticism, by publishing its maxims, if only statesmen would have the courage to grant philosophers the right to ventilate their opinions.

With this end in view, I propose another principle of public right, which is at once transcendental and affirmative. Its formula would be as follows: – "All maxims which require publicity, in order that they may not fail to attain their end, are in agreement both with right and politics."

For, if these maxims can only attain the end at which they aim by being published, they must be in harmony with the universal end of mankind, which is happiness; and to be in sympathy with this (to make the people contented with their lot) is the real business of politics. Now, if this end should be attainable only by publicity, or in other words, through the removal of all distrust of the maxims of politics, these must be in harmony with the right of the people; for a union of the ends of all is only possible in a harmony with this right.

I must postpone the further development and discussion of this principle till another opportunity. That it is a transcendental formula is quite evident from the fact that all the empirical conditions of a doctrine of happiness, or the *matter* of law, are absent, and that it has regard only to the *form* of universal conformity to law.

* * *

If it is our duty to realise a state of public right, if at the same time there are good grounds for hope that this ideal may be realised, although only by an approximation advancing *ad infinitum*, then perpetual peace, following hitherto falsely so-called conclusions of peace, which have been in reality mere cessations of hostilities, is no mere empty idea. But rather we have here a problem which gradually works out its own solution and, as the

periods in which a given advance takes place towards the realisation of the ideal of perpetual peace will, we hope, become with the passing of time shorter and shorter, we must approach ever nearer to this goal.

NOTES

[1] [Translation by Mary Campbell Smith (London: Swan Sonnenschein & Co., 1903) – Ed.]

[2] I have seen something of M. de St. Pierre's plan for maintaining perpetual peace in Europe. It reminds me of an inscription outside of a churchyard, which ran "*Pax Perpetua*. For the dead, it is true, fight no more. But the living are of another mind, and the mightiest among them have little respect for tribunals." (Leibnitz: *Letter to Grimarest*, quoted above, p. 37, note §.) [Tr.]

[3] On the honourable interpretation of treaties, see Vattel (*op. cit.*, II. Ch. XVII, esp. §§ 263-296, 291). See also what he says of the validity of treaties and the necessity for holding them sacred (II. Ch. XII. §§ 157, 158: II. Ch. XV). [Tr.]

[4] "Even the smoothest way," says Hume, (*Of the Original Contract*) "by which a nation may receive a foreign master, by marriage or a will, is not extremely honourable for the people; but supposes them to be disposed of, like a dowry or a legacy, according to the pleasure or interest of their rulers." [Tr.]

[5] An hereditary kingdom is not a state which can be inherited by another state, but one whose sovereign power can be inherited by another physical person. The state then acquires a ruler, not the ruler as such (that is, as one already possessing another realm) the state.

[6] This has been one of the causes of the extraordinary admixture of races in the modern Austrian empire. Cf. the lines of Matthias Corvinus of Hungary (quoted in Sir W. Stirling Maxwell's *Cloister Life of Charles the Fifth*, Ch. I, *note*):–

> "Bella gerant alii, tu, felix Austria, nube!
> Nam quae Mars aliis, dat tibi regna Venus." [Tr.]

[7] A Bulgarian Prince thus answered the Greek Emperor who magnanimously offered to settle a quarrel with him, not by shedding the blood of his subjects, but by a duel:– "A smith who has tongs will not take the red-hot iron from the fire with his hands."

(This note is a-wanting in the second Edition of 1796. It is repeated in Art. II., see p. 130.) [Tr.]

[8] See Vattel: *Law of Nations*, II. Ch. IV. § 55. No foreign power, he says, has a right to judge the conduct and administration of any sovereign or oblige him to alter it. "If he loads his subjects with taxes, or if he treats them with severity, the nation alone is concerned; and no other is called upon to offer redress for his behaviour, or oblige him to follow more wise and equitable maxims… But (*loc. cit.* § 56) when the bands of the political society are broken, or at least suspended, between the sovereign and his people, the contending parties may then be considered as two distinct powers; and, since they are both equally independent of all foreign authority, nobody has a right to judge them. Either

may be in the right; and each of those who grant their assistance may imagine that he is giving his support to the better cause." [Tr.]

[9] It has been hitherto doubted, not without reason, whether there can be laws of permission (*leges permissivæ*) of pure reason as well as commands (*leges præceptivæ*) and prohibitions (*leges prohibitivæ*). For law in general has a basis of objective practical necessity: permission, on the other hand, is based upon the contingency of certain actions in practice. It follows that a law of permission would enforce what cannot be enforced; and this would involve a contradiction, if the object of the law should be the same in both cases. Here, however, in the present case of a law of permission, the presupposed prohibition is aimed merely at the future manner of acquisition of a right – for example, acquisition through inheritance: the exemption from this prohibition (*i.e.* the permission) refers to the present state of possession. In the transition from a state of nature to the civil state, this holding of property can continue as a *bona fide*, if usurpatory, ownership, under the new social conditions, in accordance with a permission of the Law of Nature. Ownership of this kind, as soon as its true nature becomes known, is seen to be mere nominal possession (*possessio putativa*) sanctioned by opinion and customs in a natural state of society. After the transition stage is passed, such modes of acquisition are likewise forbidden in the subsequently evolved civil state: and this power to remain in possession would not be admitted if the supposed acquisition had taken place in the civilized community. It would be bound to come to an end as an injury to the right of others, the moment its illegality became patent.

I have wished here only by the way to draw the attention of teachers of the Law of Nature to the idea of a *lex permissiva* which presents itself spontaneously in any system of rational classification. I do so chiefly because use is often made of this concept in civil law with reference to statutes; with this difference, that the law of prohibition stands alone by itself, while permission is not, as it ought to be, introduced into that law as a limiting clause, but is thrown among the exceptions. Thus "this or that is forbidden", – say, Nos. 1, 2, 3, and so on in an infinite progression, – while permissions are only added to the law incidentally: they are not reached by the application of some principle, but only by groping about among cases which have actually occurred. Were this not so, qualifications would have had to be brought into the formula of laws of prohibition which would have immediately transformed them into laws of permission. Count von Windischgrätz, a man whose wisdom was equal to his discrimination, urged this very point in the form of a question propounded by him for a prize essay. One must therefore regret that this ingenious problem has been so soon neglected and left unsolved. For the possibility of a formula similar to those of mathematics is the sole real test of a legislation that would be consistent. Without this, the so-called *jus certum* will remain forever a mere pious wish: we can have only general laws valid on the whole; no general laws possessing the universal validity which the concept law seems to demand.

[10] "From this diffidence of one another, there is no way for any man to secure himself, so reasonable, as anticipation; that is, by force, or wiles, to master the persons of all men he can, so long, till he see no other power great enough to

endanger him: and this is no more than his own conservation requireth, and is generally allowed." (Hobbes: *Lev*. I. Ch. XIII.) [Tr.]

[11] Hobbes thus describes the establishment of the state,

> "A *commonwealth* is said to be *instituted*, when a *multitude* of men do agree, and *covenant*, *every one*, *with every one*, that to whatsoever *man*, or *assembly of men*, shall be given by the major part, the *right* to *present* the person of them all, that is to say, to be their *representative*; everyone, as well he that *voted for it*, as he that *voted against it*, shall *authorize* all the actions and judgments, of that man, or assembly of men, in the same manner, as if they were his own, to the end, to live peaceably amongst themselves, and be protected against other men." (*Lev.* II. Ch. XVIII.)
>
> There is a covenant between them, "as if every man should say to every man, *I authorize and give up my right of governing myself to this man, or to this assembly of men, on this condition, that thou give up thy right to him, and authorize all his actions in like manner*." (*Lev*. II. Ch. XVII.) [Tr.]

[12] It is usually accepted that a man may not take hostile steps against any one, unless the latter has already injured him by act. This is quite accurate, if both are citizens of a law-governed state. For, in becoming a member of this community, each gives the other the security he demands against injury, by means of the supreme authority exercising control over them both. The individual, however, (or nation) who remains in a mere state of nature deprives me of this security and does me injury, by mere proximity. There is perhaps no active (*facto*) molestation, but there is a state of lawlessness, (*status injustus*) which, by its very existence, offers a continual menace to me. I can therefore compel him, either to enter into relations with me under which we are both subject to law, or to withdraw from my neighbourhood. So that the postulate upon which the following articles are based is: – "All men who have the power to exert a mutual influence upon one another must be under a civil government of some kind."

A legal constitution is, according to the nature of the individuals who compose the state: –

(1) A constitution formed in accordance with the right of citizenship of the individuals who constitute a nation (*jus civitatis*).

(2) A constitution whose principle is international law which determines the relations of states (*jus gentium*).

(3) A constitution formed in accordance with cosmopolitan law, in as far as individuals and states, standing in an external relation of mutual reaction, may be regarded as citizens of one world-state (*jus cosmopoliticum*).

This classification is not an arbitrary one, but is necessary with reference to the idea of perpetual peace. For, if even one of these units of society were in a position physically to influence another, while yet remaining a member of a primitive order of society, then a state of war would be joined with these primitive conditions; and from this it is our present purpose to free ourselves.

[13] Lawful, that is to say, external freedom cannot be defined, as it so often is, as the right [*Befugniss*] "to do whatever one likes, so long as this does not wrong anyone else."* For what is this right? It is the possibility of actions which do not lead to the injury of others. So the explanation of a "right" would be something like this: – "Freedom is the possibility of actions which do not injure anyone. A man does not wrong another – whatever his action – if he does not wrong another": which is empty tautology. My external (lawful) freedom is rather to be explained in this way: it is the right through which I require not to obey any external laws except those to which I could have given my consent. In exactly the same way, external (legal) equality in a state is that relation of the subjects in consequence of which no individual can legally bind or oblige another to anything, without at the same time submitting himself to the law which ensures that he can, in his turn, be bound and obliged in like manner by this other.

The principle of lawful independence requires no explanation, as it is involved in the general concept of a constitution. The validity of this hereditary and inalienable right, which belongs of necessity to mankind, is affirmed and ennobled by the principle of a lawful relation between man himself and higher beings, if indeed he believes in such beings. This is so, because he thinks of himself, in accordance with these very principles, as a citizen of a transcendental world as well as of the world of sense. For, as far as my freedom goes, I am bound by no obligation even with regard to Divine Laws – which are apprehended by me only through my reason – except in so far as I could have given my assent to them; for it is through the law of freedom of my own reason that I first form for myself a concept of a Divine Will. As for the principle of equality, in so far as it applies to the most sublime being in the universe next to God – a being I might perhaps figure to myself as a mighty emanation of the Divine spirit, – there is no reason why, if I perform my duty in the sphere in which I am placed, as that aeon does in his, the duty of obedience alone should fall to my share, the right to command to him. That this principle of equality, (unlike the principle of freedom), does not apply to our relation to God is due to the fact that, to this Being alone, the idea of duty does not belong.

As for the right to equality which belongs to all citizens as subjects, the solution of the problem of the admissibility of an hereditary nobility hinges on the following question: – "Does social rank – acknowledged by the state to be higher in the case of one subject than another – stand above desert, or does merit take precedence of social standing?" Now it is obvious that, if high position is combined with good family, it is quite uncertain whether merit, that is to say, skill and fidelity in office, will follow as well. This amounts to granting the favoured individual a commanding position without any question of desert; and to that, the universal will of the people – expressed in an original contract which is the fundamental principle of all right – would never consent. For it does not follow that a nobleman is a man of noble character. In the case of the official nobility, as one might term the rank of higher magistracy which one must acquire by merit – the social position is not attached like property to the person but to his office, and equality is not thereby disturbed; for, if a man

gives up office, he lays down with it his official rank and falls back into the rank of his fellows.

* Hobbes' definition of freedom is interesting. See *Lev*. II. Ch. XXI.: – "A FREEMAN, *is he, that in those things, which by his strength and wit he is able to do, is not hindered to do what he has a will to*." [Tr.]

[14] Cf. Cowper: *The Winter Morning Walk*: –

> "But is it fit, or can it bear the shock
> Of rational discussion, that a man,
> Compounded and made up like other men
> Of elements tumultuous, …
> . . . . . .
> Should when he pleases, and on whom he will,
> Wage war, with any or with no pretence
> Of provocation giv'n or wrong sustain'd,
> And force the beggarly last doit, by means
> That his own humour dictates, from the clutch
> Of poverty, that thus he may procure
> His thousands, weary of penurious life,
> A splendid opportunity to die?"
> . . . . . .
> . . . . . .
> "He deems a thousand or ten thousand lives
> Spent in the purchase of renown for him,
> An easy reckoning." [Tr.]

[15] Cf. Hobbes: *On Dominion*, Ch. VII. § I. "As for the difference of cities, it is taken from the difference of the persons to whom the supreme power is committed. This power is committed either to *one man*, or *council*, or some *one court* consisting of many men." [Tr.]

[16] The lofty appellations which are often given to a ruler such as the Lord's Anointed, the Administrator of the Divine Will upon earth and Vicar of God – have been many times censured as flattery gross enough to make one giddy. But it seems to me without cause. Far from making a prince arrogant, names like these must rather make him humble at heart, if he has any intelligence – which we take for granted he has – and reflects that he has undertaken an office which is too great for any human being. For, indeed, it is the holiest which God has on earth – namely, the right of ruling mankind: and he must ever live in fear of injuring this treasure of God in some respect or other.

[17] Mallet du Pan boasts in his seemingly brilliant but shallow and superficial language that, after many years experience, he has come at last to be convinced of the truth of the well known saying of Pope [*Essay on Man*, III. 303]: –

> "For Forms of Government let fools contest;
> Whate'er is best administered is best."

If this means that the best administered government is best administered, then, in Swift's phrase, he has cracked a nut to find a worm in it. If it means, however, that the best conducted government is also the best kind of government, – that is, the best form of political constitution, – then it is utterly false: for examples of wise administration are no proof of the kind of government. Who ever ruled better than Titus and Marcus Aurelius, and yet the one left Domitian, the other Commodus, as his successor? This could not have happened where the constitution was a good one, for their absolute unfitness for the position was early enough known, and the power of the emperor was sufficiently great to exclude them.

[18] For as amongst masterless men, there is perpetual war, of every man against his neighbour; no inheritance, to transmit to the son, nor to expect from the father; no propriety of goods, or lands; no security; but a full and absolute liberty in every particular man: so in states, and commonwealths not dependent on one another, every commonwealth, not every man, has an absolute liberty, to do what it shall judge, that is to say, what that man, or assembly that represented it, shall judge most conducing to their benefit. But withal, they live in the condition of a perpetual war, and upon the confines of battle, with their frontiers armed, and cannons planted against their neighbours round about. (Hobbes: *Leviathan*, II. Ch. XXI.) [Tr.]

[19] But see p. 136, where Kant seems to speak of a State of nations as the ideal. Kant expresses himself, on this point, more clearly in the *Rechtslehre*, Part. II. § 61: –

> The natural state of nations [he says here,], like that of individual men, is a condition which must be abandoned, in order that they may enter a state regulated by law. Hence, before this can take place, every right possessed by these nations and every external "mine" and "thine" [*id est*, symbol of possession] which states acquire or preserve through war are merely *provisional*, and can become *peremptorily* valid and constitute a true state of peace only in a universal *union of states*, by a process analogous to that through which a people becomes a state. Since, however, the too great extension of such a State of nations over vast territories must, in the long run, make the government of that union – and therefore the protection of each of its members – impossible, a multitude of such corporations will lead again to a state of war. So that *perpetual peace*, the final goal of international law as a whole, is really an impracticable idea [*eine unausführbare Idee*]. The political principles, however, which are directed towards this end, (that is to say, towards the establishment of such unions of states as may serve as a continual approximation to that ideal), are not impracticable; on the contrary, as this approximation is required by duty and is therefore founded also upon the rights of men and of states, these principles are, without doubt, capable of practical realisation." [Tr.]

[20] A Greek Emperor who magnanimously volunteered to settle by a duel his

quarrel with a Bulgarian Prince, got the following answer: – "A smith who has tongs will not pluck the glowing iron from the fire with his hands."

[21] Both sayings are very true: that *man to man is a kind of God*; and that *man to man is an arrant wolf*. The first is true, if we compare citizens amongst themselves; and the second, if we compare cities. In the one, there is some analogy of similitude with the Deity; to wit, justice and charity, the twin sisters of peace. But in the other, good men must defend themselves by taking to them for a sanctuary the two daughters of war, deceit and violence: that is, in plain terms, a mere brutal rapacity. (Hobbes: Epistle Dedicatory to the *Philosophical Rudiments concerning Government and Society*.) [Tr.]

[22] "The strongest are still never sufficiently strong to ensure them the continual mastership, unless they find means of transforming force into right, and obedience into duty.

From the right of the strongest, right takes an ironical appearance, and is rarely established as a principle." (*Contrat Social*, I, Ch. III.) [Tr.]

[23] "The natural state," says Hobbes, (*On Dominion*, Ch. VII. § 18) "hath the same proportion to the civil, (I mean, liberty to subjection), which passion hath to reason, or a beast to a man."

Locke speaks thus of man, when he puts himself into the state of war with another: –

> having quitted reason, which God hath given to be the rule betwixt man and man, and the common bond whereby human kind is united into one fellowship and society; and having renounced the way of peace which that teaches, and made use of the force of war, to compass his unjust ends upon another, where he has no right: and so revolting from his own kind to that of beasts, by making force, which is theirs, to be his rule of right, he renders himself liable to be destroyed by the injured person, and the rest of mankind that will join with him in the execution of justice, as any other wild beat, or noxious brute, with whom mankind can have neither society nor security. (*Civil Government*, Ch. XV. § 172.) [Tr.]

[24] Cf. Rousseau: *Gouvernement de Pologne*, Ch. V. Federate government is "the only one which unites in itself all the advantages of great and small states." [Tr.]

[25] On the conclusion of peace at the end of a war, it might not be unseemly for a nation to appoint a day of humiliation, after the festival of thanksgiving, on which to invoke the mercy of Heaven for the terrible sin which the human race are guilty of, in their continued unwillingness to submit (in their relations with other states) to a law-governed constitution, preferring rather in the pride of their independence to use the barbarous method of war, which after all does not really settle what is wanted, namely, the right of each state in a quarrel. The feasts of thanksgiving during a war for a victorious battle, the hymns which are sung – to use the Jewish expression – "to the Lord of Hosts" are not in less strong contrast to the ethical idea of a father of mankind; for, apart from the indifference these customs show to the way in which nations seek to establish their rights – sad enough as it is – these rejoicings bring in an element of

exultation that a great number of lives, or at least the happiness of many, has been destroyed.

[26] Cf. *Aeneidos*, I. 294 *seq*.

> "Furor impius intus,
> Saeva sedens super arma, et centum vinetua aënis
> Post tergum nodis, fremet horridus ore cruento." [Tr.]

[27] Cf. Vattel (*op. cit*., II. ch. IX. § 123): –

> The right of passage is also a remnant of the primitive state of communion, in which the entire earth was common to all mankind, and the passage was everywhere free to each individual according to his necessities. Nobody can be entirely deprived of this right. [...] [Tr.]

[28] In order to call this great empire by the name which it gives itself – namely, China, not Sina or a word of similar sound – we have only to look at [Antonio] Georgii: *Alphab[etum] Tibet[anum]*, pp. 651-654, particularly *note* b., below. According to the observation of Professor Fischer of St. Petersburg, there is really no particular name which it always goes by: the most usual is the word *Kin, i.e*. gold, which the inhabitants of Tibet call *Ser*. Hence the emperor is called the king of gold, *i.e*. the king of the most splendid country in the world. This word *Kin* may probably be *Chin* in the empire itself, but be pronounced *Kin* by the Italian missionaries on account of the gutturals. Thus we see that the country of the Seres, so often mentioned by the Romans, was China: the silk, however, was despatched to Europe across Greater Tibet, probably through Smaller Tibet and Bucharia, through Persia and then on. This leads to many reflections as to the antiquity of this wonderful state, as compared with Hindustan, at the time of its union with Tibet and thence with Japan. On the other hand, the name Sina or Tschina which is said to be given to this land by neighbouring peoples leads to nothing.

Perhaps we can explain the ancient intercourse of Europe with Tibet fact at no time widely known by looking at what Hesychius has preserved on the matter. I refer to the shout, *Κουξ Ομπαξ* (*Konx Ompax*), the cry of the Hierophants in the Eleusinian mysteries (cf. *Travels of Anacharsie the Younger*, Part V., p. 447, *seq*.). For, according to Georgii, *Alph. Tibet*., the word *Concioa* which bears a striking resemblance to *Konx* means God. *Pah-cio* (*ib*. p. 520) which might easily be pronounced by the Greeks like *pax* means *promulgator legis*, the divine principle permeating nature (called also, on p. 177, *Cencresi*). *Om*, however, which La Crose translates by *benedictus*, *i.e*. blessed, can when applied to the Deity mean nothing but beatified (p. 507). Now P. Franc. Horatius, when be asked the Lhamas of Tibet, as he often did, what they understood by God (*Concioa*) always got the answer: – "it is the assembly of all the saints," *i.e*. the assembly of those blessed ones who have been born again according to the faith of the Lama and, after many wanderings in changing forms, have at last returned to God, to Burchane: that is to say, they are beings to be worshipped, souls which have undergone transmigration (p. 223). So the mysterious expression *Konx Ompax* ought probably to mean the holy (*Konx*), blessed, (*Om*) and wise (*Pax*) supreme Being pervading the universe, the personification of nature. Its use in the Greek mysteries probably signified

monotheism for the Epoptes, in distinction from the polytheism of the people, although elsewhere P. Horatius scented atheism here. How that mysterious word came by way of Tibet to the Greeks may be explained as above; and, on the other hand, in this way is made probable an early intercourse of Europe with China across Tibet, earlier perhaps than the communication with Hindustan.

(There is some difference of opinion as to the meaning of the words *χόγξ όμπαξ* – according to Liddell and Scott, a corruption of *χόγξ, όμοίως πάξ.* Kant's inferences here seem to be more than far-fetched. Lobeck, in his *Aglaophamus* (p. 775), gives a quite different interpretation which has, he says, been approved by scholars. And Whately (*Historic Doubts relative to Napoleon Bonaparte*, 3rd. ed., Postcript) uses *Konx Ompax* as a pseudonym. [Tr.])

[29] In the mechanical system of nature to which man belongs as a sentient being, there appears, as the underlying ground of its existence, a certain *form* which we cannot make intelligible to ourselves except by thinking into the physical world the idea of an end preconceived by the Author of the universe: this predetermination of nature on the part of God we generally call Divine Providence. In so far as this providence appears in the origin of the universe, we speak of Providence as founder of the world (*providentia conditrix ; semel jussit, semper parent*. Augustine). As it maintains the course of nature, however, according to universal laws of adaptation to preconceived ends, [*i.e*. teleological laws] we call it a ruling providence (*providentia gubernatrix*). Further, we name it the guiding providence (*providentia directrix*), as it appears in the world for special ends, which we could not foresee, but suspect only from the result. Finally, regarding particular events as divine purposes, we speak no longer of providence, but of dispensation (*directio extraordinaria*). As this term, however, really suggests the idea of miracles, although the events are not spoken of by this name, the desire to fathom dispensation, as such, is a foolish presumption in men. For, from one single occurrence, to jump at the conclusion that there u a particular principle of efficient causes and that this event is an end and not merely the natural [*natur-mechanische*] sequence of a design quite unknown to us is absurd and presumptuous, in however pious and humble a spirit we may speak of it. In the same way to distinguish between a universal and a particular providence when regarding it *materialiter*, in its relation to actual objects in the world (to say, for instance, that there may be, indeed, a providence for the preservation of the different species of creation, but that individuals are left to chance) is false and contradictory. For providence is called universal for the very reason that no single thing may be thought of as shut out from its care. Probably the distinction of two kinds of providence, *formaliter* or subjectively considered, had reference to the manner in which its purposes are fulfilled. So that we have ordinary providence (*e.g*. the yearly decay and awakening to new life in nature with change of season) and what we may call unusual or special providence (*e.g*. the bringing of timber by ocean currents to Arctic shores where it does not grow, and where without this aid the inhabitants could not live). Here, although we can quite well explain the physico-mechanical cause of these phenomena – in this case, for example, the banks of the rivers in temperate countries are over-grown with trees, some of which fall into the water and are

carried along, probably by the Gulf Stream – we must not overlook the teleological cause which points to the providential care of a ruling wisdom above nature. But the concept, commonly used in the schools of philosophy, of a co-operation on the part of the Deity or a concurrence (*concursus*) in the operations going on in the world of sense, must be dropped. For it is, firstly, self-contradictory to couple the like and the unlike together (*gryphes jungere equis*) and to let Him who is Himself the entire cause of the changes in the universe make good any shortcomings in His own predetermining providence (which to require this must be defective) during the course of the world; for example, to say that the physician has restored the sick with the help of God – that is to say that He has been present as a support. For *causa solitaria non juvat*. God created the physician as well as his means of healing; and we must ascribe the result wholly to Him, if we will go back to the supreme First Cause which, theoretically, is beyond our comprehension. Or we can ascribe the result entirely to the physician, in so far as we follow up this event, as explicable in the chain of physical causes, according to the order of nature. Secondly, moreover, such a way of looking at this question destroys all the fixed principles by which we judge an effect. But, from the ethico-practical point of view which looks entirely to the transcendental side of things, the idea of a divine concurrence is quite proper and even necessary: for example, in the faith that God will make good the imperfection of our human justice, if only our feelings and intentions are sincere; and that He will do this by means beyond our comprehension, and therefore we should not slacken our efforts after what is good. Whence it follows, as a matter of course, that no one must attempt to explain a good action as a mere event in time by this *concursus*; for that would be to pretend a theoretical knowledge of the supersensible and hence be absurd.

[30] *Id est*, which we cannot dissever from the idea of a creative skill capable of producing them. [Tr.]

[31] [Note deleted – Ed.]

[32] Of all modes of livelihood the life of the hunter is undoubtedly most incompatible with a civilised condition of society. Because, to live by hunting, families must isolate themselves from their neighbours, soon becoming estranged and spread over widely scattered forests, to be before long on terms of hostility, since each requires a great deal of space to obtain food and raiment. God's command to Noah not to shed blood (I. *Genesis*, IX. 4-6)

> [4. "But flesh with the life thereof, which is the blood thereof, shall ye not eat.
>
> 5. And surely your blood of your lives will I require; at the hand of every beast will I require it, and at the hand of man; at the hand of every man's brother will I require the life of man.
>
> 6. Whoso sheddeth man's blood, by man shall his blood be shed: for in the image of God made he man."]

is frequently quoted, and was afterwards in another connection it is true made by the baptised Jews a condition to which Christians, newly converted from heathendom, had to conform. Cf. *Acts* XV. 20; XXI. 25. This command seems

originally to have been nothing else than a prohibition of the life of the hunter; for here the possibility of eating raw flesh must often occur, and, in forbidding the one custom, we condemn the other.

[33] About 1000 English miles.

[34] The question might be put: – "If it is nature's will that these Arctic shores should not remain unpopulated, what will become of their inhabitants, if, as is to be expected, at some time or other no more driftwood should be brought to them? For we may believe that, with the advance of civilisation, the inhabitants of temperate zones will utilise better the wood which grows on the banks of their rivers, and not let it fall into the stream and so be swept away." I answer: the inhabitants of the shores of the River Obi, the Yenisei, the Lena will supply them with it through trade, and take in exchange the animal produce in which the seat of Arctic shores are so rich – that is, if nature has first of all brought about peace among them.

[35] Cf. *Enc[yclopaedia] Brit[annica]* (9th ed.), art. “Indians", in which there is an allusion to "Fuegians, the *Pescherai*s" of some writers. [Tr.]

[36] Rousseau uses these terms in speaking of democracy. (*Cont. Soc*., III. Ch. 4.) "If there were a nation of Gods, they might be governed by a democracy: but so perfect a government will not agree with men."

But he writes elsewhere of republican governments (*op. cit*., II. Ch. 6.): – "All lawful governments are republican." And in a footnote to this passage: – "I do not by the word 'republic' mean an aristocracy or democracy only, but in general all governments directed by the public will which is the law. If a government is to be lawful, it must not be confused with the sovereign power, but be considered as the administrator of that power: and then Monarchy itself is a republic," This language has a close affinity with that used by Kant. (Cf. above, p. [183 – Ed.].) [Tr.]

[37] [Note deleted.]

[38] Difference of religion! A strange expression, as if one were to speak of different kinds of morality. There may indeed be different historical forms of belief, – that is to say, the various means which have been used in the course of time to promote religion, – but they are mere subjects of learned investigation, and do not really lie within the sphere of religion. In the same way there are many religious works – the *Zendavesta, Veda, Koran* etc. – but there is only one religion, binding for all men and for all times. These books are each no more than the accidental mouthpiece of religion, and may be different according to differences in time and place.

[39] Montesquieu speaks thus in praise of the English state : – "As the enjoyment of liberty, and even its support and preservation, consists in every man's being allowed to speak his thoughts and to lay open his sentiments, a citizen in this state will say or write whatever the laws do not expressly forbid to be said or written." (*Esprit des Lois*, XIX. Ch. 27.) Hobbes is opposed to all free discussion of political questions and to freedom as a source of danger to the state. [Tr.]

[40] Kant is thinking here not of the sword of justice, in the moral sense, but of a

sword which is symbolical of the executive power of the actual law. [Tr.]

[41] Cf. Aristotle: *Politics*, (Welldon's trans.) IV. Ch. XIV. "The same principles of morality are best both for individuals and States."

Among the ancients the connection between politics and morals was never questioned, although there were differences of opinion as to which science stood first in importance. Thus, while Plato put politics second to morals, Aristotle regarded politics as the chief science and ethics as a part of politics. This connection between the sciences was denied by Machiavelli, who lays down the dictum that, in the relations of sovereigns and states, the ordinary rules of morality do not apply. See *The Prince*, Ch. XVIII. "A Prince," he says, "and most of all a new Prince, cannot observe all those rules of conduct in respect of which men are accounted good, being frequently obliged, in order to preserve his Princedom, to act in opposition to good faith, charity, humanity, and religion. He must therefore keep his mind ready to shift as the winds and tides of Fortune turn, and, as I have already said, he ought not to quit good courses if he can help it, but should know how to follow evil courses if he must."

Hume thought that laxer principles might be allowed to govern states than private persons, because intercourse between them was not so "necessary and advantageous" as between individuals. "There is a system of morals," he says, "calculated for princes, much more free than that which ought to govern private persons," (*Treatise*, III., Part II., Sect. IX.) [Tr.]

[42] These are *permissive* laws of reason which allow us to leave a system of public law, when it is tainted by injustice, to remain just as it is, until everything is entirely revolutionised through an internal development, either spontaneous, or fostered and matured by peaceful influences. For any legal constitution whatsoever, even although it conforms only slightly with the spirit of law is better than none at all – that is to say, anarchy, which is the fate of a precipitate reform. Hence, as things now are, the wise politician will look upon it as his duty to make reforms on the lines marked out by the ideal of public law. He will not use revolutions, when these have been brought about by natural causes, to extenuate still greater oppression than caused them, but will regard them as the voice of nature, calling upon him to make such thorough reforms as will bring about the only lasting constitution, a lawful constitution based on the principles of freedom.

[43] It is still sometimes denied that we find, in members of a civilised community, a certain depravity rooted in the nature of man;* and it might, indeed, be alleged with some show of truth that not an innate corruptness in human nature, but the barbarism of men, the defect of a not yet sufficiently developed culture, is the cause of the evident antipathy to law which their attitude indicates. In the external relations of states, however, human wickedness shows itself incontestably, without any attempt at concealment. Within the state, it is covered over by the compelling authority of civil laws. For, working against the tendency every citizen has to commit acts of violence against his neighbour, there is the much stronger force of the government which not only gives an appearance of morality to the whole state (*causae non*

causae), but, by checking the outbreak of lawless propensities, actually aids the moral qualities of men considerably, in their development of a direct respect for the law. For every individual thinks that he himself would hold the idea of right sacred and follow faithfully what it prescribes, if only he could expect that everyone else would do the same. This guarantee is in part given to him by the government; and a great advance is made by this step which is not deliberately moral, towards the ideal of fidelity to the concept of duty for its own sake without thought of return. As, however, every man's good opinion of himself presupposes an evil disposition in everyone else, we have an expression of their mutual judgment of one another, namely, that when it comes to hard facts, none of them are worth much; but whence this judgment comes remains unexplained, as we cannot lay the blame on the nature of man, since he is a being in the possession of freedom. The respect for the idea of right, of which it is absolutely impossible for man to divest himself, sanctions in the most solemn manner the theory of our power to conform to its dictates. And hence every man sees himself obliged to act in accordance with what the idea of right prescribes, whether his neighbours fulfil their obligation or not.

* This depravity of human nature is denied by Rousseau, who held that the mind of man was naturally inclined to virtue, and that good civil and social institutions are all that is required. (*Discourse on the Sciences and Arts*, 1750.) Kant here takes sides with Hobbes against Rousseau. See Kant's *Theory of Ethics*, Abbott's trans. (4th ed., 1889), p. 339 *seq*. – esp. p. 341 and *note*. Cf. also Hooker's *Ecclesiastical Polity*, I. § 10: – "Laws politic, ordained for external order and regiment amongst men, are never framed as they should be, unless presuming the will of man to be inwardly obstinate, rebellious, and averse from all obedience to the sacred laws of his nature; in a word, unless presuming man to be, in regard of his depraved mind, little better than a wild beast, they do accordingly provide, notwithstanding, so to frame his outward actions, that they be no hindrance unto the common good, for which societies are instituted." [Tr.]

[44] With regard to the meaning of the moral law and its significance in the Kantian system of ethics, see Abbott's translation of the *Theory of Ethics* (1889), pp. 38, 45, 54, 55, 119, 282. [Tr.]

[45] See Abbott's trans., pp. 33, 34. [Tr.]

[46] Matthew Arnold defines politics somewhere as the art of "making reason and the will of God prevail" – an art, one would say, difficult enough. [Tr.]

[47] "When a king has dethroned himself," says Locke, (*On Civil Government*, Ch. XIX. § 239) "and put himself in a state of war with his people, what shall hinder them from prosecuting him who is no king, as they would any other man, who has put himself into a state of war with them?" .... "The legislative being only a fiduciary power to act for certain ends, there remains still in the people *a supreme power to remove or alter the legislative*." (*Op. cit,*. Ch. XIII. § 149.) And again, (*op. cit*., Ch. XI. § 134.) we find the words, ". . . . over whom [*i.e*. society] no body can have a power to make laws, but by their own consent, and by authority received from them." Cf. also Ch. XIX. § 228 *seq*.

Hobbes represents the opposite point of view. "How many kings," he wrote, (Preface to the *Philosophical Rudiments concerning Government and Society*) "and those good men too, hath this one error, that a tyrant king might lawfully be put to death, been the slaughter of! How many throats hath this false position cut, that a prince for some causes may by some certain men be deposed! And what bloodshed hath not this erroneous doctrine caused, that kings are not superiors to, but administrators for the multitude!" This "erroneous doctrine" Kant received from Locke through Rousseau. He advocated, or at least practised as a citizen, a doctrine of passive obedience to the state. A free press, he held, offered the only lawful outlet for protest against tyranny. But, in theory, he was an enemy to absolute monarchy. [Tr.]

[48] We can find the voucher for maxims such as these in Herr Hofrichter Garve's essay, *On the Connection of Morals with Politics*, 1788. This worthy scholar confesses at the very beginning that he is unable to give a satisfactory answer to this question. But his sanction of such maxims, even when coupled with the admission that he cannot altogether clear away the arguments raised against them, seems to be a greater concession in favour of those who shew considerable inclination to abuse them, than it might perhaps be wise to admit.

CHAPTER V

MARY WOLLSTONECRAFT (1759-97)

Biographical Information

Author, translator, social commentator and early feminist, Mary Wollstonecraft was born on April 21, 1759 in London to John Edward Wollstonecraft and Elizabeth Dickson. She was the second of six children, and the eldest daughter.

Wollstonecraft's early education was informal and she was largely self-taught. During her formative years (1759-77) her family moved a number of times, living in Epping, Whalebone, Essex, Yorkshire, Hoxton (North London), Wales, and Walworth (London). She left home in 1778 to serve as a widow's 'companion,' but returned to her family the following year (remaining until 1782) to care for her ailing mother.

After the death of her mother, Wollstonecraft established a private school (1784-86) with one of her sisters, and served as a teacher and the headmistress. During this time she came into contact with the work of a number of radical authors, including Richard Price and William Blake. This, combined with her rejection of the conventions of family life – her relations with her parents and their relationship were both very difficult – led Wollstonecraft to come to embrace a number of Enlightenment ideals.

Upon the failure of the school, Wollstonecraft worked briefly as a governess before turning to writing. From 1787 to 1792, she found employment as a translator of religious and ethical texts from French and German; she also wrote children's stories.

It was during this time that she was able to work on, and complete, a number of lengthy studies, notably, *Thoughts on the Education of Daughters* (1787) and *A Vindication of the Rights of Men* (1790). The book for which she is most known, however, is *A Vindication of the Rights of Woman* (1792). The radical nature of her views, and the forthright way in which she presented them, led to her being described as a 'hyena in petticoats.'

In December 1792, Wollstonecraft travelled, alone, to Paris; she stayed in France through the 'Reign of Terror' until April 1795. She provides an analysis of the events in France in *An Historical and Moral View of the Origins and Progress of the French Revolution* (1794). While in Paris, Wollstonecraft began a liaison with an American 'adventurer' and businessman, Gilbert Imlay, who was the father of her first child, Fanny. She followed Imlay to London in 1795, but Imlay's infidelity led her twice to attempt suicide. In 1796, she became romantically involved with the novelist and radical author, William Godwin (1756-1836), and married him the following year, in March 1797. She died of complications following childbirth a few days after the birth of their daughter, Mary (later, Mary

Shelley, the author of the gothic novel, *Frankenstein*) on September 10, 1797.

Wollstonecraft and the Inheritance of the Enlightenment

The eighteenth century is often referred to as the Age of Enlightenment. It was a period when tradition – political, ecclesiastical, scientific, and social – was called into question. Rooted in the humanism of the Renaissance and of the early modern period, the writings of philosophers such as David Hume (1711-76) and Adam Smith (1723-90) in Britain, Immanuel Kant (1724–1804) and Johann Wolfgang von Goethe (1749-1832) in Germany, François Marie Arouet de Voltaire (1694-1778), Denis Diderot (1713–84), and Jean-Jacques Rousseau (1712-78) in France, and Thomas Jefferson (1743-1826) and Tom Paine (1737-1809) in the United States, challenged orthodoxies and held that the ultimate arbiter on all matters was reason. This conviction is typically expressed by Kant in his famous essay, "What Is Enlightenment?" (1784). There, Kant wrote: “The motto of enlightenment is therefore: *Sapere aude*! Have courage to use your own intelligence!"

The Enlightenment was a period of confidence in human capacities, progress, and the activities of the sciences; the writings of many Enlightenment philosophers reflect not only an optimism, but an openness to new ways of looking at the world. While Enlightenment authors focussed on the important role of human reason, they also emphasized the necessity of having knowledge through first-hand experience. Thus we find, at this time, an emphasis on the application of reason and experience to religion, government, economics, and the natural sciences (e.g., physics, chemistry and biology). Where the established order and tradition reflected superstition, ignorance, and oppression – where it was an obstacle to utility, human progress, and perfectibility – it was to be rejected.

The prime targets of Enlightenment thinkers were social institutions. All institutions had to be made anew on rational foundations – this applied particularly to government and religion. Not surprisingly, then, the Enlightenment is also a period of revolutions and of declarations of rights and liberties – in America, in France, and in Poland.

It is the French Revolution that particularly influenced Wollstonecraft. Early in her public life (in 1784), Wollstonecraft met the liberal (Congregationalist) theologian and dissenter, Richard Price (1723-91). In November 1789, Price gave a sermon defending the French Revolution which was soon afterwards attacked by the Anglo-Irish parliamentarian, Edmund Burke (1729–97), in his *Reflections on the Revolution in France* (1790). Though a strong supporter of American independence and critic of some elements of royalism, Burke saw the French Revolution as inherently violent and irrational, that ignored the essential roles of custom and tradition, and that destroyed the order necessary for the existence of liberty.

Wollstonecraft came to Price's defence in her *A Vindication of the Rights of Men* (1790), her first substantial philosophical work. Written hurriedly – it was first published within weeks of Burke's *Reflections* – this book not only defended Price, but also addressed a number of other political issues, including the morality of the slave trade. Wollstonecraft challenged the role of tradition, insisting against Burke that "The birthright of man... is such a degree of liberty, civil and religious, as is compatible with the liberty of every other individual with whom he is united in a social compact, and the continued existence of that compact." The publication of *A Vindication of the Rights of Men* had some impact, but its immediate effect was to establish her place among such important radical figures as William Blake, William Godwin, and the journalist and pamphleteer, Tom Paine.

Burke's views were also attacked by Paine – and it may have been the forcefulness of Paine's critique that detracted from the impact of Wollstonecraft's first *Vindication*. Born in Norfolk, England, Paine had attempted a number of careers in England before moving to Philadelphia in 1774. There he became a prominent journalist and writer, one of leading pamphleteers of the American Revolution, and a Founding Father of the United States. Soon after his return to Britain in 1787, he published *The Rights of Man* (1791) – his most significant work – which attacked Burke directly and, more broadly, challenged monarchies and European social institutions, arguing for an extended franchise, governmental reform, and equal political rights.[1]

Wollstonecraft was clearly influenced by Paine, and in late 1791 began a sequel to her first *Vindication*, entitled *A Vindication of the Rights of Woman*. This work quickly reached a wide audience in Britain and the United States, and has come to be one of the core texts of the liberal rights tradition as well as a seminal work in modern feminism.

The Vindications

Though Wollstonecraft wrote a good deal – children's books, a travel diary, a novel (based loosely on her own life), and other work – it is on the basis of her social and political writings that she is best known. In addition to the writings of Price and Paine, Wollstonecraft was likely influenced by some of the work she had translated, such as the Rev. Christian Gotthilf Salzmann's *Moralisches Elementarbuch* (*Elements of Morality for the Use of Children*; illustrated by William Blake).[2]

The notion of a 'Vindication' is, of course, ambiguous. It can mean "to free from allegation or blame" or, more neutrally, "to provide justification or defense for" (*Merriam Webster Dictionary*). But Wollstonecraft's 'vindications' were both. The *Vindication of the Rights of Men* sought to respond to the critiques of the French Revolution; *A Vindication of the Rights of Woman* picked up and continued several of the themes introduced in the first *Vindication*.

A Vindication of the Rights of Woman was dedicated to Charles Maurice de Talleyrand-Périgord (1754-1838) – of aristocratic stock, formerly Bishop of Autun in France (1789-91), and one of the authors of the French *Declaration of the Rights of Man and the Citizen* and the *Civil Constitution of the Clergy* (which led to his excommunication by Pope Pius VI). Though Talleyrand was later was to be one of the most influential diplomats in European history, at the time he was an émigré in England from the French Revolution. The putative reason for Wollstonecraft's dedication was Talleyrand's *Report on Public Instruction* (1791)[3], which provided an outline of a plan for national education under the new French constitution.

Talleyrand's proposals reflected, in several respects, views which had been expressed by Jean-Jacques Rousseau in his *Emile*, where Rousseau argued that women should be educated differently from men. While Wollstonecraft agreed with Rousseau on the importance of independence and moral autonomy, she insisted that Rousseau's view of women failed to pay proper attention to the basic similarities in the natural capacities of women and men, and that what differences one finds were due largely to 'external' reasons – specifically, the exclusion of women from education and the pursuit of intellectual occupations

This second *Vindication* provided both deductive and utilitarian arguments for the rights of women and, particularly, for the access to education, intellectual life, and the professions.

Wollstonecraft's arguments are based on her views about nature and reason. Nature and reason are not the same, but they are not opposed. What exactly Wollstonecraft meant by 'nature,' however, is somewhat unclear. Is it to be identified with natural law? Is it simply what is 'given' in experience? Regardless, Wollstonecraft took it to be obviously true that human beings naturally possess the capacity to reason – and to reason in equal measure; gender is not relevant. What is central is our common humanity and, particularly, our rationality.

Wollstonecraft holds that there is a connexion between reason, virtue, and knowledge. Possessing reason, women – like men – had the ability to develop their moral, intellectual, and even their physical capacities. Yet to these ends, liberty was required. Thus, liberty – political liberty – was based on the natural autonomy and rationality possessed by all human beings. It was not to be identified with libertinism or license or selfishness. Indeed, because of their common possession of the faculty of reason, moral rules applied to all human beings, male and female.

Liberty, then, brought with it responsibility – and the 'natural' abilities that people had were accompanied by a number of natural duties. These duties – and Wollstonecraft held that they were duties and not just injunctions of prudence – included individual virtue and self-respect. Thus, Wollstonecraft argues for the importance of modesty, chastity, (moral) independence, active participation in the public sphere, knowledge, and understanding.

For the development of virtue, not only liberty, but knowledge and the development of reason were necessary, and thus Wollstonecraft emphasised education. Education is the means by which autonomy and the virtues grow and develop.

The importance of the virtues was recognized by one's reason, and their acquisition was a product of one's reason. Yet these virtues were not of purely private benefit; they also had an important social justification. Progress in a society depended upon the virtue of its citizens. 'Private' virtue was the foundation for public benefit. There was an important relation, then, between the private and the public.

It is because of this relation between reason and virtue that Wollstonecraft attacked contemporary ideals of womanhood, as well as notions of aristocracy and property. Inheritances, unearned wealth, moral laxity and corruption, and refusals to engage in active work, enfeebled not only individuals but generations.

What, exactly, is Wollstonecraft calling for in the *Vindications*? Wollstonecraft wants a recognition of fundamental human liberty and autonomy for women and, by extension, their full participation in public life. But her demands are not for particular privilege or support based on gender. Like Hobbes and Locke, she believes that such full participation is largely achieved by removing restrictions. Building on this, Wollstonecraft calls not just for a revolution in education – that is, to provide broader access to the means of personal development – but a revolution in values. She argues that such changes will not violate what is natural, but ensure that what is natural is safeguarded. Rather than challenge marriage and motherhood, Wollstonecraft believes that these changes will lead to women being better mothers and wives – and more. Wollstonecraft is direct in her claim that some women will rightly choose other career paths than that of homemaker.

Was Wollstonecraft presenting what we might call today a liberal position? Was she advocating something more radical? Scholars today disagree, but there is no doubt that her work has had an important influence on contemporary feminist political thought.

Problems and Questions to be Addressed

The focus of the selections that follow is human nature (specifically, the nature of men and women) and the value of self-development, but this discussion deals, as well, with the importance of rationality and equality, the nature and source of rights, and the existence of duties. It is, therefore, useful to keep in mind the following questions as one reads Wollstonecraft's text.

1. The backdrop for Wollstonecraft's *Vindication* was the French Revolution. Does Wollstonecraft see the French Revolution on a par with previous revolutions (e.g., the Glorious Revolution of 1688 and the

American Revolution of 1776)? Does fear have a role in Wollstonecraft's views?
2. To what extent does Wollstonecraft continue the intellectual tradition of Rousseau?
3. What exactly is the connexion of reason and virtue or modesty, discussed in Chapter VII of the *Vindication of the Rights of Woman*?
4. How is nature related to duty? How are rights related to nature and to duty?
5. Is Wollstonecraft right on the importance of education in 'liberating' people? What is the importance or role of property?
6. Wollstonecraft calls for equality of men and women, yet she also acknowledges that there are important differences between them. What does she mean by 'equal'?
7. Apart from arguing for the rights of women, how far does Wollstonecraft provide a case for restructuring political society? How radical a transformation of society is required for Wollstonecraft's view of progress? What would political society look like on Wollstonecraft's model?

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NOTES

[1] Paine was charged with seditious libel following the publication of *The Rights of Man* (Part 1), but escaped to France before he could be arrested. In 1792 Paine became a French citizen and was elected to the National Convention. He opposed the execution of Louis XVI, however, and in 1793 was arrested and imprisoned. He survived the Terror and was released in 1794. In 1802, Paine left France for America, where he remained until his death in 1809. By the time of his death, some 1,500,000 copies of *The Rights of Man* had been published.

[2] Salzmann (1744-1811) later provided an Introduction to the translation of Wollstonecraft's *Vindication* into German (*Rettung der Rechte des Weibes: mit Bemerkungen über politische und moralische Gegenstände*, tr. Georg Friedrich

Christian Weißenborn; intro. Christian Gotthilf Salzmann [Schnepfenthal: Verl. der Erziehungsanstalt, 1793-1794].)

[3] The Constitution of 1791 established a Committee of Public Instruction. Talleyrand presented a report to the Constituent Assembly on behalf of the Committee, calling for radical reform to the educational system, and for maiing it available to all.

A Vindication of the Rights of Woman (1792)

[DEDICATORY LETTER]
TO
M. TALLEYRAND-PERIGORD
Late Bishop of Autun

SIR, – Having read with great pleasure a pamphlet which you have lately published, I dedicate this volume to you – the first dedication that I have ever written, to induce you to read it with attention; and, because I think that you will understand me, which I do not suppose many pert witlings will, who may ridicule the arguments they are unable to answer. But, sir I carry my respect for your understanding still farther; so far that I am confident you will not throw my work aside, and hastily conclude that I am in the wrong, because you did not view the subject in the same light yourself. And, pardon my frankness, but I must observe, that you treated it in too cursory a manner, contented to consider it as it had been considered formerly, when the rights of man, not to advert to woman, were trampled on as chimerical – I call upon you, therefore, now to weigh what I have advanced respecting the rights of woman and national education; and I call with the firm tone of humanity, for my arguments, sir, are dictated by a disinterested spirit – I plead for my sex, not for myself. Independence I have long considered as the grand blessing of life, the basis of every virtue; and independence I will ever secure by contracting my wants, though I were to live on a barren heath.

It is then an affection for the whole human race that makes my pen dart rapidly along to support what I believe to be the cause of virtue; and the same motive leads me earnestly to wish to see woman placed in a station in which she would advance, instead of retarding, the progress of those glorious principles that give a substance to morality. My opinion, indeed, respecting the rights and duties of woman seems to flow so naturally from these simple principles, that I think it scarcely possible but that some of the enlarged minds who formed your admirable constitution will coincide with me.

In France there is undoubtedly a more general diffusion of knowledge than in any part of the European world, and I attribute it, in a great measure, to the social intercourse which has long subsisted between the sexes. It is true – I utter my sentiments with freedom – that in France the very essence of sensuality has been extracted to regale the voluptuary, and a kind of sentimental lust has prevailed, which, together with the system of duplicity that the whole tenor of their political and civil government taught, have given a sinister sort of sagacity to the French character, properly termed finesse, from which naturally flow a polish of manners that injures the substance by hunting sincerity out of society. And modesty, the fairest garb of virtue! has been more-grossly insulted in France than even in

England, till their women have treated as prudish that attention to decency which brutes instinctively observe.

Manners and morals are so nearly allied that they have often been confounded; but, though the former should only be the natural reflection of the latter, yet, when various causes have produced factitious and corrupt manners, which are very early caught, morality becomes an empty name. The personal reserve, and sacred respect for cleanliness and delicacy in domestic life, which French women almost despise, are the graceful pillars of modesty; but, far from despising them, if the pure flame of patriotism have reached their bosoms, they should labour to improve the morals of their fellow-citizens, by teaching men, not only to respect modesty in women, but to acquire it themselves, as the only way to merit their esteem.

Contending for the rights of woman, my main argument is built on this simple principle, that if she be not prepared by education to become the companion of man, she will stop the progress of knowledge and virtue; for truth must be common to all, or it will be inefficacious with respect to its influence on general practice. And how can woman be expected to co-operate unless she knows why she ought to be virtuous? unless freedom strengthens her reason till she comprehends her duty, and see in what manner it is connected with her real good. If children are to be educated to understand the true principle of patriotism, their mother must be a patriot; and the love of mankind, from which an orderly train of virtues spring, can only be produced by considering the moral and civil interest of mankind; but the education and situation of woman at present shuts her out from such investigations.

In this work I have produced many arguments, which to me were conclusive, to prove that the prevailing notion respecting a sexual character was subversive of morality, and I have contended, that to render the human body and mind more perfect, chastity must more universally prevail, and that chastity will never be respected in the male world till the person of a woman is not, as it were, idolised, when little virtue or sense embellish it with the grand traces of mental beauty, or the interesting simplicity of affection.

Consider, sir, dispassionately these observations, for a glimpse of this truth seemed to open before you when you observed, “that to see one-half of the human race excluded by the other from all participation of government was a political phenomenon that, according to abstract principles, it was impossible to explain.” If so, on what does your constitution rest? If the abstract rights of man will bear discussion and explanation, those of woman, by a parity of reasoning, will not shrink from the same test; though a different opinion prevails in this country, built on the very arguments which you use to justify the oppression of woman – prescription. Consider – I address you as a legislator – whether, when men contend for their freedom, and to be allowed to judge for themselves respecting their own happiness, it be not inconsistent and unjust to

subjugate women, even though you firmly believe that you are acting in the manner best calculated to promote their happiness?

Who made man the exclusive judge, if woman partake with him of the gift of reason? In this style argue tyrants of every denomination, from the weak king to the weak father of a family; they are all eager to crush reason, yet always assert that they usurp its throne only to be useful. Do you not act a similar part when you force all women, by denying them civil and political rights, to remain immured in their families groping in the dark? for surely, sir, you will not assert that a duty can be binding which is not founded on reason? If, indeed, this be their destination, arguments may be drawn from reason; and thus augustly supported, the more understanding women acquire, the more they will be attached to their duty – comprehending it – for unless they comprehend it, unless their morals be fixed on the same immutable principle as those of man, no authority can make them discharge it in a virtuous manner. They may be convenient slaves, but slavery will have its constant effect, degrading the master and the abject dependent.

But if women are to be excluded, without having a voice, from a participation of the natural rights of mankind, prove first, to ward off the charge of injustice and inconsistency, that they want reason, else this flaw in your NEW CONSTITUTION will ever show that man must, in some shape, act like a tyrant, and tyranny, in whatever part of society it rears its brazen front, will ever undermine morality.

I have repeatedly asserted, and produced what appeared to me irrefragable arguments drawn from matters of fact to prove my assertion, that women cannot by force be confined to domestic concerns; for they will, however ignorant, intermeddle with more weighty affairs, neglecting private duties only to disturb, by cunning tricks, the orderly plans of reason which rise above their comprehension.

Besides, whilst they are only made to acquire personal accomplishments, men will seek for pleasure in variety, and faithless husbands will make faithless wives; such ignorant beings, indeed, will be very excusable when, not taught to respect public good, nor allowed any civil rights, they attempt to do themselves justice by retaliation.

The box of mischief thus opened in society, what is to preserve private virtue, the only security of public freedom and universal happiness? Let there be then no coercion established in society, and the common law of gravity prevailing, the sexes will fall into their proper places. And now that more equitable laws are forming your citizens, marriage may become more sacred; your young men may choose wives from motives of affection, and your maidens allow love to root out vanity. The father of a family will not then weaken his constitution and debase his sentiments by visiting the harlot, nor forget, in obeying the call of appetite, the purpose for which it was implanted. And the mother will not neglect her children to practise the arts of coquetry, when sense and modesty secure her the friendship of her husband.

But, till men become attentive to the duty of a father, it is vain to expect women to spend that time in their nursery which they, "wise in their generation," choose to spend at their glass; for this exertion of cunning is only an instinct of nature to enable them to obtain indirectly a little of that power of which they are unjustly denied a share; for, if women are not permitted to enjoy legitimate rights, they will render both men and themselves vicious to obtain illicit privileges.

I wish, sir, to set some investigations of this kind afloat in France; and should they lead to a confirmation of my principles when your constitution is revised, the Rights of Woman may be respected, if it be fully proved that reason calls for this respect, and loudly demands JUSTICE for one-half of the human race.

I am, Sir,
Yours respectfully,
M. W.

CHAPTER II: THE PREVAILING OPINION OF A SEXUAL CHARACTER DISCUSSED

[…] As to the argument respecting the subjection in which the sex has ever been held, it retorts on man. The many have always been enthralled by the few; and monsters, who scarcely have shown any discernment of human excellence, have tyrannised over thousands of their fellow-creatures. Why have men of superior endowments submitted to such degradation? For, is it not universally acknowledged that kings, viewed collectively, have ever been inferior, in abilities and virtue, to the same number of men taken from the common mass of mankind – yet have they not, and are they not still treated with a degree of reverence that is an insult to reason? China is not the only country where a living man has been made a God. Men have submitted to superior strength to enjoy with impunity the pleasure of the moment; women have only done the same, and therefore till it is proved that the courtier, who servilely resigns the birthright of a man, is not a moral agent, it cannot be demonstrated that woman is essentially inferior to man because she has always been subjugated. Brutal force has hitherto governed the world, and that the science of politics is in its infancy, is evident from philosophers scrupling to give the knowledge most useful to man that determinate distinction.

I shall not pursue this argument any further than to establish an obvious inference, that as sound politics diffuse liberty, mankind, including woman, will become more wise and virtuous.

CHAPTER III: THE SAME SUBJECT CONTINUED

[…] But should it be proved that woman is naturally weaker than man, whence does it follow that it is natural for her to labour to become still

weaker than nature intended her to be? Arguments of this cast are an insult to common sense, and savour of passion. The divine right of husbands, like the divine right of kings, may, it is to be hoped, in this enlightened age, be contested without danger; and though conviction may not silence many boisterous disputants, yet, when any prevailing prejudice is attacked, the wise will consider, and leave the narrow-minded to rail with thoughtless vehemence at innovation. […]

CHAPTER IV: OBSERVATIONS ON THE STATE OF DEGRADATION TO WHICH WOMAN IS REDUCED BY VARIOUS CAUSES

[…] Pleasure is the business of woman's life, according to the present modification of society; and while it continues to be so, little can be expected from such weak beings. Inheriting in a lineal descent from the first fair defect in nature – the sovereignty of beauty – they have, to maintain their-power, resigned the natural rights which the exercise of reason might have procured them, and chosen rather to be short-lived queens than labour to obtain the sober pleasures that arise from equality. Exalted by their inferiority (this sounds like a contradiction), they constantly demand homage as women, though experience should teach them that the men who pride themselves upon paying this arbitrary insolent respect to the sex, with the most scrupulous exactness) are most inclined to tyrannise over, and despise the very weakness they cherish. Often do they repeat Mr. Hume's sentiments, when, comparing the French and Athenian character, he alludes to women, – "But what is more singular in this whimsical nation, say I to the Athenians, is, that a frolic of yours during the saturnalia, when the slaves are served by their masters,. Is seriously continued by them through the whole year, and through the whole course of their lives, accompanied, too, with some circumstances, which still further augment the absurdity and ridicule. Your sport only elevates for a few days those whom fortune has thrown down, and whom she too, in sport, may really elevate for ever above you. But this nation gravely exalts those whom nature has subjected to them, and whose inferiority and infirmities are absolutely incurable. The women, though without virtue, are their masters and sovereigns." […]

With respect to women, when they receive a careful education, they are either made fine ladies, brimful of sensibility, and teeming with capricious fancies, or mere notable women. The latter are often friendly, honest creatures, and have a shrewd kind of good sense, joined with worldly prudence, that often render them more useful members of society than the fine sentimental lady, though they possess neither greatness of mind nor taste. The intellectual world is shut against them. Take them out of their family or neighbourhood, and they stand still; the mind finding no employment, for literature affords a fund of amusement which they have never sought to relish, but frequently to despise. The sentiments and taste of more cultivated minds appear ridiculous, even in those whom chance and

family connections have led them to love; but in mere acquaintance they think it all affectation.

A man of sense can only love such a woman on account of her sex, and respect her because she is a trusty servant. He lets her, to preserve his own peace, scold the servants, and go to church in clothes made of the very best materials. A man of her own size of understanding would probably not agree so well with her, for he might wish to encroach on her prerogative, and manage some domestic concerns himself; yet women, whose minds are not enlarged by cultivation, or the natural selfishness of sensibility by reflection, are very unfit to manage a family, for, by an undue stretch of power, they are always tyrannising to support a superiority that only rests on the arbitrary distinction of fortune. The evil is sometimes more serious, and domestics are deprived of innocent indulgences, and made to work beyond their strength, in order to enable the notable woman to keep a better table, and outshine her neighbours in finery and parade. If she attend to her children, it is in general to dress them in a costly manner; and whether this attention arise from vanity or fondness, it is equally pernicious.

Besides, how many women of this description pass their days, or at least their evenings, discontentedly. Their husbands acknowledge that they are good managers and chaste wives, but leave home to seek for more agreeable – may I be allowed to use a significant French word – piquant society; and the patient drudge, who fulfils her task like a blind horse in a mill, is defrauded of her just reward, for the wages due to her are the caresses of her husband; and women who have so few resources in themselves, do not very patiently bear this privation of a natural right. […]

CHAPTER VII: MODESTY – COMPREHENSIVELY CONSIDERED, AND NOT AS A SEXUAL VIRTUE

Modesty! sacred offspring of sensibility and reason! – true delicacy of mind! – may I unblamed presume to investigate thy nature, and trace to its covert the mild charm, that mellowing each harsh feature of a character, renders what would otherwise only inspire cold admiration – lovely! Thou that smoothest the wrinkles of wisdom, and softenest the tone of the sublimest virtues till they all melt into humanity; thou that spreadest the ethereal cloud that, surrounding love, heightens every beauty, it half shades, breathing those coy sweets that steal into the heart, and charm the senses – modulate for me the language of persuasive reason, till I rouse my sex from the flowery bed, on which they supinely sleep life away!

In speaking of the association of our ideas, I have noticed two distinct modes; and in defining modesty, it appears to me equally proper to discriminate that purity of mind, which is the effect of chastity, from a simplicity of character that leads us to form a just opinion of ourselves, equally distant from vanity or presumption, though by no means incompatible with a lofty consciousness of our own dignity. Modesty, in the latter signification of the term, is that soberness of mind which teaches a

man not to think more highly of himself than he ought to think, and should be distinguished from humility, because humility is a kind of self-abasement. […]

A modest man is steady, an humble man timid, and a vain one presumptuous: this is the judgment, which the observation of many characters, has led me to form. Jesus Christ was modest, Moses was humble, and Peter vain.

Thus, discriminating modesty from humility in one case, I do not mean to confound it with bashfulness in the other. Bashfulness, in fact, is so distinct from modesty, that the most bashful lass or raw country lout, often become the most impudent; for their bashfulness being merely the instinctive timidity of ignorance, custom soon changes it into assurance.[1]

The shameless behaviour of the prostitutes, who infest the streets of this metropolis, raising alternate emotions of pity and disgust, may serve to illustrate this remark. They trample on virgin bashfulness with a sort of bravado, and glorifying in their shame, become more audaciously lewd than men, however depraved, to whom this sexual quality has not been gratuitously granted, ever appear to be. But these poor ignorant wretches never had any modesty to lose, when they consigned themselves to infamy; for modesty is a virtue, not a quality. No, they were only bashful, shamefaced innocents; and losing their innocence, their shamefacedness was rudely brushed off: a virtue would have left some vestiges in the mind, had it been sacrificed to passion, to make us respect the grand ruin.

Purity of mind, or that genuine delicacy, which is the only virtuous support of chastity, is near akin to that refinement of humanity, which never resides in any but cultivated minds. It is something nobler than innocence, it is the delicacy of reflection, and not the coyness of ignorance. The reserve of reason, which, like habitual cleanliness, is seldom seen in any great degree, unless the soul is active, may easily be distinguished from rustic shyness or wanton skittishness; and, so far from being incompatible with knowledge, it is its fairest fruit. What a gross idea of modesty had the writer of the following remark! – "The lady who asked the question whether women may be instructed in the modern system of botany consistently with female delicacy? was accused of ridiculous prudery; nevertheless, if she had proposed the question to me, I should certainly have answered – they cannot." Thus is the fair book of knowledge to be shut with an everlasting seal! on reading similar passages I have reverentially lifted up my eyes and heart to Him who liveth for ever and ever, and said, "O, my Father, hast Thou, by the very constitution of her nature forbid Thy child to seek Thee in the fair forms of truth? And can her soul be sullied by the knowledge that awfully calls her to Thee?"

I have then philosophically pursued these reflections till I inferred that those women who have most improved their reason must have the most modesty, though a dignified sedateness of deportment may have succeeded the playful, bewitching bashfulness of youth.[2]

And thus have I argued. To render chastity the virtue from which unsophisticated modesty will naturally flow, the attention should be called away from employments which only exercise the sensibility, and the heart made to beat time to humanity rather than to throb with love. The woman who has dedicated a considerable portion of her time to pursuits purely intellectual, and whose affections have been exercised by humane plans of usefulness, must have more purity of mind, as a natural consequence, than the ignorant beings whose time and thoughts have been occupied by gay pleasures, or schemes to conquer hearts.[3] The regulation of the behaviour is not modesty, though those who study rules of decorum are in general termed modest women. Make the heart clean; let it expand and feel for all that is human, instead of being narrowed by selfish passions; and let the mind frequently contemplate subjects that exercise the understanding, without heating the imagination, and artless modesty will give the finishing touches to the picture. […]

As a sex, women are more chaste than men; and as modesty is the effect of chastity, they may deserve to have this virtue ascribed to them in rather an appropriated sense. Yet I must be allowed to add an hesitating if, for I doubt whether chastity will produce modesty, though it may propriety of conduct, when it is merely a respect for the opinion of the world,[4] and when coquetry and the lovelorn tales of novelists employ the thoughts. Nay, from experience and reason, I should be led to expect to meet with more modesty amongst men than women, simply because men exercise their understandings more than women.

But with respect to propriety of behaviour, excepting one class of females, women have evidently the advantage. What can be more disgusting than that impudent dross of gallantry thought so manly, which makes many men stare insultingly at every female they meet? Can it be termed respect for the sex? No, this loose behaviour shows such habitual depravity, such weakness of mind, that it is vain to expect much public or private virtue till both men and women grow more modest – till men, curbing a sensual fondness for the sex, or an affectation of manly assurance – more properly speaking, impudence – treat each other with respect, unless appetite or passion give the tone, peculiar to it, to their behaviour. I mean every personal respect – the modest respect of humanity and fellow-feeling – not the libidinous mockery of gallantry, nor the insolent condescension of protectorship.

To carry the observation still further, modesty must heartily disclaim, and refuse to dwell with that debauchery of mind, which leads a man coolly to bring forward, without a blush, indecent allusions, or obscene witticisms, in the presence of a fellow-creature; women are now out of the question, for then it is brutality. Respect for man, as man, is the foundation of every noble sentiment. How much more modest is the libertine who obeys the call of appetite or fancy than the lewd joker who sets the table in a roar!

This is one of the many instances in which the sexual distinction respecting modesty has proved fatal to virtue and happiness It is, however, carried still further, and woman – weak woman – made by her education the slave of sensibility, is required, on the most trying occasions, to resist that sensibility. "Can anything," says Knox, "be more absurd than keeping women in a state of ignorance, and yet so vehemently to insist on their resisting temptation?" Thus when virtue or honour make it proper to check a passion, the burden is thrown on the weaker shoulders, contrary to reason and true modesty, which at least should render the self-denial mutual, to say nothing of the generosity of bravery, supposed to be a manly virtue.

In the same strain runs Rousseau's and Dr. Gregory's advice respecting modesty, strangely miscalled! for they both desire a wife to leave it in doubt whether sensibility or weakness led her to her husband's arms. The woman is immodest who can let the shadow of such a doubt remain in her husband's mind a moment.

But, to state the subject in a different light, the want of modesty, which I principally deplore as subversive of morality, arises from the state of warfare so strenuously supported by voluptuous men as the very essence of modesty, though, in fact, its bane, because it is a refinement on lust that men fall into who have not sufficient virtue to relish the innocent pleasures of love. A man of delicacy carries his notions of modesty still further, for neither weakness nor sensibility will gratify him – he looks for affection. […]

But if the sexes be really to live in a state of warfare, if Nature have pointed it out, let them act nobly, or let pride whisper to them that the victory is mean when they merely vanquish sensibility. The real conquest is that over affection not taken by surprise, when, like Heloisa, a woman gives up all the world deliberately for love. I do not now consider the wisdom or virtue of such a sacrifice, I only contend that it was a sacrifice to affection, and not merely to sensibility, though she had her share. And I must be allowed to call her a modest woman, before I dismiss this part of the subject, by saying, that till men are more chaste, women will be immodest. Where, indeed, could modest women find husbands from whom they would not continually turn with disgust? Modesty must be equally cultivated by both sexes, or it will ever remain a sickly hot-house plant, whilst the affectation of it, the fig leaf borrowed by wantonness, may give a zest to voluptuous enjoyments.

Men will probably still insist that woman ought to have more modesty than man; but it is not dispassionate reasoners who will most earnestly oppose my opinion. No, they are the men of fancy, the favourites of the sex, who outwardly respect and inwardly despise the weak creatures whom they thus sport with. They cannot submit to resign the highest sensual gratification, nor even to relish the epicurism of virtue – self-denial.

To take another view of the subject, confining my remarks to women.

The ridiculous falsities[5] which are told to children, from mistaken notions of modesty, tend very early to inflame their imaginations and set their little minds to work, respecting subjects which Nature never intended they should think of till the body arrived at some degree of maturity; then the passions naturally begin to take the place of the senses, as instruments to unfold the understanding, and form the moral character. […]

To say the truth, women are in general too familiar with each other, which leads to that gross degree of familiarity that so frequently renders the marriage state unhappy. Why in the name of decency are sisters, female intimates, or ladies and their waiting-women, to be so grossly familiar as to forget the respect which one human creature owes to another? That squeamish delicacy which shrinks from the most disgusting offices when affection[6] or humanity lead us to watch at a sick pillow is despicable. But why women in health should be more familiar with each other than men are, when they boast of their superior delicacy, is a solecism in manners which I could never solve.

In order to preserve health and beauty, I should earnestly recommend frequent ablutions, to dignify my advice that it may not offend the fastidious ear; and by example, girls ought to be taught to wash and dress alone, without any distinction of rank; and if custom should make them require some little assistance, let them not require it till that part of the business is over which ought never to be done before a fellow-creature, because it is an insult to the majesty of human nature. Not on the score of modesty, but decency; for the care which some modest women take, making at the same time a display of that care not to let their legs be seen, is as childish as immodest.[7]

I could proceed still further, till I animadverted on still more nasty customs, which men never fall into. Secrets are told where silence ought to reign; and that regard to cleanliness, which some religious sects have perhaps carried too far especially the Essenes, amongst the Jews, by making that an insult to God which is only an insult to humanity, is violated in a beastly manner. How can delicate women obtrude notice that part of the animal economy, which is so very disgusting? And is it not very rational to conclude, that women who have not been taught to respect the human nature of their own sex in these particulars, will not long respect the mere difference of sex in their husbands? After their maidenish bashfulness is once lost, I, in fact, have generally observed that women fall into old habits, and treat their husbands as they did their sisters or female acquaintance.

Besides, women from necessity, because their minds are not cultivated, have recourse very often to what I familiarly term bodily wit, and their intimacies are of the same kind. In with respect to both mind and body, they are too intimate. That decent personal reserve, which is the foundation of dignity of character, must be kept up between woman, or their minds will never gain strength or modesty.

On this account also, I object to many females being shut up together in nurseries, schools, or convents. I cannot recollect, without

indignation, the jokes and hoyden tricks which knots of young women indulged themselves in, when in my youth accident threw me, an awkward rustic, in their way. They were almost on a par with the double meanings which shake the convivial table when the glass has circulated freely. But it is vain to attempt to keep the heart pure unless the head is furnished with ideas, and set to work to compare them, in order to acquire judgment, by generalising simple ones; and modesty, by making the understanding damp the sensibility.

It may be thought that I lay too great a stress on personal reserve, but it is ever the handmaid of modesty; so that were I to name the graces that ought to adorn beauty, I should instantly exclaim, cleanliness, neatness, and personal reserve. It is obvious, I suppose, that the reserve I mean has nothing sexual in it, and that I think it equally necessary in both sexes. So necessary, indeed, is that reserve and cleanliness which indolent women too often neglect, that I will venture to affirm that, when two or three women live in the same house, the one will be most respected by the male part of the family who reside with them, leaving love entirely out of the question, who pays this kind of habitual respect to her person. […]

As a sex, women are habitually indolent; and everything tends to make them so. I do not forget the spurts of activity which sensibility produces; but as these flights of feelings only increase the evil, they are not to be confounded with the slow, orderly walk of reason. So great in reality is their mental and bodily indolence, that till their body be strengthened and their understanding enlarged by active exertions, there is little reason to expect that modesty will take place of bashfulness. They may find it prudent to assume its semblance; but the fair veil will only be worn on gala days. […]

A Christian has still nobler motives to incite her to preserve her chastity and acquire modesty, for her body has been called the temple of the living God; of that God who requires more than modesty of mien. His eye searcheth the heart; and let her remember, that if she hope to find favour in the sight of purity itself, her chastity must be founded on modesty, and not on worldly prudence; or verily a good reputation will be her only reward; for that awful intercourse, that sacred communication, which virtue establishes between man and his Maker, must give rise to the wish of being pure as He is pure!

After the foregoing remarks, it is almost superfluous to add, that I consider all those feminine airs of maturity, which succeed bashfulness, to which truth is sacrificed, to secure the heart of a husband, or rather to force him to be still a lover when Nature would, had she not been interrupted in her operations, have made love give place to friendship, as immodest. The tenderness which a man will feel for the mother of his children is an excellent substitute for the ardour of unsatisfied passion; but to prolong that ardour it is indelicate, not to say immodest, for women to feign an unnatural coldness of constitution. Women as well as men ought to have the common appetites and passions of their nature, they are only brutal when unchecked

by reason: but the obligation to check them is the duty of mankind, not a sexual duty. Nature, in these respects, may safely be left to herself; let women only acquire knowledge and humanity, and love will teach them modesty.[8] There is no need of falsehoods, disgusting as futile, for studied rules of behaviour only impose on shallow observers; a man of sense soon sees through, and despises the affectation.

The behaviour of young people, to each other, as men and women, is the last thing that should be thought of in education. In fact, behaviour in most circumstances is now so much thought of, that simplicity of character is rarely to be seen: yet, if men were only anxious to cultivate each virtue and let it take root firmly in the mind, the grace resulting from it, its natural exterior mark, would soon strip affectation of its flaunting plumes; because, fallacious as unstable, is the conduct that is not founded upon truth!

Would ye, o my sisters, really possess modesty, ye must remember that the possession of virtue, of any denomination, is incompatible with ignorance and vanity! ye must acquire that soberness of mind, which the exercise of duties, and the pursuit of knowledge, alone inspire, or ye will still remain in a doubtful dependent situation, and only be loved whilst ye are fair! The downcast eye, the rosy blush, the retiring grace, are all proper in their season; but modesty being the child of reason, cannot long exist with the sensibility that is not tempered by reflection. Besides, when love, even innocent love, is the whole employ of your lives, your hearts will be too soft to afford modesty that tranquil retreat, where she delights to dwell, in close union with humanity.

CHAPTER VIII: MORALITY UNDERMINED BY SEXUAL NOTIONS OF THE IMPORTANCE OF A GOOD REPUTATION

[...] The leading principles which run through all my disquisitions, would render it unnecessary to enlarge on this subject, if a constant attention to keep the varnish of the character fresh, and in good condition, were not often inculcated as the sum total of female duty; if rules to regulate the behaviour, and to preserve the reputation, did not too frequently supersede moral obligations. But, with respect to reputation, the attention is confined to a single virtue of chastity. If the honour of a woman, as it is absurdly called, be safe, she may neglect every social duty; nay, ruin her family by gaming and extravagance; yet still present a shameless front – for truly she is an honourable woman!

Mrs. Macaulay has justly observed, that "there is but one fault which a woman of honour may not commit with impunity." She then justly and humanely adds – "This has given rise to the trite and foolish observation, that the first fault against chastity in woman has a radical power to deprave the character. But no such frail beings come out of the hands of Nature. The human mind is built of nobler materials than to be easily corrupted; and with all their disadvantages of situation and education,

women seldom become entirely abandoned till they are thrown into a state of desperation, by the venomous rancour of their own sex."

But, in proportion as this regard for the reputation of chastity is prized by women, it is despised by men: and the two extremes are equally destructive to morality.

Men are certainly more under the influence of their appetites than women; and their appetites are more depraved by unbridled indulgence and the fastidious contrivances of satiety. Luxury has introduced a refinement in eating, that destroys the constitution; and, a degree of gluttony which is so beastly, that a perception of seemliness of behaviour must be worn out before one being could eat immoderately in the presence of another, and afterwards complain of the oppression that his intemperance naturally produced. Some women, particularly French women, have also lost a sense of decency in this respect; for they will talk very calmly of an indigestion. It were to be wished that idleness was not allowed to generate, on the rank soil of wealth, those swarms of summer insects that feed on putrefaction, we should not then be disgusted by the sight of such brutal excesses.

There is one rule relative to behaviour that, I think, ought to regulate every other; and it is simply to cherish such an habitual respect for mankind as may prevent us from disgusting a fellow-creature for the sake of a present indulgence. The shameful indolence of many married women and others a little advanced in life, frequently leads them to sin against delicacy. For, though convinced that the person is the band of union between the sexes, yet, how often do they from sheer indolence, or, to enjoy some trifling indulgence, disgust?

The depravity of the appetite which brings the sexes together, has had a still more fatal effect. Nature must ever be the standard of taste, the gauge of appetite – yet how grossly is nature insulted by the voluptuary. Leaving the refinements of love out of the question; nature, by making the gratification of an appetite, in this respect, as well as every other, a natural and imperious law to preserve the species, exalts the appetite, and mixes a little mind and affection with a sensual gust. The feelings of a parent mingling with an instinct merely animal, give it dignity; and the man and woman often meeting on account of the child, a mutual interest and affection is excited by the exercise of a common sympathy. Women then having some necessary duty to fulfil, more noble than to adorn their persons, would not contentedly be the slaves of casual lust; which is now the situation of a very considerable number who are, literally speaking, standing dishes to which every glutton may have access.

I may be told that great as this enormity is it only affects a devoted part of the sex – devoted for the salvation of the rest. But, false as every assertion might easily be proved, that recommends the sanctioning a small evil to produce a greater good; the mischief does not stop here, for the moral character, and peace of mind, of the chaster part of the sex, is undermined by the conduct of the very women to whom they allow no refuge from guilt: whom they inexorably consign to the arts that lure their husbands from

them, debauch and force them, let not modest women start, to no refuge exercise of their sons, assume, in some degree, the same character themselves. For I will venture to assert, that all the causes of female weakness, as well as depravity, which I have already enlarged on, branch out of one grand cause – want of chastity in men.

This intemperance, so prevalent, depraves the appetite to such a degree, that a wanton stimulus is necessary to rouse it; but the parental design of Nature is forgotten, and the mere person, and that for a moment, alone engrosses the thoughts. So voluptuous, indeed, often grows the lustful prowler, that he refines on female softness. Something more soft than women is then sought for; till, in Italy and Portugal, men attend the levees of equivocal beings, to sigh for more than female languor.

To satisfy this genus of men, women are made systematically voluptuous, and though they may not all carry their libertinism to the same height, yet this heartless intercourse with the sex, which they allow themselves, depraves both sexes, because the taste of men is vitiated; and women, of all classes, naturally square their behaviour to gratify the taste by which they obtain pleasure and power. Women becoming, consequently, weaker, in mind and body, than they ought to be, were one of the grand ends of their being taken into the account, that of bearing and nursing children, have not sufficient strength to discharge the first duty of a mother; and sacrificing to lasciviousness the parental affection, that ennobles instinct, either destroy the embryo in the womb, or cast it off when born. Nature in everything demands respect, and those who violate her laws seldom violate them with impunity. The weak enervated women who particularly catch the attention of libertines, are unfit to be mothers, though they may conceive; so that the rich sensualist, who has rioted among women, spreading depravity and misery, when he wishes to perpetuate his name, receives from his wife only an half-formed being that inherits both its father's and mother's weakness. […]

The two sexes mutually corrupt and improve each other. This I believe to be an indisputable truth, extending it to every virtue. Chastity, modesty, public spirit, and all the noble train of virtues, on which social virtue and happiness are built, should be understood and cultivated by all mankind, or they will be cultivated to little effect. And, instead of furnishing the vicious or idle with a pretext for violating some sacred duty, by terming it a sexual one, it would be wiser to show that Nature has not made any difference, for that the unchaste man doubly defeats the purpose of Nature, by rendering women barren, and destroying his own constitution, though he avoids the shame that pursues the crime in the other sex. These are the physical consequences, the moral are still more alarming; for virtue is only a nominal distinction when the duties of citizens, husbands, wives, fathers, mothers, and directors of families, become merely the selfish ties of convenience.

Why then do philosophers look for public spirit? Public spirit must be nurtured by private virtue, or it will resemble the factitious sentiment

which makes women careful to preserve their reputation, and men their honour. A sentiment that often exists unsupported by virtue, unsupported by that sublime morality which makes the habitual breach of one duty a breach of the whole moral law.

CHAPTER IX: OF THE PERNICIOUS EFFECTS WHICH ARISE FROM THE UNNATURAL DISTINCTIONS ESTABLISHED IN SOCIETY

From the respect paid to property flow, as from a poisoned fountain, most of the evils and vices which render this world such a dreary scene to the contemplative mind. For it is in the most polished society that noisome reptiles and venomous serpents lurk under the rank herbage; and there is voluptuousness pampered by the still sultry air, which relaxes every good disposition before it ripens into virtue.

One class presses on another, for all are aiming to procure respect on account of their property; and property once gained will procure the respect due only to talents and virtue. Men neglect the duties incumbent on man, yet are treated like demigods. Religion is also separated from morality by a ceremonial veil, yet men wonder that the world is almost, literally speaking, a den of sharpers or oppressors.

There is a homely proverb, which speaks a shrewd truth, that whoever the devil finds idle he will employ. And what but habitual idleness can hereditary wealth and titles produce? For man is so constituted that he can only attain a proper use of his faculties by exercising them, and will not exercise them unless necessity of some kind first set the wheels in motion. Virtue likewise can only be acquired by the discharge of relative duties; but the importance of these sacred duties will scarcely be felt by the being who is cajoled out of his humanity by the flattery of sycophants. There must be more equality established in society, or morality will never gain ground, and this virtuous equality will not rest firmly even when founded on a rock, if one-half of mankind be chained to its bottom by fate, for they will be continually undermining it through ignorance or pride.

It is vain to expect virtue from women till they are in some degree independent of men; nay, it is vain to expect that strength of natural affection which would make them good wives and mothers. Whilst they are absolutely dependent on their husbands they will be cunning, mean, and selfish; and the men who can be gratified by the fawning fondness of spaniel-like affection have not much delicacy, for love is not to be bought; in any sense of the words, its silken wings are instantly shrivelled up when anything beside a return in kind is sought. Yet whilst wealth enervates men, and women live, as it were, by their personal charms, how can we expect them to discharge those ennobling duties which equally require exertion and self-denial? Hereditary property sophisticates the mind, and the unfortunate victims to it – if I may so express myself – swathed from their birth, seldom exert the locomotive faculty of body or mind, and thus viewing everything

through one medium, and that a false one, they are unable to discern in what true merit and happiness consist. False, indeed, must be the light when the drapery of situation hides the man, and makes him stalk in masquerade, dragging from one scene of dissipation to another the nerveless limbs that hang with stupid listlessness, and rolling round the vacant eye, which plainly tells us that there is no mind at home.

I mean therefore to infer that the society is not properly organised which does not compel men and women to discharge their respective duties by making it the only way to acquire that countenance from their fellow-creatures, which every human being wishes some way to attain. The respect consequently which is paid to wealth and mere personal charms is a true north-east blast that blights the tender blossoms of affection and virtue. Nature has wisely attached affections to duties to sweeten toil, and to give that vigour to the exertions of reason which only the heart can give. But the affections which is put on merely because it is the appropriated insignia of a certain character, when its duties are not fulfilled, is one of the empty compliments which vice and folly are obliged to pay to virtue and the real nature of things.

To illustrate my opinion, I need only observe that when a woman is admired for her beauty, and suffers herself to be so far intoxicated by the admiration she receives as to neglect to discharge the indispensable duty of a mother, she sins against herself by neglecting to cultivate an affection that would equally tend to make her useful and happy. True happiness – I mean all the contentment and virtuous satisfaction that can be snatched in this imperfect state – must arise from well-regulated affections, and an affection includes a duty. Men are not aware of the misery they cause, and the vicious weakness they cherish, by only inciting women to render themselves pleasing; they do not consider that they thus make natural and artificial duties clash by sacrificing the comfort and respectability of a woman's life to voluptuous notions of beauty, when in nature they all harmonise.

Cold would be the heart of a husband, were he not rendered unnatural by early debauchery, who did not feel more delight at seeing his child suckled by its mother than the most artful wanton tricks could ever raise, yet this natural way of cementing the matrimonial tie, and twisting esteem with fonder recollections, wealth leads women to spurn. To preserve their beauty, and wear the flowery crown of the day, which gives them a kind of right to reign for a short time over the sex, they neglect to stamp impressions on their husbands' hearts that would be remembered with more tenderness when the snow on the head began to chill the bosom than even their virgin charms. The maternal solicitude of a reasonable affectionate woman is very interesting, and the chastened dignity with which a mother returns the caresses that she and her child receive from a father who has been fulfilling the serious duties of his station is not only a respectable, but a beautiful sight. So singular, indeed, are my feelings – and I have endeavoured not to catch factitious ones – that after having been fatigued with the sight of insipid grandeur and the slavish ceremonies that with

cumbrous pomp supplied the place of domestic affections, I have turned to some other scene to relieve my eye by resting it on the refreshing green everywhere scattered by Nature. I have then viewed with pleasure a woman nursing her children, and discharging the duties of her station with perhaps merely a servant-maid to take off her hands the servile part of the household business. I have seen her prepare herself and children, with only the luxury of cleanliness, to receive her husband, who, returning weary home in the evening, found smiling babes and a clean hearth. My heart has loitered in the midst of the group, and has even throbbed with sympathetic emotion when the scraping of the well-known foot has raised a pleasing tumult.

Whilst my benevolence has been gratified by contemplating this artless picture, I have thought that a couple of this description, equally necessary and independent of each other, because each fulfilled the respective duties of their station, possessed all that life could give. Raised sufficiently above abject poverty not to be obliged to weigh the consequence of every farthing they spend, and having sufficient to prevent their attending to a frigid system of economy which narrows both mind, I declare, so vulgar are my conceptions, that I know not what is wanted to render this the happiest as well as the most respectable situation in the world, but a taste for literature, to throw a little variety and interest into social converse, and some superfluous money to give to the needy and to buy books. For it is not pleasant when the heart is opened by compassion, and the head active in arranging plans of usefulness, to have a prim urchin continually twitching back the elbow to prevent the hand from drawing out an almost empty purse, whispering at the same time some prudential maxim about the priority of justice.

Destructive, however, as riches and inherited honours are to the human character, women are more debased and cramped, if possible, by them than men, because men may still in some degree unfold their faculties by becoming soldiers and statesmen. […]

The preposterous distinctions of rank, which render civilisation a curse, by dividing the world between voluptuous tyrants and cunning envious dependents, corrupt, almost equally, every class of people, because respectability is not attached to the discharge of the relative duties of life, but to the station, and when the duties are not fulfilled the affections cannot gain sufficient strength to fortify the virtue of which they are the natural reward. Still there are some loop-holes out of which a man may creep, and dare to think and act for himself; but for a woman it is an herculean task, because she has difficulties peculiar to her sex to overcome, which require almost superhuman powers.

A truly benevolent legislator always endeavours to make it the interest of each individual to be virtuous; and thus private virtue becoming the cement of public happiness, an orderly whole is consolidated by the tendency of all the parts towards a common centre. But the private or public virtue of woman is very problematical, for Rousseau, and a numerous list of male writers, insist that she should all her life be subjected to a severe

restraint, that of propriety. Why subject her to propriety – blind propriety – if she be capable of acting from a nobler spring, if she be an heir of immortality? Is sugar always to be produced by vital blood? Is one half of the human species, like the poor African slaves, to be subject to prejudices that brutalise them, when principles would be a surer guard, only to sweeten the cup of man? Is not this indirectly to deny woman reason? for a gift is a mockery, if it be unfit for use.

Women are, in common with men, rendered weak and luxurious by the relaxing pleasures which wealth procures; g but added to this they are made slaves to their persons, and must render them alluring that man may lend them his reason to guide their tottering steps aright. or should they be ambitious, they must govern their tyrants by sinister tricks, for without rights there cannot be any incumbent duties. The laws respecting woman, which I mean to discuss in a future part, make an absurd unit of a man and his wife; and then by the easy transition of only considering him as responsible, she is reduced to a mere cipher.

The being who discharges the duties of its station is independent; and, speaking of women at large, their first duty is to themselves as rational creatures, and the next, in point of importance, as citizens, is that, which includes so many, of a mother. The rank in life which dispenses with their fulfilling this duty, necessarily degrades them by making them mere dolls. or should they turn to something more important than merely fitting drapery upon a smooth block, their minds are only occupied by some soft platonic attachment; or the actual management of an intrigue may keep their thoughts in motion; for when they neglect domestic duties, they have it not in their power to take the field and march and counter-march like soldiers, or wrangle in the senate to keep their faculties from rusting. […]

Yet, if defensive war, the only justifiable war, in the present advanced state of society, where virtue can show its face and ripen amidst the rigours which purify the air on the mountain's top, were alone to be adopted as just and glorious, the true heroism of antiquity might again animate female bosoms. But fair and softly, gentle reader, male or female, do not alarm thyself, for though I have compared the character of a modern soldier with that of a civilised woman, I am not going to advise them to turn their distaff into a musket, though I sincerely wish to see the bayonet concerted into a pruning-hook. I only re-created an imagination, fatigued by contemplating the vices and follies which all proceed from a feculent stream of wealth that has muddied the pure rills of natural affection, by supposing that society will some time or other be so constituted, that man must necessarily fulfil the duties of a citizen, or be despised, and that while he was employed in any of the departments of civil life, his wife, also an active citizen, should be equally intent to manage her family, educate her children, and assist her neighbours.

But to render her really virtuous and useful, she must not, if she discharge her civil duties, want individually the protection of civil laws; she must not be dependent on her husband's bounty for her subsistence during

his life, or support after his death; for how can a being be generous who has nothing of its own? or virtuous who is not free? The wife, in the present state of things, who is faithful to her husband, and neither suckles nor educates her children, scarcely deserves the name of a wife, and has no right to that of a citizen. But take away natural rights, and duties become null.

Women then must be considered as only the wanton solace of men, when they become so weak in mind and body that they cannot exert themselves unless to pursue some frothy pleasure, or to invent some frivolous fashion. What can be a more melancholy sight to a thinking mind, than to look into the numerous carriages that drive helter-skelter about this metropolis in a morning full of pale-faced creatures who are flying from themselves! I have often wished, with Dr. Johnson, to place some of them in a little shop with half a dozen children looking up to their languid countenances for support. I am much mistaken, if some latent vigour would not soon give health and spirit to their eyes, and some lines drawn by the exercise of reason on the blank cheeks, which before were only undulated by dimples, might restore lost dignity to the character, or rather enable it to attain the true dignity of its nature. Virtue is not to be acquired even by speculation, much less by the negative supineness that wealth naturally generates.

Besides, when poverty is more disgraceful than even vice, is not morality cut to the quick? Still to avoid misconstruction, though I consider that women in the common walks of life are called to fulfil the duties of wives and mothers, by religion and reason, I cannot help lamenting that women of a superior cast have not a road open by which they can pursue more extensive plans of usefulness and independence. I may excite laughter, by dropping an hint, which I mean to pursue, some future time, for I really think that women ought to have representatives, instead of being arbitrarily governed without having any direct share allowed them in the deliberations of government.

But, as the whole system of representation is now, in this country, only a convenient handle for despotism, they need not complain, for they are as well represented as a numerous class of hard-working mechanics, who pay for the support of royalty when they can scarcely stop their children's mouths with bread. How are they represented whose very sweat supports the splendid stud of an heir-apparent, or varnishes the chariot of some female favourite who looks down on shame? Taxes on the very necessaries of life, enable an endless tribe of idle princes and princesses to pass with stupid pomp before a gaping crowd, who almost worship the very parade which costs them so dear. […]

But what have women to do in society? I may be asked, but to loiter with easy grace; surely you would not condemn them all to suckle fools and chronicle small beer! No. Women might certainly study the art of healing, and be physicians as well as nurses. And midwifery, decency seems to allot to them, though I am afraid, the word midwife, in our dictionaries,

will soon give p]ace to accoucheur, and one proof of the former delicacy of the sex be effaced from the language.

They might also study politics, and settle their benevolence on the broadest basis; for the reading of history will scarcely be more useful than the perusal of romances, if read as mere biography; if the character of the times, the political improvements, arts, etc., be not observed. In short, if it be not considered as the history of man; and not of particular men, who filled a niche in the temple of fame, and dropped into the black rolling stream of time, that silently sweeps all before it into the shapeless void called – eternity. – For shape, can it be called, "that shape hath none"?

Business of various kinds, they might likewise pursue, if they were educated in a more orderly manner, which might save many from common and legal prostitution. Women would not then marry for a support, as men accept of places under Government, and neglect the implied duties; nor would an attempt to earn their own subsistence, a most laudable one! sink them almost to the level of those poor abandoned creatures who live by prostitution. For are not milliners and mantua-makers reckoned the next class? The few employments open to women, so far. from being liberal, are menial; and when a superior education enables them to take charge of the education of children as governesses, they are not treated like the tutors of sons, though even clerical tutors are not always treated in a manner calculated to render them respectable in the eyes of their pupils, to say nothing of the private comfort of the individual. But as women educated like gentlewomen, are never designed for the humiliating situation which necessity sometimes forces them to fill; these situations are considered in the light of a degradation; and they know little of the human heart, who need to be told, that nothing so painfully sharpens sensibility as such a fall in life.

Some of these women might be restrained from marrying by a proper spirit of delicacy, and others may not have had it in their power to escape in this pitiful way from servitude; is not that Government then very defective, and very unmindful of the happiness of one-half of is members, that does not provide for honest, independent women, by encouraging them to fill respectable stations? But in order to render their private virtue a public benefit, they must have a civil existence in the State, married or single; else we shall continually see some worthy woman, whose sensibility has been rendered painfully acute by undeserved contempt, droop like "the lily broken down by a plowshare."

It is a melancholy truth; yet such is the blessed effect of civilisation! the most respectable women are the most oppressed; and, unless they have understandings far superior to the common run of understandings, taking in both sexes, they must, from being treated like contemptible beings, become contemptible. How many women thus waste life away the prey of discontent, who might have practised as physicians, regulated a farm, managed a shop, and stood erect, supported by their own industry, instead of hanging their heads surcharged with the dew of

sensibility, that consumes the beauty to which it at first gave lustre; nay, I doubt whether pity and love are so near akin as poets feign, for I have seldom seen much compassion excited by the helplessness of females, unless they were fair; then, perhaps, pity was the soft handmaid of love, or the harbinger of lust.

How much more respectable is the woman who earns her own bread by fulfilling any duty, than the most accomplished beauty! – beauty did I say! – so sensible am I of the beauty of moral-loveliness, or the harmonious propriety that attunes the passions of a well-regulated mind, that I blush at making the comparison; yet I sigh to think how few women aim at attaining this respectability by withdrawing from the giddy whirl of pleasure, or the indolent calm that stupefies the good sort of women it sucks in. […]

Those writers are particularly useful, in my opinion, who make man feel for man, independent of the station he fills, or the drapery of factitious sentiments. I then would fain convince reasonable men of the importance of some of my remarks; and prevail on them to weigh dispassionately the whole tenor of my observations. I appeal to their understandings; and, as a fellow-creature, claim, in the name of my sex, some interest in their hearts. I entreat them to assist to emancipate their companion, to make her a helpmeet for them.

Would men but generously snap our chains, and be content with rational fellowship instead of slavish obedience, they would find us more observant daughters, more affectionate sisters, more faithful wives, more reasonable mothers – in a word, better citizens. We should then love them with true affection, because we should learn to respect ourselves; and the peace of mind of a worthy man would not be interrupted by the idle vanity of his wife, nor the babes sent to nestle in a strange bosom, having never found a home in their mother's.

CHAPTER XI: DUTY TO PARENTS

There seems to be an indolent propensity in man to make prescription always take place of reason, and to place every duty on an arbitrary foundation. The rights of kings are deduced in a direct line from the King of kings, and that of parents from our first parent.

Why do we thus go back for principles that should always rest on the same base, and have the same weight to-day that they had a thousand years ago – and not a jot more? If parents discharge their duty they have a strong hold and sacred claim on the gratitude of their children, but few parents are willing to receive the respectful affection of their offspring on such terms. They demand blind obedience, because they do not merit a reasonable service: and to render these demands of weakness and ignorance more binding, a mysterious sanctity is spread round the most arbitrary principle; for what other name can be given to the blind duty of obeying vicious or weak beings merely because they obeyed a powerful instinct?

The simple definition of the reciprocal duty which naturally subsists between parent and child may be given in a few words. The parent who pays proper attention to helpless infancy has a right to require the same attention when the feebleness of age comes upon him. But to subjugate a rational being to the mere will of another, after he is of age to answer to society for his own conduct, is a most cruel and undue stretch of- power, and perhaps as injurious to morality as those religious systems which do not allow right and wrong to have any existence, but in the Divine will.

I never knew a parent who had paid more than common attention to his children disregarded.[9] On the contrary, the early habit of relying almost implicitly on the opinion of a respected parent is not easily shook, even when matured reason convinces the child that his father is not the wisest man in the world. This weakness – for a weakness it is, though the epithet amiable may be tacked to it – a reasonable man must steel himself against; for the absurd duty, too often inculcated, of obeying a parent only on account of his being a parent, shackles the mind, and prepares it for a slavish submission to any power but reason.

I distinguish between the natural and accidental duty due to parents. The parent who sedulously endeavours to form the heart, and enlarge the understanding of his child, has given that dignity to the discharge of a duty, common to the whole animal world, that only reason can give. This is the parental affection of humanity, and leaves instinctive natural affection far behind. Such a parent acquires all the rights of the most sacred friendship, and his advice, even when his child is advanced in life, demands serious consideration.

With respect to marriage, though after one-and-twenty a parent seems to have no right to withhold his consent on any account, yet twenty years of solicitude call for a return, and the son ought at least to promise not to marry for two or three years, should the object of his choice not entirely meet with the approbation of his first friend.

But respect for parents is, generally speaking, a much more debasing principle; it is only a selfish respect for property. The father who is blindly obeyed is obeyed from sheer weakness, or from motives that degrade the human character.

A great proportion of the misery that wanders in hideous forms around the world is allowed to rise from the negligence of parents; and still these are the people who are most tenacious of what they term a natural right, though it be subversive of the birthright of man, the right of acting according to the direction of his own reason.

I have already very frequently had occasion to observe that vicious or indolent people are always eager to profit by enforcing arbitrary privileges, and generally in the same proportion as they neglect the discharge of the duties which alone render the privileges reasonable. This is at the bottom a dictate of common sense, or the instinct of self-defence, peculiar to ignorant weakness, resembling that instinct which makes a fish

muddy the water it swims in to elude its enemy, instead of boldly facing it in the clear stream. […]

A slavish bondage to parents cramps every faculty of the mind; and Mr. Locke very judiciously observes, that "if the mind be curbed and humbled too much in children; if their spirits be abased and broken much by too strict an hand over them, they lose all their vigour and industry." This strict hand may in some degree account for the weakness of women; for girls, from various causes, are more kept down by their parents, in every sense of the word, than boys. The duty expected from them is, like all the duties arbitrarily imposed on women, more from a sense of propriety, more out of respect for decorum, than reason; and thus taught slavishly to submit to their parents, they are prepared for the slavery of marriage. I may be told that a number of women are not slaves in the marriage state. True, but they then become tyrants; for it is not rational freedom, but a lawless kind of power, resembling the authority exercised by the favourites of absolute monarchs, which they obtain by debasing means. I do not likewise dream of insinuating that either boys or girls are always slaves. I only insist that when they are obliged to submit to authority blindly their faculties are weakened, and their tempers rendered imperious or abject. I also lament that parents, indolently availing themselves of a supposed privilege, damp the first faint glimmering of reason, rendering at the same time the duty, which they are so anxious to enforce, an empty name; because they will not let it rest on the only basis on which a duty can rest securely; for unless it be founded on knowledge, it cannot gain sufficient strength to resist the squalls of passion, or the silent sapping of self-love. But it is not the parents who have given the surest proof of their affection for their children, or, to speak more properly. who, by fulfilling their duty, have allowed a natural parental affection to take root in their hearts, the child of exercised sympathy and reason, and not the overweening offspring of selfish pride, who most vehemently insist on their children submitting to their will merely because it is their will. On the contrary, the parent who sets a good example, patiently lets that example work, and it seldom fails to produce its natural effect – filial reverence.

Children cannot be taught too early to submit to reason – the true definition of that necessity which Rousseau insisted on, without defining it; for to submit to reason is to submit to the nature of things, and to that God who formed them so, to promote our real interest.

Why should the minds of children be warped as they just begin to expand, only to favour the indolence of parents who insist on a privilege without being willing to pay the price fixed by Nature? I have before had occasion to observe that a right always includes a duty, and I think it may likewise fairly be inferred that they forfeit the right who do not fulfil the duty.

It is easier, I grant, to command than reason; but it does not follow from hence that children cannot comprehend the reason why they are made to do certain things habitually: for from a steady adherence to a few simple

principles of conduct flows that salutary power which a judicious parent gradually gains over a child's mind. And this power becomes strong indeed, if tempered by an even display of affection brought home to the child's heart. For, I believe, as a general rule, It must be allowed that the affection which we inspire always resembles that we cultivate; so that natural affections, which have been supposed almost distinct from reason, may be found more nearly connected with judgment than is commonly allowed. Nay, as another proof of the necessity of cultivating the female understanding, it is but just to observe, that the affections seem to have a kind of animal capriciousness when they merely reside in the heart.

It is the irregular exercise of parental authority that first injures the mind, and to these irregularities girls are more subject than boys. The will of those who never allow their will to be disputed, unless they happen to be in a good humour, when they relax proportionally, is almost always unreasonable. To elude this arbitrary authority girls very early learn the lessons which they afterwards practise on their husbands; for I have frequently seen a little sharp-faced miss rule a whole family, excepting that now and then mamma's anger will burst out of some accidental cloud; – either her hair was ill-dressed,[10] or she had lost more money at cards, the night before, than she was willing to own to her husband; or some such moral cause of anger.

After observing sallies of this kind, I have been led into a melancholy train of reflection respecting females, concluding that when their first affection must lead them astray, or make their duties clash till they rest on mere whims and customs, little can be expected from them as they advance in life. How, indeed, can an instructor remedy this evil? for to teach them virtue on any solid principle is to teach them to despise their parents. Children cannot, ought not, to be taught to make allowance for the faults of their parents, because every such allowance weakens the force of reason in their minds, and makes them still more indulgent to their own. It is one of the most sublime virtues of maturity that leads us to be severe with respect to ourselves, and forbearing to others; but children should only be taught the simple virtues, for if they begin too early to make allowance for human passions and manners, they wear off the fine edge of the criterion by which they should regulate their own, and become unjust in the same proportion as they grow indulgent.

The affections of children, and weak people, are always selfish; they love their relatives, because they are beloved by them, not on account of their virtues. Yet, till esteem and love are blended together in the first affection, and reason made the foundation of the first duty, morality will stumble at the threshold. But, till society is very differently constituted, parents, I fear, will still insist on being obeyed, because they will be obeyed, and constantly endeavour to settle that power on a Divine right which will not bear the investigation of reason.

CHAPTER XII: ON NATIONAL EDUCATION

[...] I have already animadverted on the bad habits which females acquire when they are shut up together; and, I think, that the observation may fairly be extended to the other sex, till the natural inference is drawn which I have had in view throughout – that to improve both sexes they ought, not only in private families, but in public schools, to be educated together. If marriage be the cement of society, mankind should all be educated after the same model, or the intercourse of the sexes will never deserve the name of fellowship, nor will women ever fulfil the peculiar duties of their sex, till they become enlightened citizens, till they become free by being enabled to earn their own subsistence, independent of men; in the same manner, I mean, to prevent misconstruction, as one man is independent of another. Nay, marriage will never be held sacred till women, by being brought up with men, are prepared to be their companions rather than their mistresses; for the mean doublings of cunning will ever render them contemptible, whilst oppression renders them timid. So convinced am I of this truth, that I will venture to predict that virtue will never prevail in society till the virtues of both sexes are founded on reason; and, till the affections common to both are allowed to gain their due strength by the discharge of mutual duties.

Were boys and girls permitted to pursue the same studies together, those graceful decencies might early be inculcated which produce modesty without those sexual distinctions that taint the mind. Lessons of politeness, and that formulary of decorum, which treads on the heels of falsehood, would be rendered useless by habitual propriety of behaviour. Not indeed put on for visitors, like the courtly robe of politeness, but the sober effect of cleanliness of mind. Would not this simple elegance of sincerity be a chaste homage paid to domestic affections, far surpassing the meretricious compliments that shine with false lustre in the heartless intercourse of fashionable life? But till more understanding preponderates in society, there will ever be a want of heart and taste, and the harlot's rouge will supply the place of that celestial suffusion which only virtuous affections can give to the face. Gallantry, and what is called love, may subsist without simplicity of character but the main pillars of friendship are respect and confidence – esteem is never founded on it cannot tell what!

A taste for the fine arts requires great cultivation, but not more than a taste for the virtuous affections, and both suppose that enlargement of mind which opens so many sources of mental pleasure. Why do people hurry to noisy scenes and crowded circles? I should answer, because they want activity of mind, because they have not cherished the virtues of the heart. They only therefore see and feel in the gross, and continually pine after variety, finding everything that is simple insipid.

This argument may be carried further than philosophers are rare of, for if nature destined woman, in particular, for the discharge of domestic duties, she made her susceptible of the attached affections in a great degree.

Now women are notoriously fond of pleasure, and naturally must be so according to my definition, because they cannot enter into the minutia of domestic taste, lacking judgment, the foundation of all taste; for the understanding, in spite of sensual cavillers, reserves to itself the privilege of conveying pure joy to the heart.

True taste is ever the work of the understanding employed in observing natural effects; and till women have more understanding, it is vain to expect them to possess domestic taste. Their lively senses will ever be at work to harden their hearts, and the emotions struck out of them will continue to be vivid and transitory, unless a proper education store their mind with knowledge. […]

Let an enlightened nation[11] then try what effect reason would have to bring them back to nature, and their duty; and allowing them to share the advantages of education and government with man, see whether they will become better, as they grow wiser and become free. They cannot be injured by the experiment, for it is not in the power of man to render them more insignificant than they are at present.

To render this practicable, day-schools for particular areas should be established by Government, in which boys and girls might be educated together. The school for the younger children, from five to nine years of age, ought to be absolutely free and open to all classes.[12] A sufficient number of masters should also be chosen by a select committee in each parish, to whom any complaint of negligence, etc., might be made, if signed by six of the children's parents. […]

Girls and boys still together? I hear some readers ask. Yes. And I should not fear any other consequence than that some early attachment might take place; which, whilst it had the best effect on the moral character of the young people, might not perfectly agree with the views of the parents, for it will be a long time, I fear, before the world will be so far enlightened that parents, only anxious to render their children virtuous, shall allow them to choose companions for life themselves. […]

These would be schools of morality – and the happiness of man, allowed to flow from the pure springs of duty and affection, what advances might not the human mind make? Society can only be happy and free in proportion as it is virtuous; but the present distinctions, established in society, corrode all private, and blast all public virtue.

I have already inveighed against the custom of confining girls to their needle, and shutting them out from all political and civil employments; for by thus narrowing their minds they are rendered unfit to fulfil the peculiar duties which Nature has assigned them. […]

But these littlenesses would not degrade their character, if women were led to respect themselves, if political and moral subjects were opened to them; and, I will venture to affirm, that this is the only way to make them properly attentive to their domestic duties. An active mind embraces the whole circle of its duties, and finds time enough for all. It is not, I assert, a bold attempt to emulate masculine virtues; it is not the enchantment of

literary pursuits, or the steady investigation of scientific subjects, that leads women astray from duty. No, it is indolence and vanity – the love of pleasure and the love of sway, that will reign paramount in an empty mind. […]

I know that libertines will also exclaim, that woman would be unsexed by acquiring strength of body and mind, and that beauty, soft bewitching beauty! would no longer adorn the daughters of men. I am of a very different opinion, for I think that, on the contrary, we should then see dignified beauty and true grace; to produce which, many powerful physical and moral causes would concur. Not relaxed beauty, it is true, or the graces of helplessness; but such as appears to make us respect the human body as a majestic pile fit to receive a noble inhabitant, in the relics of antiquity.[...]

In France or Italy, have the women confined themselves to domestic life? Though they have not hitherto had a political existence, yet have they not illicitly had great sway, corrupting themselves and the men with whose passions they played? In short, in whatever light I view the subject, reason and experience convince me that the only method of leading women to fulfil their peculiar duties is to free them from all restraint by allowing them to participate the inherent rights of mankind.

Make them free, and they will quickly become wise and virtuous, as men become more so, for the improvement must be mutual, or the injustice which one-half of the human race are obliged to submit to retorting on their oppressors, the virtue of man will be worm-eaten by the insect whom he keeps under his feet.

Let men take their choice. Man and woman were made for each other, though not to become one being; and if they will not improve women, they will deprave them.

I speak of the improvement and emancipation of the whole sex, for I know that the behaviour of a few women, who, by accident, or following a strong bent of nature, have acquired a portion of knowledge superior to that of the rest of their sex, has often been overbearing; but there have been instances of women who, attaining knowledge, have not discarded modesty, nor have they always pedantically appeared to despise the ignorance which they laboured to disperse in their own minds. The exclamations then which any advice respecting female learning commonly produces, especially from pretty women, often arise from envy. When they chance to see that even the lustre of their eyes, and the flippant sportiveness of refined coquetry, will not always secure them attention during a whole evening, should a woman of a more cultivated understanding endeavour to give a rational turn to the conversation, the common source of consolation is that such women seldom get husbands. What arts have I not seen silly women use to interrupt by flirtation – a very significant word to describe such a manoeuvre – a rational conversation, which made the forget that they were pretty women. […]

CHAPTER XIII: SOME INSTANCES OF THE FOLLY WHICH THE IGNORANCE OF WOMEN GENERATES; WITH CONCLUDING REFLECTIONS ON THE MORAL IMPROVEMENT THAT A REVOLUTION IN FEMALE MANNERS MIGHT NATURALLY BE EXPECTED TO PRODUCE

[…] Let woman share the rights, and she will emulate the virtues of man; for she must grow more perfect when emancipated, or justify the authority that chains such a weak being to her duty. If the latter, it will be expedient to open a fresh trade with Russia for whips: a present which a father should always make to his son-in-law on his wedding day, that a husband may keep his whole family in order by the same means; and without any violation of justice reign, wielding this sceptre, sole master of his house, because he is the only thing in it who has reason: – the divine, indefeasible earthly sovereignty breathed into man by the Master of the universe. Allowing this position, women have not any inherent rights to claim; and, by the same rule, their duties vanish, for rights and duties are inseparable.

Be just then, O ye men of understanding: and mark not more severely what women do amiss than the vicious tricks of the horse or the ass for whom ye provide provender – and allow her the privileges of ignorance, to whom ye deny the rights of reason, or ye will be worse than Egyptian task-masters expecting virtue where Nature has not given understanding.

NOTES

[1] [omitted]

[2] Modesty is the graceful calm virtue of maturity; bashfulness the charm of vivacious youth.

[3] I have conversed, as man with man, with medical men on anatomical subjects, and compared the proportions of the human body with artists, yet such modesty did I meet with, that I was never reminded by word or look of my sex, of the absurd rules which make modesty a Pharisaical cloak of weakness. And I am persuaded that in the pursuit of knowledge women would never be insulted by sensible me, and rarely by men of any description, if they did not by mock modesty remind them that they were women – actuated by the same spirit as the Portuguese ladies, who would think their charms insulted if, when left alone with a man, he did not at least attempt to be grossly familiar with their persons. Men are not always men in the company of women, nor would women always remember that they are women, if they were allowed to acquire more understanding.

[4] The immodest behaviour of many married women, who are nevertheless faithful to their husbands' beds, will illustrate this remark.

[5] Children very early see cats with their kittens, birds with their young ones, etc. Why then are they not to be told that their mothers carry and nourish them in the same way? As there would then be no appearance of mystery, they would

never think of the subject more. Truth may always be told to children, if it be told gravely; but it is the modesty of affected modesty that does all the mischief; and this smoke heats the imagination by vainly endeavouring to obscure certain objects. If, indeed, children could be kept entirely from improper company, we should never allude to any such subjects; but as this is impossible, it is best to tell them the truth, especially as such information, not interesting them, will make no impression on their imagination.

[6] Affection would rather make one choose to perform these offices, to spare the delicacy of a friend, by still keeping a veil over them, for the personal helplessness, produced by sickness, is of an humbling nature.

[7] I remember to have met with a sentence, in a book of education, that made me smile: "It would be needless to caution you against putting your hand by chance under you neck-handkerchief, for a modest woman never did so!"

[8] The behaviour of many newly married women has often disgusted me. They seem anxious never to let their husbands forget the privilege of marriage; and to find no pleasure in his society unless he is acting the lover. Short, indeed, must be the reign of love, when the flame is thus constantly blown up, without its receiving any solid fuel!

[9] Dr. Johnson makes the same observation.

[10] I myself heard a little girl once say to a servant, "My mamma has been scolding me finely this morning, because her hair was not dressed to please her." Though this remark was pert, it was just. And what respect could a girl acquire for such a parent without doing violence to reason?

[11] France.

[12] Treating this part of the subject, I have borrowed some hints from a very sensible pamphlet, written by the late Bishop of Autun, on "Public Education."

CHAPTER V

JEREMY BENTHAM (1748-1832)

Biographical Information

A leading theorist in Anglo-American philosophy of law and one of the 'founders' of utilitarianism, Jeremy Bentham was born in Houndsditch, in London, on February 15, 1748. He was the son and grandson of attorneys, and his early family life was coloured by a mix of pious superstition (on his mother's side) and Enlightenment rationalism (from his father).

Bentham lived during a time of major social, political and economic change. The 'industrial revolution,' with the massive economic and social shifts that it brought in its wake, the rise of the middle class, revolutions in France and America – all were reflected in Bentham's reflections on existing institutions.

In 1760 Bentham entered Queen's College, Oxford and, upon graduation in 1764, studied law at Lincoln's Inn. Though qualified to practice law, he never did so. Instead, he devoted most of his life to writing on matters of legal reform – though, curiously, he made little effort to publish much of what he wrote.

Bentham spent his time in intense study, often writing some eight to twelve hours a day. While most of his best known work deals with theoretical questions in law, Bentham was an active polemicist and he was engaged for some time in developing projects that proposed various 'practical' ideas for the reform of social institutions.

Although his work came to have an important influence on political philosophy, Bentham did not write any single text that gave the essential principles of his views on this topic. His most important theoretical work is the *Introduction to the Principles of Morals and Legislation* (1789), in which much of his moral theory – which he said reflected 'the greatest happiness principle' – is described and developed.

In 1781, Bentham became associated with the Earl of Shelburne and, through him, came into contact with a number of the leading Whig politicians and lawyers. Although his work was admired by some, at the time Bentham's ideas were still largely unappreciated. In 1785, he briefly joined his brother Samuel, in Russia, where he pursued his writing with even more than his usual intensity, and devised a plan for the now infamous 'Panopticon' – a model prison where all prisoners would be observable by (unseen) guards at all times – a project which he had hoped would interest the Czarina Catherine the Great.

After his return to England in 1788, and for some 20 years thereafter, Bentham pursued – fruitlessly and at great expense – the idea of the panopticon. Fortunately, an inheritance received in 1796 provided him

with financial stability. By the late 1790s, Bentham's theoretical work came to have a more significant place in political reform. Still, his influence was, arguably, still greater on the continent. (Bentham was made an honorary citizen of the fledgling French Republic in 1792 and his *The Theory of Legislation* was published first, in French, by his Swiss disciple, Etienne Dumont, in 1802.)

The precise extent of Bentham's influence in British politics has been a matter of some debate. While he attacked both Tory and Whig policies, both the Reform bill of 1832 (promoted by Bentham's disciple, Lord Henry Brougham) and later reforms in the century (such as the secret ballot, advocated by Bentham's friend, George Grote, who was elected to parliament in 1832) reflected Benthamite concerns. The impact of Bentham's ideas goes further still. Contemporary philosophical and economic vocabulary (e.g., 'international,' 'maximize,' 'minimize,' and 'codification') is indebted to Bentham's proclivity for inventing terms and, among his other disciples were James Mill, and his son, John (who was responsible for an early edition of some of Bentham's manuscripts), as well as the legal theorist, John Austin.[1]

At his death in London, on June 6, 1832, Bentham left literally tens of thousands of manuscript pages – some of which was work only sketched out, but all of which he hoped would be prepared for publication. He also left a large estate – used to finance the newly-established University College, London (for those individuals excluded from university education – i.e., non-conformists, Catholics and Jews) – and his cadaver which, *per* his instructions, was dissected, embalmed, dressed, and placed in a chair, and resides in a cabinet in a corridor of the main building of University College to this day.[2] The Bentham Project, set up in the early 1960s at University College, has, as its aim, the publishing of a definitive, scholarly edition of Bentham's works and correspondence.

Method

Influenced by the '*philosophes*' of the Enlightenment (such as Beccaria, Helvétius, Diderot, D'Alembert, and Voltaire), but also by Locke and Hume, Bentham's work combined an empiricist approach with a rationalism that emphasized conceptual clarity and deductive argument. Locke's influence was primarily as the author of the *Enquiry Concerning Human Understanding* – and Bentham saw in him a model of one who emphasised the importance of reason over custom and tradition and who insisted on precision in the use of terms. Hume's influence was not so much on Bentham's method as on his account of the underlying principles of psychological associationism and on his articulation of the principle of utility[3] which was then still often annexed to theological views.[4]

Bentham's analytical and empirical method is especially obvious when one looks at some of his main criticisms of the law and of moral and political discourse in general. His principal target was the presence of

'fictions' – in particular, legal fictions. On his view, to consider any part or aspect of a thing in abstraction from that thing, was to run the risk of confusion or cause positive deceit. While, in some cases, such 'fictional' terms such as 'relation,' 'right,' 'power,' and 'possession' were of some use, in many cases their original warrant had been forgotten, so that they survived as the product of either prejudice or inattention. In those cases where the terms could be 'cashed out' in terms of the properties of real things, they could continue to be used but, otherwise, they were to be abandoned. Still, Bentham hoped to eliminate legal fictions as far as possible from the law – including the legal fiction that there was some original contract that explained why there was any law at all. He thought that, at the very least, clarifications and justifications could be given that avoided the use of such terms. In short, Bentham serves as a philosophical 'bridge' between the reformist attitudes of an Enlightenment philosophe and a political radical. It is not surprising that Bentham's approach and method were greatly admired by many twentieth-century Anglo-American legal theorists.

Human Nature

For Bentham, morals and legislation can be described scientifically, but such a description requires an account of human nature. Just as nature is explained through reference to the laws of physics, so human behaviour can be explained by reference to the two primary motives of pleasure and pain; this is the theory of psychological hedonism.

There is, Bentham admits, no direct proof of such an analysis of human motivation – though he holds that it is clear that, in acting, all people implicitly refer to it. At the beginning of the *Introduction to the Principles of Morals and Legislation*, Bentham writes that "[n]ature has placed mankind under the governance of two sovereign masters, pain and pleasure. It is for them alone to point out what we ought to do, as well as to determine what we shall do. On the one hand the standard of right and wrong, on the other the chain of causes and effects, are fastened to their throne. They govern us in all we do, in all we say, in all we think: every effort we can make to throw off our subjection, will serve but to demonstrate and confirm it."[5] From this we see that, for Bentham, pleasure and pain serve not only as explanations for action, but also define one's good. It is, in short, on the basis of pleasures and pains, which can exist only in individuals, that Bentham thought one could construct a calculus of value.[6]

Related to this fundamental hedonism is a view of the individual as exhibiting a natural rational self-interest – a psychological egoism.[7] In his "Remarks on Bentham's Philosophy" (1833), Mill cites Bentham's *The Book of Fallacies* that "[i]n *every* human breast... self-regarding interest is predominant over social interest; each person's own individual interest over the interests of all other persons taken together."[8] Fundamental to the nature

and activity of individuals, then, is their own well-being, and reason – as a natural capability of the person – is considered to be subservient to this end.

Bentham believed that the nature of the human person can be adequately described without mention of social relationships.[9] To begin with, the idea of "relation" is but a "fictitious entity",[10] though necessary for 'convenience of discourse.' And, more specifically, he remarks that "the community is a fictitious body,"[11] and it is but "the sum of the interests of the several members who compose it."[12] Thus, the extension of the term 'individual' is, in the main, no greater and no less than the biological entity. Bentham's view, then, is that the individual – the basic unit of the social sphere – is an "atom"[13] and there is no 'self' or 'individual' greater than the human individual. A person's relations with others – even if important – are not essential and describe nothing that is, strictly speaking, necessary to its being what it is.

Finally, the picture of the human person presented by Bentham is based on a psychological associationism indebted to David Hartley and David Hume; Bentham's analysis of 'habit' (which is essential to his understanding of society and, especially, political society) particularly reflects associationist presuppositions. On this view, pleasure and pain are objective states and can be measured in terms of their intensity, duration, certainty, proximity, fecundity and purity. This allows, then, both for an objective determination of an activity or state and for a comparison with others.

Bentham's understanding of human nature reveals, in short, not only a psychological and ontological, but a moral, individualism where, to extend the critique of utilitarianism made by Graeme Duncan and John Gray; "the individual human being is conceived as the source of values and as himself the supreme value."[14]

Moral Philosophy

As Elie Halévy notes, there are three principal characteristics which constitute the basis of Bentham's moral and political philosophy: the greatest happiness principle, universal egoism and the artificial identification of one's interests with those of others.[15] Though these characteristics are present throughout his work, they are particularly evident in the *Introduction to the Principles of Morals and Legislation*, where Bentham is concerned with articulating rational principles that would provide a basis, and guide, for legal, social and moral reform.

To begin with, Bentham's moral philosophy reflects what he calls at different times 'the greatest happiness principle' or 'the principle of utility' – a term which he borrows from Hume. In adverting to this principle, however, he was not referring to just the usefulness of things or actions, but to the extent to which these things or actions promote the general happiness. Specifically, then, what is morally obligatory is that which produces the greatest amount of happiness for the greatest number of

people, happiness being determined by reference to the presence of pleasure and the absence of pain. Thus, Bentham writes, "By the principle of utility is meant that principle which approves or disapproves of every action whatsoever, according to the tendency which it appears to have to augment or diminish the happiness of the party whose interest is in question: or, what is the same thing in other words, to promote or to oppose that happiness."[16] And Bentham emphasises that this applies to "every action whatsoever." That which does not maximize the greatest happiness (such as an act of pure ascetic sacrifice) is, therefore, morally wrong. (Unlike some of the previous attempts at articulating a universal hedonism, Bentham's approach is thoroughly naturalistic.)

Bentham's moral philosophy, then, clearly reflects his psychological view that the primary motivators in human beings are pleasure and pain. Bentham admits that his version of the principle of utility is something that does not admit of direct proof[17] – but he notes that this is not a problem as some explanatory principles do not admit of any such proof, and all explanation must start somewhere. But this, by itself, does not explain why another's happiness – or the general happiness – should count. And, in fact, he provides a number of suggestions that could serve as answers to the question of why we should be concerned with the happiness of others.

First, Bentham says, the principle of utility is something to which individuals, in acting, refer either explicitly or implicitly – and this is something that can be ascertained and confirmed by simple observation. Indeed, Bentham held that all existing systems of morality can be "reduced to the principles of sympathy and antipathy"[18] – which is precisely that which defines utility.

A second argument found in Bentham is that, if pleasure is the good, then it is good irrespective of whose pleasure it is. Thus, a moral injunction to pursue or maximize pleasure has force independently of the specific interests of the person acting.[19]

Bentham also suggests that individuals would reasonably seek the general happiness simply because the interests of others are inextricably bound up with their own – though he recognised that this is something that is easy for individuals to ignore. Nevertheless, Bentham envisages a solution to this as well. Specifically, he proposes that making this identification of interests obvious and, when necessary, bringing diverse interests together would be the responsibility of the legislator.

Finally, there are, Bentham held, advantages to a moral philosophy based on utility. To begin with, the principle of utility is (compared to other moral principles) clear, allows for objective and disinterested public discussion, and enables decisions to be made where there seem to be conflicts of (*prima facie*) legitimate interests. Moreover, in calculating the pleasures and pains involved in carrying out a course of action – the 'hedonic calculus' – there is a fundamental commitment to human equality. The principle of utility presupposes that 'one man is worth just the same as

another man' and so there is a guarantee that, in calculating the greatest happiness "each person is to count for one and no one for more than one."

For Bentham, then, there was no inconsistency between his psychological hedonism and egoism, and the greatest happiness principle. Thus, moral philosophy or ethics can be simply described as "the art of directing men's action to the production of the greatest possible quantity of happiness, on the part of those whose interest is in view."[20]

Political Philosophy

Bentham was regarded as the central figure of a group of intellectuals called, by Elie Halévy, "the philosophic radicals"[21]; both J. S. Mill and Herbert Spencer can be counted among the 'spiritual descendants' of this group.[22] While it would be too strong to claim that the ideas of the philosophic radicals reflected a common political theory, it is nevertheless correct to say that they agreed that many of the social problems of late eighteenth and early nineteenth century England were due to an antiquated legal system and to the control of the economy by a hereditary landed gentry opposed to modern capitalist institutions.[23]

As discussed in the preceding section, for Bentham, the principles that govern morals also govern politics and law, and political reform required a clear understanding of human nature. While he develops a number of principles already present in Anglo-Saxon political philosophy, he breaks with that tradition in significant ways.

In his earliest work, *A Fragment on Government* (1776) (an excerpt from a longer work published only in 1928 as *Comment on Blackstone's Commentaries*), Bentham attacked the legal theory of Sir William Blackstone. Bentham's target was, primarily, Blackstone's defense of tradition in law. Bentham advocated the rational revision of the legal system, a restructuring of the process of determining responsibility and of punishment and a more extensive freedom of contract. This, he believed, would favour not only the development of the community, but the personal development of the individual.

Bentham's attack on Blackstone targeted more than the latter's use of tradition, however. Against Blackstone and against a number of earlier thinkers, including Locke, Bentham repudiated many of the concepts underlying their political philosophies, such as natural right, state of nature, and 'social contract'. Bentham's work, then, attempted to outline positive alternatives to the preceding 'traditionalisms.' Not only did he work to reform and restructure existing institutions but he promoted broader suffrage and self (i.e., representative) government.

Law, Liberty and Government

The notion of liberty present in Bentham's account is what is now generally referred to as 'negative' liberty – freedom from external restraint or

compulsion.[24] Bentham says that "[l]iberty is the absence of restraint"[25] and, so, to the extent that one is not hindered by others, one has liberty and is 'free'. Bentham denies that liberty is 'natural' (in the sense of existing 'prior to' social life and as thereby imposing limits on the state) or that there is an *a priori* sphere of liberty in which the individual is sovereign. In fact, Bentham holds that people have always lived in society, and so there can be no state of nature (though he does distinguish between political society and 'natural society'[26]) and no 'social contract' (a notion which he held was not only unhistorical but pernicious). Nevertheless, he does note that there is an important distinction between one's public and private life that has morally significant consequences,[27] and he holds that liberty is a *good* – that, even though it is not something that is a *fundamental* value, it reflects the greatest happiness principle.[28]

Correlative with this account of liberty, Bentham (as Hobbes before him) viewed law as 'negative.' Given that pleasure and pain are fundamental to – indeed, provide – the standard of value for Bentham, liberty, because 'pleasant', was a good and its restriction, because 'painful', was an evil.[29] Law, which is by its very nature a restriction of liberty and painful to those whose freedom is restricted[30], is a *prima facie* evil. It is only so far as control by the state is limited that the individual is free. Law is, Bentham recognized, necessary to social order and good laws are clearly essential to good government. Indeed, perhaps more than Locke, Bentham saw the positive role to be played by law and government, particularly in achieving community well-being. To the extent that law advances and protects one's economic and personal goods, and that what government there is, is self- government, law reflects the interests of the individual.

Unlike many earlier thinkers, Bentham held that law is not rooted in a 'natural law' but is simply a command an expression of the will of the sovereign. (This account of law, later developed by Austin, is characteristic of legal positivism.) Thus, a law that commands morally questionable or morally evil actions, or that is not based on consent, is still 'law.'

Rights

Bentham's views on rights are, perhaps, best known through the attacks on the concept of 'natural rights' that appear throughout his work. These criticisms are especially developed in his *Anarchical Fallacies* (a polemical attack on the declarations of rights issued in France during the French Revolution), written between 1791 and 1795, but not published until 1816, in French.[31] Bentham's target here is, primarily, the concept of 'natural rights' – though his criticisms of this notion and allied concepts of 'natural law,' 'social contract,' and 'state of nature' appear throughout his work. The notion of 'natural right,' Bentham argues, is a fiction, and to appeal to it would have disastrous consequences. While the essays in *Anarchical Fallacies* are largely polemical, they also contain a major attack on a

number of principles associated with liberalism – and many of Bentham's objections continue to be influential in contemporary political philosophy.

Bentham's criticisms are rooted in his understanding of the nature of law. Rights are created by the law,[32] and law is simply a command of the sovereign.[33] The existence of law and rights, therefore, requires government.[34] Rights are also usually (though not necessarily) correlative with duties determined by the law and, as in Hobbes, are either those which the law explicitly gives us, or those where, within a legal system, the law is silent. The view that there could be rights, not based on sovereign command, and which pre-exist the establishment of government, is rejected.

According to Bentham, then, the term 'natural right' is a "perversion of language." It is "ambiguous," "sentimental" and "figurative" and it has anarchical consequences. At best, such a 'right' may tell us what we ought to do; it cannot serve as a legal restriction on what we can or cannot do. The term 'natural right' is ambiguous, Bentham says, because it suggests that there are general rights – that is, rights over no specific object – so that one would have a claim on whatever one chooses. The effect of exercising such a universal, natural 'right' would be to extinguish the right altogether, since "what is every man's right is no man's right." No legal system could function with such a broad conception of rights. Thus, there cannot be any general rights in the sense suggested by the French declarations.

The notion of 'natural rights' is, moreover, figurative. Properly speaking, there are no rights anterior to government. The assumption of the existence of such rights, Bentham says, seems to be derived from the theory of the social contract. Here, individuals form a society and choose a government through the alienation of certain of their `rights.' But such a doctrine is not only unhistorical, according to Bentham, it does not even serve as a useful fiction to explain the origin of political authority. Governments arise by habit or by force and, for contracts (and, specifically, some 'original contract') to bind, there must already be a government in place to enforce them .

Finally, the idea of a natural right is "anarchical." Such a right, Bentham claims, entails a freedom from all restraint and, in particular, from all legal restraint. Since a natural right would be anterior to law, it could not be limited by law and, since human beings are motivated by self interest, if everyone had such freedom, the result would be pure anarchy. To have a right in any meaningful sense entails that others cannot legitimately interfere with one's rights, and this implies that rights must be capable of enforcement. Such restriction, as noted earlier, is the province of the law.

Bentham concludes, therefore, that the term "[n]atural rights is simple nonsense: natural and imprescriptible rights, rhetorical nonsense, – nonsense upon stilts." Rights – what Bentham calls "real" rights – then, are fundamentally legal rights. All rights must be legal and specific (that is, having both a specific object and subject). They ought to be made because of their conduciveness to "the general mass of felicity" and, correlatively,

when their abolition would be to the advantage of society, rights ought to be abolished. So far as rights exist in law, they are protected; outside of law, they are at best "reasons for wishing there were such things as rights."[35] While Bentham's essays against natural rights are largely polemical, many of his objections continue to be influential in contemporary political philosophy.

Nevertheless, Bentham did not dismiss talk of rights altogether. There are some services that are essential to the happiness of human beings and that cannot be left to others to fulfill as they see fit, and so these individuals must be compelled, on pain of punishment, to fulfill them. They must, in other words, respect the rights of others. Thus, although Bentham was generally suspicious of the concept of 'right,' he does allow that the term is useful and, in such work as *A General View of a Complete Code of Laws*, he enumerates a large number of rights. While the meaning he assigns to these 'rights' is largely stipulative rather than descriptive, they clearly reflect principles defended throughout his work.[36]

There has been some debate over the extent to which the rights that Bentham defends are based on, or reducible to, duties or obligations, whether he can consistently maintain that such duties or obligations are based on the principle of utility, and whether the existence of what Bentham calls 'permissive rights' – rights one has where the law is silent – is consistent with his general utilitarian view. (This latter point has been discussed at length by H.L.A. Hart and David Lyons.)

Problems and Questions to be Addressed

In the selections that follow, Bentham details, at length, a number of problems that he finds implicit in documents that contain reference to, or provide, accounts of rights and related concepts. Bentham also lists a number of claims or powers which we may appropriately call 'rights.' Implicit in these discussions is what Bentham thinks our liberties are, as well as what the nature of law and the state happen to be. It is useful, then, to keep in mind the questions that follow. One should also be attentive to some of the implications of Bentham's views – e.g., the relation of happiness to individual liberty and whether the kind of political philosophy that Bentham is presenting is one that can allow for a genuine pluralism.

1. How does Bentham understand the concept of 'natural rights'?
2. What are Bentham's main criticisms of natural rights? (What characteristics does he say that rights have? Why? What are the consequences of such a discourse? Why?)
3. What sense would Bentham make of the 'right to property'?
4. What positive and constructive sense can one give to the notion of rights?
5. In what sense can one properly speak of rights? What is their form and what is their purpose?

6. What specific rights are there?
7. What is the basis of rights? What is the relation between rights and morality? What is the relation among liberty, rights, and the law?
8. How are rights ascribed?
9. What is the relation between rights and obligations? (Is this the same as that between rights and duties?)
10. Can there be illegal rights or immoral rights? Does it make sense to talk about either?
11. What is the basis for political legitimacy? What makes law binding on us? Can one make a moral claim against the state? Can there be rights held against the state?
12. Is there any inconsistency between Bentham's account of the origin of rights and the legitimacy of law and the state?

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NOTES

[1] One might also mention the important role played in political affairs by the *Westminster Review*, a publication used for the promotion of Benthamite ideas.

[2] This curious legacy has invited a good deal of speculation. It is, however, generally accepted, as he explains in his will and in an essay ("Further Uses of the Dead to the Living") that he did so on utilitarian grounds – that he held that bodies should not just be buried, but be used for dissection and, thus, to advance medical practice and knowledge (the practice of dissection was, at that time, compulsory for the bodies of murderers in England but it was not legal for people to designate that their bodies be used for this purpose), but also because he thought that dead bodies of well-known individuals should be used as moral reminders for succeeding generations. It is also not unlikely that Bentham decided to do this as a way of challenging religious and ethical sensibilities concerning death.

[3] See *A Fragment on Government* in *The Works of Jeremy Bentham*, ed. John Bowring (London, 1838-1843; reprinted New York, 1962), Vol. I, pp. 221-295; see p. 242; note p. 268. Cf *A Commentary on the Commentaries and A Fragment on Government*, ed. J.H. Burns and H.L.A. Hart (London: Athlone Press, 1977), Historical Preface, Intended for the 2nd edition, sec. 3, p. 500.

[4] E.g., William Paley's *Principles of Moral and Political Philosophy*, 1785, and Joseph Priestley, *The First Principles of Government, and on the Nature of Political, Civil and Religious Liberty*, 1768.

[5] *An Introduction to the Principles of Morals and Legislation*, ed. J.H. Burns and H.L.A. Hart (London, Athlone Press, 1970), Ch. 1, sec. 1, p. 11.

[6] George Sabine, *A History of Political Theory* (Hinsdale IL: The Dryden Press, 1973), 4th ed., p. 640.

[7] Sabine, *Political Theory*, p. 640.

[8] *The Book of Fallacies: From Unfinished Papers of Jeremy Bentham. Edited By a Friend* [i.e., Peregrine Bingham, from the French of Etienne Dumont's

edition] (London: Hunt, 1824), pp. 392-3.

[9] See Mary Peter Mack's remarks on the similarity between Bentham and Hobbes's nominalism in *Jeremy Bentham: An Odyssey of Ideas 1748-1792* (London: Heinemann, 1962) cited in Frank Thakurdas, *The English Utilitarians and the Idealists* (Delhi: Vishal Publication, 1978), p. 101.

[10] *Introduction to the Principles of Morals and Legislation*, Ch. 16, (ed. Burns and Hart) p. 235, ftn. 73.

[11] *Introduction to the Principles of Morals and Legislation*, Ch. 1, sec. 4, (ed. Burns and Hart), p. 12.

[12] *Introduction to the Principles of Morals and Legislation*, Ch. 1, sec. 4, (ed. Burns and Hart) p. 12. One finds the same view in Mill's *System of Logic*, Bk. VI, Ch. 7, sec. 1.

[13] Halévy says that "[t]he individual became in some sort the atom of the Utilitarian economist and moralist" See Elie Halévy, *The Growth of Philosophic Radicalism* [*La formation du radicalisme philosophique*], trans. Mary Morris, with a preface by A.D. Lindsay (London: Faber & Faber, 1928; reprinted, Boston: Beacon Press, 1966), p. 502.

[14] See Graeme Duncan and John Gray, "The Left Against Mill," in *New Essays on John Stuart Mill and Utilitarianism*, eds. Wesley E. Cooper, Kai Nielsen and Steven C. Patten (Guelph: Canadian Association for Publishing in Philosophy, 1979; *Canadian Journal of Philosophy*, Supplementary Volume V), pp. 203-230, p. 215.

[15] See Halévy, *Growth of Philosophic Radicalism*, pp. 12-17; see also Thakurdas, *The English Utilitarians*, p. 87. For a discussion of the coherence among the various aspects of Bentham's views, see also John Plamenatz, *The English Utilitarians* (Oxford: Basil Blackwell, 1949), esp. pp. 70-72.

[16] See *Introduction to the Principles of Morals and Legislation* (ed. Burns and Hart) Ch 1, Sec. 2, p. 11.

[17] Bentham asks: "Is [this principle] susceptible of any direct proof? it should seem not: for that which is used to prove every thing else, cannot itself be proved: a chain of proofs must have their commencement somewhere. To give such proof is as impossible as it is needless." *Introduction to the Principles of Morals and Legislation* (ed. Burns and Hart), Ch. 1, sec. 1, p. 13. Bentham continues by noting that all human beings generally (though perhaps only implicitly) defer to this principle in deciding to act and in assessing the actions of others.

[18] *Introduction to the Principles of Morals and Legislation* (ed. Burns and Hart) Ch. 2, sec. 14, p. 25.

[19] See *Deontology*, I, p. 165.

[20] *Introduction to the Principles of Morals and Legislation* (ed. Burns and Hart) Ch. 17, sec. 2, p. 282.

[21] Halévy, *Growth of Philosophic Radicalism.*

[22] For Mill, see, for example, Joseph Hamburger, *Intellectuals in Politics: John*

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[23] See Sabine, *Political Theory*, p. 613 and Thakurdas, *The English Utilitarians*, pp. 2-3, 49ff.

[24] For a discussion of this concept, see Isaiah Berlin, *Two Concepts of Liberty*, Oxford, 1958, pp. 6ff., and the discussions in the Introduction and in Chapter 9 (on Bernard Bosanquet) below.

[25] Bentham mss, University College, London, Box 9, Folder 6, p. 142; cited in D.J. Manning, *The Mind of Jeremy Bentham* (London: Longmans, 1968), p. 87.

[26] See *Works* (ed. Bowring), Vol. I, p. 263.

[27] Bentham refers, for example, to "the difference between private ethics... and that branch of jurisprudence which contains the art or science of legislation, on the other. Private ethics teaches how each man may dispose himself to pursue the course most conducive to his own happiness...: the art of legislation... teaches how a multitude of men, composing a community, may be disposed to pursue that course which upon the whole is the most conducive to the happiness of the whole community, by means of motives to be applied by the legislator" (*Introduction to the Principles of Morals and Legislation*, Ch. 17, sec. 20 [ed. Burns and Hart], p. 293. For a discussion of this point, see Hamburger, p. 22.

[28] For Bentham, recall, the value of liberty "came well after security, equality... and property" (Thakurdas, *The English Utilitarians*, p. 201).

[29] Bentham has in mind here what one might call "political" (as distinct from "individual" or "personal") liberty (see *[A] General View of a Complete Code of Laws*, in his *Works*, Vol. III, pp. 155-210, p. 185). Political liberty is, itself, of two kinds—that which the law explicitly allows us to do (as correlatives to existing obligations), and that which the law does not expressly forbid (i.e., "permissive" rights) (Bentham, *Complete Code*, p. 181).

According to Bentham's *Principles of the Civil Code*, Pt. I, Ch., 2 (in his *Works*, Vol. I, pp. 297-364, at p. 302), liberty is a good, though subordinate to security (which is one of the four main ends of the civil law—the others being subsistence, abundance and equality). Bentham denies that political liberty is natural, for then it could not be limited (see his *Anarchical Fallacies*, in his *Works*, Vol. II, pp. 489-584, at pp. 497-498). See also John MacCunn, *Six Radical Thinkers*, second impression (London, 1910), p. 25 and Thakurdas, *The English Utilitarians*, pp. 59 and 81. There is considerable debate on the fundamental character of liberty in Bentham's thought. For a general account of the `authoritarian' and `liberal facilitative' interpretations of Bentham, see James E. Crimmins, "Contending Interpretations of Bentham's Utilitarianism," *Canadian Journal of Political Science / Revue canadienne de science politique*, 29 (1996): 751-777.

[30] According to Bentham, "[t]he evil of... restraint [is]... the pain which it gives a man not to be able to do the act." See *Introduction to the Principles of Morals and Legislation* (ed. Bowring), Ch. 13, sec. 14, Vol. I, pp. 1-154, p. 85; Cf. *Introduction to the Principles of Morals and Legislation*, (ed. Burns and Hart), p. 163.

[31] This appears first as part of the second volume of *Tactique des assemblées législatives, suivie d'un traité des sophismes politiques; ouvrage extrait des manuscrits de m. Jérémie Bentham par Ét. Dumont*, Genève: J.J. Paschoud, 1816. See *Bentham's Political Thought*, ed. Bhikhu Parekh (London: Croom Helm, 1973), p. 257.

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[32] *Introduction to the Principles of Morals and Legislation*, Ch. 16 (ed. Burns and Hart), p. 205, ftn. 30.

[33] See *Introduction to the Principles of Morals and Legislation*, Ch. 16 (ed. Burns and Hart), p. 205, ftn. 30 and Bentham's *The Limits of Jurisprudence Defined*, ed. C. W. Everett (New York: Columbia University Press, 1945), p. 88, cited in Mary Peter Mack, *Jeremy Bentham: An Odyssey of Ideas 1748-1792* (London: Heinemann, 1962), p. 170.

[34] See *Anarchical Fallacies*, *Works* (ed. Bowring),Vol. II, pp. 500-501.

[35] See *Anarchical Fallacies*, *Works* (ed. Bowring),Vol. II, p. 501.

[36] See Parekh, *Bentham's Political Thought*, p. 32. Cf. David Crossley, "Utilitarianism, Rights and Equality," *Utilitas*, 2 (1990): 40-54, where he argues that Bentham recognized a moral right to equality.

Anarchical Fallacies;
Being an Examination of the Declarations of Rights Issued During the French Revolution (1791-92)

AN EXAMINATION OF THE DECLARATION OF THE RIGHTS OF THE MAN AND THE CITIZEN DECREED BY THE CONSTITUENT ASSEMBLY IN FRANCE

PREAMBLE

"The Representatives of the French people, constituted in National Assembly, considering that ignorance, forgetfulness, or contempt of the Rights of Man, are the only causes of public calamities, and of the corruption of governments, have resolved to set forth in a solemn declaration, the natural, unalienable, and sacred rights of man, in order that this declaration, constantly presented to all the members of the body social, may recall to mind, without ceasing, their rights and their duties; to the end, that the acts of the legislative power, and those of the executive power, being capable at every political institution, they may be more respected, and also that the demand of the citizens hereafter, founded upon simple and incontestable principles, may always tend to the maintenance of the constitution and to the happiness of all."

"In consequence, the National Assembly acknowledges and declares, in the presence and under the auspices of the Supreme Being, the following Rights of the Man and the Citizen."—

From this preamble we may collect the following positions:—

1. That the declaration in question ought to include a declaration of all the powers which it is designed should thereafter subsist in the State; the limits of each power precisely laid down, and every one completely distinguished from the other.

2. That the articles by which this is to be done, ought not to be loose and scattered, but closely connected into a whole, and the connexion all along made visible.

3. That the declaration of the rights of man, in a state preceding that of political society, ought to form a part of the composition in question, and constitute the first part of it.

4. That in point of fact, a clear idea of all these stands already imprinted in the minds of every man.

5. That, therefore, the object of such a draught is not, in any part of such a draught, to teach the people anything new.

6. But that the object of such a declaration is to declare the accession of the Assembly, as such, to the principles as understood and embraced, as well by themselves in their individual capacity, as by all other individuals in the State.

7. That the use of this solemn adoption and recognition is, that the principles recognized may serve as a standard by which the propriety of the several particular laws that are afterwards to be enacted in consequence, may be tried.

8. That by the conformity of these laws to this standard, the fidelity of the legislators to their trust is also to be tried.

9. That accordingly, if any law should hereafter be enacted, between which, and any of those fundamental articles, any want of conformity in any point can be pointed out, such want of conformity will be a conclusive proof of two things: 1. Of the impropriety of such law; 2. Of error or criminality on the part of the authors and adopters of that law.

It concerns me to see so respectable an Assembly hold out expectations, which, according to my conception, cannot in the nature of things be fulfilled.

An enterprise of this sort, instead of preceding the formation of a complete body of laws, supposes such a work to be already existing in every particular except that of its obligatory force.

No laws are ever to receive the sanction of the Assembly that shall be contrary in any point to these principles. What does this suppose? It supposes the several articles of detail that require to be enacted, to have been drawn up, to have been passed in review, to have been confronted with these fundamental articles, and to have been found in no respect repugnant to them. In a word, to be sufficiently assured that the several laws of detail will bear this trying comparison, one thing is necessary: the comparison must have been made.

To know the several laws which the exigencies of mankind call for, a view of all these several exigencies must be obtained. But to obtain this view, there is but one possible means, which is, to take a view of the laws that have already been framed, and of the exigencies which have given birth to them.

To frame a composition which shall in any tolerable degree answer this requisition, two endowments, it is evident, are absolutely necessary:—an acquaintance with the law as it is, and the perspicuity and genius of the metaphysician: and these endowments must unite in the same person.

I can conceive but four purposes which a discourse, of the kind proposed under the name of a Declaration of Rights, can be intended to answer:—the setting bounds to the authority of the crown;—the setting bounds to the authority of the supreme legislative power, that of the National Assembly;—the serving as a general guide or set of instructions to the National Assembly itself, in the task of executing their function in detail, by the establishment of particular laws;—and the affording a satisfaction to the people.

These four purposes seem, if I apprehend right, to be all of them avowed by the same or different advocates for this measure.

Of the fourth and last of these purposes I shall say nothing: it is a question merely local—dependent upon the humour of the spot and of the day, of which no one at a distance can be a judge. Of the fitness of the end,

there can be but one opinion: the only question is about the fitness of the means.

In the three other points of view, the expediency of the measure is more than I can perceive.

The description of the persons, of whose rights it is to contain the declaration, is remarkable. Who are they? The French nation? No; not they only, but all citizens, and all men. By citizens, it seems we are to understand men engaged in political society: by men, persons not yet engaged in political society—persons as yet in a state of nature.

The word men, as opposed to citizens, I had rather not have seen. In this sense, a declaration of the rights of men is a declaration of the rights which human creatures, it is supposed, would possess, were they in a state in which the French nation certainly are not, nor perhaps any other; certainly no other into whose hands this declaration could ever come.

This instrument is the more worthy of attention, especially of the attention of a foreigner, inasmuch as the rights which it is to declare are the rights which it is supposed belong to the members of every nation in the globe. As a member of a nation which with relation to the French comes under the name of a foreign one, I feel the stronger call to examine this declaration, inasmuch as in this instrument I am invited to read a list of rights which belong as much to me as to the people for whose more particular use it has been framed.

The word men, I observe to be all along coupled in the language of the Assembly itself, with the word citizen. I lay it, therefore, out of the question, and consider the declaration in the same light in which it is viewed by M. Turgot, as that of a declaration of the rights of all men in a state of citizenship or political society.

I proceed, then, to consider it in the three points of view above announced:—

1. Can it be of use for the purpose of setting bounds to the power of the crown? No; for that is to be the particular object of the Constitutional Code itself, from which this preliminary part is detached in advance.

2. Can it be of use for the purpose of setting bounds to the power of the several legislative bodies established or to be established? I answer, No.

(1) Not of any subordinate ones: for of their authority, the natural and necessary limit is that of the supreme legislature, the National Assembly.

(2) Not of the National Assembly itself:—Why? 1. Such limitation is unnecessary. It is proposed, and very wisely and honestly, to call in the body of the people, and give it as much power and influence as in its nature it is capable of: by enabling it to declare its sentiments whenever it thinks proper, whether immediately, or through the channel of the subordinate assemblies. Is a law enacted or proposed in the National Assembly, which happens not to be agreeable to the body of the people? It will be equally censured by them, whether it be conceived, or not, to bear marks of a repugnancy to this declaration of rights. Is a law disagreeable to them? They

will hardly think themselves precluded from expressing their disapprobation, by the circumstance of its not being to be convicted of repugnancy to that instrument; and though it should be repugnant to that instrument, they will see little need to resort to that instrument for the ground of their repugnancy; they will find a much nearer ground in some particular real or imaginary inconvenience.

In short, when you have made such provision, that the supreme legislature can never carry any point against the general and persevering opinion of the people, what would you have more? What use in their attempting to bind themselves by a set of phrases of their own contrivance? The people's pleasure: that is the only check to which no other can add anything, and which no other can supersede.

In regard to the rights thus declared, mention will either be made of the exceptions and modifications that may be made to them by the laws themselves, or there will not. In the former case, the observance of the declaration will be impracticable; nor can the law in its details stir a step without flying in the face of it. In the other case, it fails thereby altogether of its only object, the setting limits to the exercise of the legislative power. Suppose a declaration to this effect:—no man's liberty shall be abridged in any point. This, it is evident, would be an useless extravagance, which must be contradicted by every law that came to be made. Suppose it to say—no man's liberty shall be abridged, but in such points as it shall be abridged in, by the law. This, we see, is saying nothing: it leaves the law just as free and unfettered as it found it.

Between these two rocks lies the only choice which an instrument destined to this purpose can have. Is an instrument of this sort produced? We shall see it striking against one or other of them in every line. The first is what the framers will most guard against, in proportion to their reach of thought, and to their knowledge in this line: when they hit against the other, it will be by accident and unawares.

Lastly, it cannot with any good effect answer the only remaining intention, viz. that of a check to restrain as well as to guide the legislature itself, in the penning of the laws or detail that are to follow.

The mistake has its source in the current logic, and in the want of attention to the distinction between what is first in the order of demonstration, and what is first in the order of invention. Principles, it is said, ought to precede consequences; and the first being established, the others will follow of course. What are the principles here meant? General propositions, and those of the widest extent. What by consequences? Particular propositions, included under those general ones.

That this order is favourable to demonstration, if by demonstration be meant personal debate and argumentation, is true enough. Why? Because, if you can once get a man to admit the general proposition, he cannot, without incurring the reproach of inconsistency, reject a particular proposition that is included in it.

But, that this order is not the order of conception, of investigation, of invention, is equally undeniable. In this order, particular propositions always precede general ones. The assent to the latter is preceded by and grounded on the assent to the former.

If we prove the consequences from the principle, it is only from the consequences that we learn the principle.

Apply this to laws. The first business, according to the plan I am combating, is to find and declare the principles: the laws of a fundamental nature: that done, it is by their means that we shall be enabled to find the proper laws of detail. I say, no: it is only in proportion as we have formed and compared with one another the laws of detail, that our fundamental laws will be exact and fit for service. Is a general proposition true? It is because all the particular propositions that are included under it are true. How, then, are we to satisfy ourselves of the trust of the general one? By having under our eye all the included particular ones. What, then, is the order of investigation by which true general propositions are formed? We take a number of less extensive—of particular propositions; find some points in which they agree, and from the observation of these points form a more extensive one, a general one, in which they are all included. In this way, we proceed upon sure grounds, and understand ourselves as we go: in the opposite way, we proceed at random, and danger attends every step.

No law is good which does not add more to the general mass of felicity than it takes from it. No law ought to be made that does not add more to the general mass of felicity than it takes from it. No law can be made that does not take something from liberty; those excepted which take away, in the whole or in part those laws which take from liberty. Propositions to the first effect I see are true without any exception: propositions to the latter effect I see are not true till after the particular propositions intimated by the exceptions are taken out of it. These propositions I have attained a full satisfaction of the truth of. How? By the habit I have been in for a course of years, of taking any law at pleasure, and observing that the particular proposition relative to that law was always conformable to the fact announced by the general one.

So in the other example. I discerned in the first instance, in a faint way, that two classes would serve to comprehend all laws: laws which take from liberty in their immediate operation, and laws which in the same way destroy, in part or in the whole, the operation of the former. The perception was at first obscure, owing to the difficulty of ascertaining what constituted in every case a law, and of tracing out its operation. By repeated trials, I came at last to be able to show of any law which offered itself, that it came under one or other of those classes.

What follows? That the proper order is—first to digest the laws of detail, and when they are settled and found to be fit for use, then, and not till then, to select and frame *in terminis*, by abstraction, such propositions as may be capable of being given without self-contradiction as fundamental laws.

What is the source of this premature anxiety to establish fundamental laws? It is the old conceit of being wiser than all posterity—wiser than those who will have had more experience,—the old desire of ruling over posterity—the old recipe for enabling the dead to chain down the living. In the case of a specific law, the absurdity of such a notion is pretty well recognized, yet there the absurdity is much less than here. Of a particular law, the nature may be fully comprehended—the consequences foreseen: of a general law, this is the less likely to be the case, the greater the degree in which it possesses the quality of a general one. By a law of which you are fully master, and see clearly to the extent of, you will not attempt to bind succeeding legislators: the law you pitch upon in preference for this purpose, is one which you are unable to see to the end of.

Ought no such general propositions, then, to be ever framed till after the establishment of a complete code? I do not mean to assert this; on the contrary, in morals as in physics, nothing is to be done without them. The more they are framed and tried, the better: only, when framed, they ought to be well tried before they are ushered abroad into the world in the character of laws. In that character they ought not to be exhibited till after they have been confronted with all the particular laws to which the force of them is to apply. But if the intention be to chain down the legislator, these will be all the laws without exception which are looked upon as proper to be inserted in the code. For the interdiction meant to be put upon him in unlimited: he is never to establish any law which shall disagree with the pattern cut out for him—which shall ever trench upon such and such rights.

Such indigested and premature establishments betoken two things:—the weakness of the understanding, and the violence of the passions: the weakness of the understanding, in not seeing the insuperable incongruities which have been above stated—the violence of the passions, which betake themselves to such weapons for subduing opposition at any rate, and giving to the will of every man who embraces the proposition imported by the article in question, a weight beyond what is its just and intrinsic due. In vain would man seek to cover his weakness by positive and assuming language: the expression of one opinion, the expression of one will, is the utmost that any proposition can amount to. Ought and ought not, can and can not, shall and shall not, all put together, can never amount to anything more. "No law ought to be made, which will lessen upon the whole the mass of general felicity." When I, a legislator or private citizen, say this, what is the simple matter of fact that is expressed? This, and this only, that a sentiment of dissatisfaction is excited in my breast by any such law. So again—"No law shall be made, which will lessen upon the whole the mass of general felicity". What does this signify? That the sentiment of dissatisfaction in me is as strong as to have given birth to a determined will that no such law should ever pass, and that determination so strong as to have produced a resolution on my part to oppose myself, as far as depends on me, to the passing of it, should it ever be attempted—a determination which is the more likely to meet with success, in

proportion to the influence, which in the character of legislator or any other, my mind happens to possess over the minds of others.

"No law *can* be made which will do as above. What does this signify? The same will as before, only wrapped up in an absurd and insidious disguise. My will is here so strong, that, as a means of seeing it crowned with success, I use my influence with the persons concerned to persuade them to consider a law which, at the same time, I suppose to be made, in the same point of view as if it were not made; and consequently, to pay no more obedience to it than if it were the command of an unauthorized individual. To compass this design, I make the absurd choice of a term expressive in its original and proper import of a physical impossibility, in order to represent as impossible the very event of the occurrence of which I am apprehensive:—occupied with the contrary persuasion, I raise my voice to the people—tell them the thing is impossible; and they are to have the goodness to believe me, and act in consequence.

A law to the effect in question is a violation of the natural and indefeasible rights of man. What does this signify? That my resolution of using my utmost influence in opposition to such a law is wound up to such a pitch, that should any law be ever enacted, which in my eyes appears to come up to that description, my determination is, to behave to the persons concerned in its enactment, as any man would have towards those who had been guilty of a notorious and violent infraction of his rights. If necessary, I would corporally oppose them—if necessary, in short, I would endeavour to kill them; just as, to save my own life, I would endeavour to kill any one who was endeavouring to kill me.

These several contrivances for giving to an increase in vehemence, the effect of an increase in strength of argument, may be styled *bawling* upon paper: it proceeds from the same temper and the same sort of distress as produces bawling with the voice.

That they should be such efficacious recipes is much to be regretted; that they will always be but too much so, is much to be apprehended; but that they will be less and less so, as intelligence spreads and reason matures, is devoutly to be wished, and not unreasonably to be hoped for.

As passions are contagious, and the bulk of men are more guided by the opinions and pretended opinions of others than by their own, a large share of confidence, with a little share of argument, will be apt to go farther than all the argument in the world without confidence: and hence it is, that modes of expression like these, which owe the influence they unhappily possess to the confidence they display, have met with such general reception. That they should fall into discredit, is, if the reasons above given have any force, devoutly to be wished: and for the accomplishing this good end, there cannot be any method so effectual—or rather, there cannot be any other method, than that of unmasking them in the manner here attempted.

The phrases *can* and *can not*, are employed in this way with greater and more pernicious effect, inasmuch as, over and above physical and moral impossibility, they are made use of with much less impropriety and violence

to denote legal impossibility. In the language of the law, speaking in the character of the law, they are used in this way without ambiguity or inconvenience. "Such a magistrate cannot do so and so," that is, he has no power to do so and so. If he issue a command to such an effect, it is no more to be obeyed than if it issued from any private person. But when the same expression is applied to the very power which is acknowledged to be supreme, and not limited by any specific institution, clouds of ambiguity and confusion roll on in a torrent almost impossible to be withstood. Shuffled backwards and forwards amidst these three species of impossibility—physical, legal, and moral—the mind can find no resting-place: it loses its footing altogether, and becomes easy prey to the violence which wields these arms.

The expedient is the more powerful, inasmuch as, where it does not succeed so far as to gain a man and carry him over to that side, it will perplex him and prevent his finding his way to the other: it will leave him neutral, though it should fail of making him a friend.

It is the better calculated to produce this effect, inasmuch as nothing can tend more powerfully to draw a man altogether out of the track of reason and out of sight of utility, the only just standard for trying all sorts of moral questions. Of a positive assertion thus irrational, the natural effect, where it fails of producing irrational acquiescence, is to produce equally irrational denial, by which no light is thrown upon the subject, nor any opening pointed out through which light may come. I say, the law cannot do so and so: you say, it can. When we have said thus much on each side, it is to no purpose to say more; there we are completely at a stand: argument such as this can go no further on either side,—or neither yields,—or passion triumphs alone—the stronger sweeping the weaker away.

Change the language, and instead of *cannot*, put *ought not*,—the case is widely different. The moderate expression of opinion and will intimated by this phrase, leads naturally to the inquiry after a reason: —and this reason, if there be any at bottom that deserves the name, is always a proposition of fact relative to the question of utility. Such a law *ought not* to be established, because it is not consistent with the general welfare—its tendency is not to add to the general stock of happiness. I say, it ought not to be established; that is, I do not approve of its being established; the emotion excited in my mind by the idea of its establishment, is not that of satisfaction, but the contrary. How happens this? Because the production of inconvenience, more than equivalent to any advantage that will ensue, presents itself to my conception in the character of a probable event. Now the question is put, as every political and moral question ought to be, upon the issue of fact; and mankind are directed into the only true track of investigation which can afford instruction or hope of rational argument, the track of experiment and observation. Agreement, to be sure, is not even then made certain:—for certainty belongs not to human affairs. But the track, which of all others bids fairest for leading to agreement, is pointed out: a clue for bringing back the

travellers, in case of doubt or difficulty, is presented; and, at any rate, they are not struck motionless at the first step.

Nothing would be more unjust or more foreign to my design, than taking occasion, from anything that has been said, to throw particular blame upon particular persons: reproach which strikes everybody, hurts nobody; and common error, where it does not, according to the maxim of English law, produce common right, is productive at least of common exculpation.

A CRITICAL EXAMINATION OF THE DECLARATION OF RIGHTS

PRELIMINARY OBSERVATIONS

The Declaration of Rights —I mean the paper published under that name by the French National Assembly in 1791—assumes for its subject-matter a field of disquisition as unbounded in point of extent as it is important in its nature. But the more ample the extent given to any proposition or string of propositions, the more difficult it is to keep the import of it confined without deviation, within the bounds of truth and reason. If in the smallest corners of the field it ranges over, it fail of coinciding with the line of rigid rectitude, no sooner is the aberration pointed out, than (inasmuch as there is no medium between truth and falsehood) its pretensions to the appellation of a truism are gone, and whoever looks upon it must recognize it to be false and erroneous,—and if, as here, political conduct be the theme, so far as the error extends and fails of being detected, pernicious.

In a work of such extreme importance with a view to practice, and which throughout keeps practice so closely and immediately and professedly in view, a single error may be attended with the most fatal consequences. The more extensive the propositions, the more consummate will be the knowledge, the more exquisite the skill, indispensably requisite to confine them in all points within the pale of truth. The most consummate ability in the whole nation could not have been too much for the task—one may venture to say, it would not have been equal to it. But that, in the sanctioning of each proposition, the most consummate ability should happen to be vested in the heads of the sorry majority in whose hands the plenitude of power happened on that same occasion to be vested, is an event against which the chances are almost as infinity to one.

Here, then, is a radical and all-pervading error—the attempting to give to a work on such a subject the sanction of government; especially of such a government—a government composed of members so numerous, so unequal in talent, as well as discordant in inclinations and affections. Had it been the work of a single hand, and that a private one, and in that character given to the world, every good effect would have been produced by it that could be produced by it when published as the work of government, without any of the bad effects which in case of the smallest error must result from it when given as the work of government.

The revolution, which threw the government into the hands of the penners and adopters of this declaration, having been the effect of insurrection, the grand object evidently is to justify the cause. But by justifying it, they invite it: in justifying past insurrection, they plant and cultivate a propensity to perpetual insurrection in time future; they sow the seeds of anarchy broad-cast: in justifying the demolition of existing authorities, they undermine all future ones, their own consequently in the number. Shallow and reckless vanity!—They imitate in their conduct the author of that fabled law, according to which the assassination of the prince upon the throne gave to the assassin a title to succeed him. *"People, behold your rights! If a single article of them be violated, insurrection is not your right only, but the most sacred of your duties."* Such is the constant language, for such is the professed object of this source and model of all laws
— this self-consecrated oracle of all nations.

The more *abstract*—that is, the more *extensive* the proposition is, the more liable is it to involve a fallacy. Of fallacies, one of the most natural modifications is that which is called *begging the question*—the abuse of making the abstract proposition resorted to for proof, a lever for introducing, in the company of *other* propositions that are nothing to the purpose, the very proposition which is admitted to stand in need of proof.

Is the provision in question fit in point of expediency to be passed into a law for the government of the French nation? That, *mutatis mutandis*, would have been the question put in England: that was the proper question to have been put in relation to each provision it was proposed should enter into the composition of the body of French laws.

Instead of that, as often as the utility of a provision appeared (by reason of the wideness of its extent, for instance) of a doubtful nature, the way taken to clear the doubt was to assert it to be a provision fit to be made law for all men—for all Frenchmen—and for all Englishmen, for example, into the bargain. This medium of proof was the more alluring, inasmuch as to the advantage of removing opposition, was added the pleasure, the sort of titillation so exquisite to the nerve of vanity in a French heart—the satisfaction, to use a homely, but not the less apposite proverb, of teaching grandmothers to suck eggs. Hark! ye citizens of the other side of the water! Can you tell us that rights you have belonging to you? No, that you can't. It's *we* that understand rights: not our own only, but yours into the bargain; while you, poor simple souls! know nothing about the matter.

Hasty generalization, the great stumbling block of intellectual vanity!—hasty generalization, the rock that even genius itself is so apt to split upon!—hasty generalization, the bane of prudence and of science!

In the British Houses of Parliament, more especially in the most efficient house for business, there prevails a well-known jealousy of, and repugnance to, the voting abstract propositions. This jealousy is not less general than reasonable. A jealousy of abstract propositions is an aversion to whatever is beside the purpose—an aversion to impertinence.

The great enemies of public peace are the selfish and dissocial passions:—necessary as they are—the one to the very existence of each individual, the other to his security. On the part of these affections, a deficiency in point of strength is never to be apprehended: all that is to be apprehended in respect of them, is to be apprehended on the side of their excess. Society is held together only by the sacrifices that men can be induced to make of the gratifications they demand: to obtain these sacrifices is the great difficulty, the great task of government. What has been the object, the perpetual and palpable object, of this declaration of pretended rights? To add as much force as possible to these passions, already but too strong, to burst the cords that hold them in,—to say to the selfish passions, there—everywhere—is your prey!—to the angry passions, there—everywhere—is your enemy.

Such is the morality of this celebrated manifesto, rendered famous by the same qualities that gave celebrity to the incendiary of the Ephesian temple.

The logic of it is of a piece with its morality:—a perpetual vein of nonsense, flowing from a perpetual abuse of words,—words having a variety of meanings, where words with single meanings were equally at hand—the same words used in a variety of meanings in the same page,—words used in meanings not their own, where proper words were equally at hand,—words and propositions of the most unbounded signification, turned loose without any of those exceptions or modifications which are so necessary on every occasion to reduce their import within the compass, not only of right reason, but even of the design in hand, of whatever nature it may be;—the same inaccuracy, the same inattention in the penning of this cluster of truths on which the fate of nations was to hang, as if it had been an oriental tale, or an allegory for a magazine:—stale epigrams, instead of necessary distinctions,—figurative expressions preferred to simple ones,—sentimental conceits, as trite as they are unmeaning, preferred to apt and precise expressions,—frippery ornament preferred to the majestic simplicity of good sound sense,—and the acts of the senate loaded and disfigured by the tinsel of the playhouse.

In a play or a novel, an improper word is but a word: and the impropriety, whether noticed or not, is attended with no consequences. In a body of laws—especially of laws given as constitutional and fundamental ones—an improper word may be a national calamity:—and civil war may be the consequence of it. Out of one foolish word may start a thousand daggers.

Imputations like these may appear general and declamatory—and rightly so, if they stood alone: but they will be justified even to satiety by the details that follow. Scarcely an article, which in rummaging it, will not be found a true Pandora's box.

In running over the several articles, I shall on the occasion of each article point out, in the first place, the errors it contains in theory; and then, in the second place, the mischiefs it is pregnant with in practice.

The criticism is verbal:—true, but what else can it be? Words—words without a meaning, or with a meaning too flatly false to be maintained

by anybody, are the stuff it is made of. Look to the letter, you find nonsense—look beyond the letter, you find nothing.

ARTICLE I

Men [all men] are born and remain free, and equal in respect of rights. Social distinctions cannot be founded, but upon common utility.

In this article are contained, grammatically speaking, two distinct sentences. The first is full of error, the other of ambiguity.

In the first are contained four distinguishable propositions, all of them false—all of them notoriously and undeniably false:—

1. That all men are born free.
2. That all men remain free.
3. That all men are born equal in rights.
4. That all men remain (*i.e.* remain for ever, for the proposition is indefinite and unlimited) equal in rights.

All men are born free? All men remain free? No, not a single man: not a single man that ever was, or is, or will be. All men, on the contrary, are born in subjection, and the most absolute subjection—the subjection of a helpless child to the parents on whom he depends every moment for his existence. In this subjection every man is born—in this subjection he continues for years—for a great number of years—and the existence of the individual and of the species depends upon his so doing.

What is the state of things to which the supposed existence of these supposed rights is meant to bear reference?—a state of things prior to the existence of government, or a state of things subsequent to the existence of government? If to a state prior to the existence of government, what would the existence of such things as these be to the purpose, even if it were true, in any country where there is such a thing as government? If to a state of things subsequent to the formation of government—if in a country where there is a government, in what single instance—in the instance of what single government, is it true? Setting aside the case of parent and child, let any man name that single government under which any such equality is recognized.

All men born free? Absurd and miserable nonsense! When the great complaint—a complaint made perhaps by the very same people at the same time, is—that so many men are born slaves. Oh! but when we acknowledge them to be born slaves, we refer to the laws in being; which laws being void, as being contrary to those laws of nature which are the efficient causes of those rights of man that we are declaring, the men in question are free in one sense, though slaves in another;—slaves, and free, at the same time:—free in respect of the laws of nature—slaves in respect of the pretended human laws, which, though called laws, are no laws at all, as being contrary to the laws of nature. For such is the difference—the great and perpetual difference, betwixt the good subject, the rational censor of the laws, and the anarchist—between the moderate man and the man of violence. The rational censor, acknowledg-

ing the existence of the law he disapproves, proposes the repeal of it: the anarchist, setting up his will and fancy for a law before which all mankind are called upon to bow down at the first word—the anarchist, trampling on truth and decency, denies the validity of the law in question,—denies the existence of it in the character of a law, and calls upon all mankind to rise up in a mass, and resist the execution of it.

Whatever is, is,—was the maxim of DesCartes, who looked upon it as so sure, as well as so instructive a truth, that everything else which goes by the name of truth might be deduced from it. The philosophical vortex maker—who, however mistaken in his philosophy and his logic, was harmless enough at least—the manufacturer of identical propositions and celestial vortices —little thought how soon a part of his own countrymen, fraught with pretensions as empty as his own, and as mischievous as his were innocent, would contest with him even this his favourite and fundamental maxim, by which everything else was to be brought to light. *Whatever is, is not*—is the maxim of the anarchists, as often as anything comes across him in the shape of a law which he happens not to like.

"Cruel is the judge," says Lord Bacon, "who, in order to enable himself to torture men, applies torture to the law." Still more cruel is the anarchist, who, for the purpose of effecting the subversion of the laws themselves, as well as the massacre of the legislators, tortures not only the words of the law, but the very vitals of the language.

All men are born equal in rights. The rights of the heir of the most indigent family equal to the rights of the heir of the most wealthy? In what case is this true? I say nothing of hereditary *dignities* and *powers*. Inequalities such as these being proscribed under and by the French government in France, are consequently proscribed by that government under every other government, and consequently have no existence anywhere. For the total subjection of every other government to French government, is a fundamental principle in the law of universal independence—the French law. Yet neither was this true at the time of issuing this Declaration of Rights, nor was it meant to be so afterwards. The 13th article, which we shall come to in its place, proceeds on the contrary supposition: for, considering its other attributes, inconsistency could not be wanting to the list. It can scarcely be more hostile to all other laws than it is at variance with itself.

All men (i.e. all human creatures of both sexes) *remain equal in rights*. All men, meaning doubtless all human creatures. The apprentice, then, is equal in rights to his master; he has as much liberty with relation to the master, as the master has with relation to him; he has as much right to command and to punish him; he is as much owner and master of the master's house, as the master himself. The case is the same as between ward and guardian. So again as between wife and husband. The madman has as good a right to confine anybody else, as anybody else has to confine him. The idiot has as much right to govern everybody, as anybody can have to govern him. The physician and the nurse, when called in by the next friend of a sick man seized with a delirium, have no more right to prevent his throwing himself out

of the window, than he has to throw them out of it. All this is plainly and incontestably included in this article of the Declaration of Rights: in the very words of it, and in the meaning—if it have any meaning. Was this the meaning of the authors of it?— or did they mean to admit this explanation as to some of the instances, and to explain the article away as to the rest? Not being idiots, nor lunatics, nor under a delirium, they would explain it away with regard to the madman, and the man under a delirium. Considering that a child may become an orphan as soon as it has seen the light, and that in that case, if not subject to government, it must perish, they would explain it away, I think, and contradict themselves, in the case of guardian and ward. In the case of master and apprentice, I would not take upon me to decide: it may have been their meaning to proscribe that relation altogether;—at least, this may have been the case, as soon as the repugnancy between that institution and this oracle was pointed out; for the professed object and destination of it is to be the standard of truth and falsehood, of right and wrong, in everything that relates to government. But to this standard, and to this article of it, the subjection of the apprentice to the master is flatly and diametrically repugnant. If it do not proscribe and exclude this inequality, it proscribes none: if it do not do this mischief, it does nothing. […]

Sentence 2. *Social distinctions cannot be founded but upon common utility*.

This proposition has two or three meanings. According to one of them, the proposition is notoriously false: according to another, it is in contradiction to the four propositions that preceded it in the same sentence.

What is meant by *social distinctions*? what is meant by *can*? what is meant by *founded*?

What is meant by *social distinctions*?— Distinctions not respecting equality?—then these are nothing to the purpose. Distinctions in respect of equality?—then, consistently with the preceding propositions in this same article, they can have no existence: not existing, they cannot be founded upon anything. The distinctions above exemplified, are they in the number of the social distinctions here intended? Not one of them (as we have been seeing,) but has subjection—no one of them, but has inequality for its very essence.

What is meant by *can*—can not be founded but upon common utility? Is it meant to speak of what *is* established, or of what *ought to be established*? Does it mean that no social distinctions, but those which it approves as having the foundation in question, are established anywhere? or simply that none such *ought to be* established anywhere? or that, if the establishment or maintenance of such dispositions by the laws be attempted anywhere, such laws ought to be treated as void, and the attempt to execute them to be resisted? For such is the venom that lurks under such words as *can* and *can not*, when set up as a check upon the laws,—they contain all these three so perfectly distinct and widely different meanings. In the first, the proposition they are inserted into refers to practice, and makes appeal to observation—to the observation of other men, in regard to a matter of fact: in the second, it is an appeal to the approving faculty of others, in regard to the

same matter of fact: in the third, it is no appeal to anything, or to anybody, but a violent attempt upon the liberty of speech and action on the part of others, by the terrors of anarchical despotism, rising up in opposition to the laws: it is an attempt to lift the dagger of the assassin against all individuals who presume to hold an opinion different from that of the orator or the writer, and against all governments which presume to support any such individuals in any such presumption. In the first of these imports, the proposition is perfectly harmless: but it is commonly so untrue, so glaringly untrue, so palpably untrue even to drivelling, that it must be plain to everybody it can never have been the meaning that was intended.

In the second of these imports, the proposition may be true or not, as it may happen, and at any rate is equally innocent: but it is such as will not answer the purpose; for an opinion that leaves others at liberty to be of a contrary one, will never answer the purpose of the passions: and if this had been the meaning intended, not this ambiguous phraseology, but a clear and simple one, presenting this meaning and no other, would have been employed. The third, which may not improperly be termed the *ruffian-like* or threatening import, is the meaning intended to be presented to the weak and timid, while the two innocent ones, of which one may even be reasonable, are held up before it as a veil to blind the eyes of the discerning reader, and screen from him the mischief that lurks beneath.

Can and *can not*, when thus applied—*can* and *can not*, when used instead of *ought* and *ought not*—*can* and *can not*, when applied to the binding force and effect of laws—not of the acts of individuals, nor yet of the acts of subordinate authority, but of the acts of the supreme government itself, are the disguised cant of the assassin: after them there is nothing but *do him*, betwixt the preparation for murder and the attempt. They resemble that instrument which in outward appearance is but an ordinary staff, but which within that simple and innocent semblance conceals a dagger. These are the words that speak daggers—if daggers can be spoken: they speak daggers, and there remains nothing but to use them.

Look where I will, I see but too many laws, the alteration or abolition of which, would in my poor judgement be a public blessing. I can conceive some,—to put extreme and scarcely exampled cases,—to which I might be inclined to oppose resistance, with a prospect of support such as promised to be effectual. But to talk of what the law, the supreme legislature of the country, acknowledged as such, *can* not do!—to talk of a *void* law as you would of a *void* order or a *void* judgement!—The very act of bringing such words into conjunction is either the vilest of nonsense, or the worst of treasons:—treason, not against one branch of the sovereignty, but against the whole: treason, not against this or that government, but against *all* governments.

ARTICLE II

The end in view of every political association is the preservation of the natural and imprescriptible rights of man. These rights are liberty, property, security, and resistance to oppression.

Sentence 1. *The end in view of every political association, is the preservation of the natural and imprescriptible rights of man.*

More confusion—more nonsense,—and the nonsense, as usual, dangerous nonsense. The words can scarcely be said to have a meaning: but if they have, or rather if they had a meaning, these would be the propositions either asserted or implied:—

1. That there are such things as right anterior to the establishment of governments: for natural, as applied to rights, if it mean anything, is meant to stand in opposition to *legal*,—to such rights as are acknowledged to owe their existence to government, and are consequently posterior in their date to the establishment government.

2. That these rights *can not* be abrogated by government: for *can not* is implied in the form of the word imprescriptible, and the sense it wears when so applied, is the cut-throat sense above explained.

3. That the governments that exist derive their origin from formal associations, or what are now called *conventions*: associations entered into by a partnership contract, with all the members for partners,—entered into at a day prefixed, or a predetermined purpose, the formation of a new government where there was none before (for as to formal meetings holden under the controul of an existing government, they are evidently out of question here) in which it seems again to be implied in the way of inference, though a necessary and an unavoidable inference, that all governments (that is, self-called governments, knots of persons exercising the powers of government) that have had any other origin than an association of the above description, are illegal, that is, no governments at all; resistance to them, and subversion of them, lawful and commendable; and so on.

Such are the notions implied in this first part of the article. How stands the truth of things? That there are no such things as natural rights—no such things as rights anterior to the establishment of government—no such as natural rights opposed to, in contradistinction to, legal: that the expression is merely figurative; that when used, in the moment you attempt to give it a literal meaning it leads to error, and to that sort of error that leads to mischief—to the extremity of mischief.

We know what it is for men to live without government—and living without government, to live without rights: we know what it is for men to live without government, for we see instances of such a way of life—we see it in many savage nations, or rather races of mankind; for instance, among the savages of New South Wales, whose way of living is so well known to us: no habit of obedience, and thence no government—no government, and thence no laws—no laws, and thence no such things as rights—no security—no

property:—liberty, as against regular controul, the controul of laws and government—perfect; but as against all irregular controul, the mandates of stronger individuals, none. In this state, at a time earlier than the commencement of history—in this same state, judging from analogy, we, the inhabitants of the part of the globe we call Europe, were;—no government, consequently no rights: no rights, consequently no property—no legal security—no legal liberty: security not more than belongs to beasts—forecast and sense of insecurity keener—consequently in point of happiness below the level of the brutal race.

In proportion to the want of happiness resulting from the want of rights, a reason exists for wishing that there were such things as rights. But reasons for wishing there were such things as rights, are not rights;—a reason for wishing that a certain right were established, is not that right—want is not supply—hunger is not bread.

That which has no existence cannot be destroyed—that which cannot be destroyed cannot require anything to preserve it from destruction. *Natural rights* is simple nonsense: natural and imprescriptible rights, rhetorical nonsense,—nonsense upon stilts. But this rhetorical nonsense ends in the old strain of mischievous nonsense: for immediately a list of these pretended natural rights is given, and those are so expressed as to present to view legal rights. And of these rights, whatever they are, there is not, it seems, any one of which any government *can*, upon any occasion whatever, abrogate the smallest particle.

So much for terrorist language. What is the language of reason and plain sense upon this same subject? That in proportion as it is *right* or *proper*, i.e. advantageous to the society in question, that this or that right—a right to this or that effect—should be established and maintained, in that same proportion it is *wrong* that it should be abrogated: but that as there is no *right*, which ought not to be maintained so long as it is upon the whole advantageous to the society that it would be maintained so long as it is upon the whole advantageous to the society that it should be maintained, so there is no right which, when the abolition of it is advantageous to society, should not be abolished. To know whether it would be more for the advantage of society that this or that tight should be maintained or abolished, the time at which the question about maintaining or abolishing is proposed, must be given, and the circumstances under which it is proposed to maintain or abolish it; the right itself must be specifically described, not jumbled with an undistinguishable heap of others, under any such vague general terms as property, liberty, and the like.

One thing, in the midst of all this confusion, is but too plain. They know not of what they are talking under the name of natural rights, and yet they would have them imprescriptible—proof against all the power of the laws—pregnant with occasions summoning the members of the community to rise up in resistance against the laws. What, then, was their object in declaring the existence of imprescriptible rights, and without specifying a single one by any such mark as it could be known by? This and no other—to excite and

keep up a spirit of resistance to all laws—a spirit of insurrection against all governments—against the governments of all other nations instantly,—against the government of their own nation—against the government they themselves were pretending to establish—even that, as soon as their own reign should be at an end. In us is the perfection of virtue and wisdom: in all mankind besides, the extremity of wickedness and folly. Our will shall consequently reign without controul, and for ever: reign now we are living—reign after we are dead.

All nations—all future ages—shall be, for they are predestined to be, our slaves.

Future governments will not have honesty enough to be trusted with the determination of what rights shall be maintained, what abrogated—what laws kept in force, what repealed. Future subjects (I should say future citizens, for French government does not admit of subjects) will not have wit enough to be trusted with the choice whether to submit to the determination of the government of their time, or to resist it. Governments, citizens—all to the end of time—all must be kept in chains.

Such are their maxims—such their premises—for it is by such premises only that the doctrine of imprescriptible rights and unrepealable laws can be supported.

What is the real source of these imprescriptible rights—these unrepealable laws? Power turned blind by looking from its own height: self-conceit and tyranny exalted into insanity. No man was to have any other man for a servant, yet all men were forever to be their slaves. Making laws with imposture in their mouths, under pretence of declaring them—giving for laws anything that came uppermost, and these unrepealable ones, on pretence of finding them ready made. Made by what? Not by a God—they allow of none; but by their goddess, Nature.

The origination of governments from a contract is a pure fiction, or in other words, a falsehood. It never has been known to be true in any instance; the allegation of it does mischief, by involving the subject in error and confusion, and is neither necessary nor useful to any good purpose.

All governments that we have any account of have been gradually established by habit, after having been formed by force; unless in the instance of governments formed by individuals who have been emancipated, or have emancipated themselves from governments already formed, the governments under which they were born—a rare case, and from which nothing follows with regard to the rest. What signifies it how governments are formed? Is it the less proper—the less conducive to the happiness of society—that the happiness of society should be the one object kept in view by the members of the government in all their measures? Is it the less the interest of men to be happy—less to be wished that they may be so—less the moral duty of their governors to make them so, as far as they can, at Mogadore than at Philadelphia?

Whence is it, but from government, that contracts derive their binding force? Contracts came from government, not government from

contracts. It is from the habit of enforcing contracts, and seeing them enforced, that governments are chiefly indebted for whatever disposition they have to observe them.

Sentence 2. *These rights* [these imprescriptible as well as natural rights,] *are liberty, property, security, and resistance to oppression.*

Observe the extent of these pretended rights, each of them belonging to every man, and all of them without bounds. Unbounded liberty; that is, amongst other things, the liberty of doing or not doing on every occasion whatever each man pleases:—Unbounded property; that is, the right of doing with everything around him (with every *thing* at least, if not with every person,) whatsoever he pleases; communicating that right to anybody, and withholding it from anybody:—Unbounded security: that is, security for such his liberty, for such his property, and for his person, against every defalcation that can be called for on any account in respect of any of them:—Unbounded resistance to oppression; that is, unbounded exercise of the faculty of guarding himself against whatever unpleasant circumstance may present itself to his imagination or his passions under that name. Nature, say some of the interpreters of the pretended law of nature—nature gave to each man a right to everything; which is, in effect, but another way of saying—nature has given no such right to anybody; for in regard to most rights, it is as true that what is every man's right is no man's right, as that what is every man's business is no man's business. Nature gave—gave to every man a right to everything:—be it so—true; and hence the necessity of human government and human laws, to give to every man his own right, without which no right whatsoever would amount to anything. Nature gave every man a right to everything before the existence of laws, and in default of laws. This nominal universality and real nonentity of right, set up provisionally by nature in default of laws, the French oracle lays hold of, and perpetuates it under the law and in spite of laws. These anarchical rights which nature had set out with, democratic art attempts to rivet down, and declares indefeasible.

Unbounded liberty—I must still say unbounded liberty;—for though the next article but one returns to the charge, and gives such a definition of liberty as seems intended to set bounds to it, yet in effect the limitation amounts to nothing; and when, as here, no warning is given of any exception in the texture of the general rule, every exception which turns up is, not a confirmation but a contradiction of the rule:—liberty, without any pre-announced or intelligible bounds; and as to the other rights, they remain unbounded to the end: rights of man composed of a system of contradictions and impossibilities.

In vain would it be said, that though no bounds are here assigned to any of these rights, yet it is to be understood as taken for granted, and tacitly admitted and assumed, that they are to have bounds; viz. such bounds as it is understood will be set them by the laws. Vain, I say would be this apology; for the supposition would be contradictory to the express declaration of the article itself, and would defeat the very object which the whole declaration has in view. It would be self-contradictory, because these rights are, in the

same breath in which their existence is declared, declared to be imprescriptible; and imprescriptible, or, as we in England should say, indefeasible, means nothing unless it exclude the interference of the laws.

It would be not only inconsistent with itself, but inconsistent with the declared and sole object of the declaration, if it did not exclude the interference of the laws. It is against the laws themselves, and the laws only, that this declaration is levelled. It is for the hands of the legislator and all legislators, and none but legislators, that the shackles it provides are intended,—it is against the apprehended encroachments of legislators that the rights in question, the liberty and property, and so forth, are intended to be made secure,—it is to such encroachments, and damages, and dangers, that whatever security it professes to give has respect. Precious security for unbounded rights against legislators, if the extent of those rights in every direction were purposely left to depend upon the will and pleasure of those very legislators!

Nonsensical or nugatory, and in both cases mischievous: such is the alternative.

So much for all these pretended indefeasible rights in the lump: their inconsistency with each other, as well as the inconsistency of them in the character of indefeasible rights with the existence of government and all peaceable society, will appear still more plainly when we examine them one by one.

1. *Liberty*, then is imprescriptible—incapable of being taken away—out of the power of any government ever to take away: liberty,—that is, every branch of liberty—every individual exercise of liberty; for no line is drawn—no distinction—no exception made. What these instructors as well as governors of mankind appear not to know, is, that all rights are made at the expense of liberty—all laws by which rights are created or confirmed. No right without a correspondent obligation. Liberty, as against the coercion of the law, may, it is true, be given by the simple removal of the obligation by which that coercion was applied—by the simple repeal of the coercing law. But as against the coercion applicable by individual to individual, no liberty can be given to one man but in proportion as it is taken from another. All coercive laws, therefore (that is, all laws but constitutional laws, and laws repealing or modifying coercive laws,) and in particular all laws creative of liberty, are, as far as they go, abrogative of liberty. Not here and there a law only—not this or that possible law, but almost all laws, are therefore repugnant to these natural and imprescriptible rights: consequently null and void, calling for resistance and insurrection, and so on, as before.

Laws creative of rights of property are also struck at by the same anathema. How is property given? By restraining liberty; that is, by taking it away so far as is necessary for the purpose. How is your house made yours? By debarring every one else from the liberty of entering it without your leave. But

2. *Property*. Property stands second on the list,—proprietary rights are in the number of the natural and imprescriptible rights of man—of the

rights which a man is not indebted for to the laws, and which cannot be taken from him by the laws. Men—that is, every man (for a general expression given without exception is an universal one) has a right to property, to proprietary rights, *a right which* cannot be taken away from him by the laws. To proprietary rights. Good: but in relation to what subject? for as to proprietary rights—without a subject to which they are referable—without a subject in or in relation to which they can be exercised—they will hardly be of much value, they will hardly be worth taking care of, with so much solemnity. In vain would all the laws in the world have ascertained that I have a right to something. If this be all they have done for me—if there be no specific subject in relation to which my proprietary rights are established, I must either take what I want without right, or starve. As there is no such subject specified with relation to each man, or to any man (indeed how could there be?) the necessary inference (taking the passage literally) is, that every man has all manner of proprietary rights with relation to every subject of property without exception: in a word, that every man has a right to every thing. Unfortunately, in most matters of property, what is every man's right is no man's right; so that the effect of this part of the oracle, if observed, would be, not to establish property, but to extinguish it—to render it impossible ever to be revived: and this is one of the rights declared to be imprescriptible.

It will probably be acknowledged, that according to this construction, the clause in question is equally ruinous and absurd:—and hence the inference may be, that this was not the construction—this was not the meaning in view. But by the same rule, every possible construction which the words employed can admit of, might be proved not to have been the meaning in view: nor is this clause a whit more absurd or ruinous than all that goes before it, and a great deal of what comes after it. And, in short, if this be not the meaning of it, what is? Give it a sense—give it any sense whatever,—it is mischievous:—to save it from that imputation, there is but one course to take, which is to acknowledge it to be nonsense.

Thus much would be clear, if anything were clear in it, that according to this clause, whatever proprietary rights, whatever property a man once has, no matter how, being imprescriptible, can never be taken away from him by any law: or of what use or meaning is the clause? So that the moment it is acknowledged in relation to any article, that such article is my property, no matter how or when it became so, that moment it is acknowledged that it can never be taken away from me: therefore, for example, all laws and all judgements, whereby anything is taken away from me without my free consent—all taxes, for example, and all fines—are void, and, as such, call for resistance and insurrection, and so forth, as before.

3. *Security*. Security stands the third on the list of these natural and imprescriptible rights which laws did not give, and which laws are not in any degree to be suffered to take away. Under the head of security, liberty might have been included, so likewise property: since security for liberty, or the enjoyment of liberty, may be spoken of as a branch of security:—security for property, or the enjoyment of properitary rights, as another. Security for

person is the branch that seems here to have been understood:—security for each man's person, as against all those hurtful or disagreeable impressions (exclusive of those which consist in the mere disturbance of the enjoyment of liberty,) by which a man is affected in his person; loss of life —loss of limbs—loss of life the use of limbs—wounds, bruises, and the like. All laws are null and void, then, which on any account or in any manner seek to expose the person of any man to any risk—which appoint capital or other corporal punishment—which expose a man to personal hazard in the service of the military power against foreign enemies, or in that of the judicial power against delinquents:—all laws which, to preserve the country from pestilence, authorize the immediate execution of a suspected person, in the event of his transgressing certain bounds.

4. *Resistance to oppression*. Fourth and last in the list of natural and imprescriptible rights, resistance to oppression—meaning, I suppose, the right to resist oppression. What is oppression? Power misapplied to the prejudice of some individual. What is it that a man has in view when he speaks of oppression? Some exertion of power which he looks upon as misapplied to the prejudice of some individual—to the producing on the part of such individual some suffering, to which (whether as forbidden by the laws or otherwise) we conceive he ought not to have been subjected. But against everything that can come under the name of oppression, provision has been already made, in the matter we have seen, by the recognition of the three preceding rights; since no oppression can fall upon a man which is not an infringement of his rights in relation to liberty, rights in relation to property, or rights in relation to security, as above described. Where, then is the difference?—to what purpose this fourth clause after the three first? To this purpose: the mischief they seek to prevent, the rights they seek to establish, are the same; the difference lies in the nature of the remedy endeavoured to be applied. To prevent the mischief in question, the endeavour of the three former clauses is, to tie the hand of the legislator and his subordinates, by the fear of nullity, and the remote apprehension of general resistance and insurrection. The aim of this fourth clause is to raise the hand of the individual concerned to prevent the apprehended infraction of his rights at the moment when he looks upon it as about to take place.

Whenever you are about to be oppressed, you have a right to resist oppression: whenever you conceive yourself to be oppressed, conceive yourself to have a right to make resistance, and act accordingly. In proportion as a law of any kind—any act of power, supreme or subordinate, legislative, administrative, or judicial, is unpleasant to a man, especially if, in consideration of such it unpleasantness, his opinion is, that such act of power ought not to have been exercised, he of course looks upon it as oppression: as often as anything of this sort happens to a man—as often as anything happens to a man to inflame his passions,—this article, for fear his passions should not be sufficiently inflamed of themselves, sets itself to work to blow the flame, and urges him to resistance. Submit not to any decree or other act of power, of the justice of which you are not yourself perfectly convinced. If a constable

call upon you to serve in the militia, shoot the constable and not the enemy;—if the commander of a press-gang trouble you, push him into the sea—if a bailiff, throw him out of the window. If a judge sentence you to be imprisoned or put to death, have a dagger ready, and take a stroke first at the judge.

ARTICLE III

The principle of every sovereignty [government] resides essentially in the nation. No body of men—no single individual—can exercise any authority which does not expressly issue from thence.

Of the two sentences of which this article is composed, the first is perfectly true, perfectly harmless, and perfectly uninstructive. Government and obedience go hand in hand. Where there is no obedience, there is no government; in proportion as obedience is paid, the powers of government are exercised. This is true under the broadest democracy: this is equally true under the most absolute monarchy. This can do no harm - can do no good, anywhere. I speak of its natural and obvious import taken by itself, and supposing the import of the world principle to be clear and unambiguous, as it is to be wished that it were, that is, taking it to mean *efficient cause*. Of power on the one part, obedience on the other is most certainly everywhere the efficient cause.

But being harmless, it would not answer the purpose, as delivered by the immediately succeeding sentence: being harmless, this meaning is not that which was in view. It is meant as an antecedent proposition, on which the next proposition is grounded in the character of a consequent. No body of men, no individual, can exercise any authority which does not issue from the nation in an express manner. *Can*—still the ambiguous and envenomed *can*. What cannot they in point of fact? Cannot they exercise authority over other people, if and so long as other people submit to it? This cannot be their meaning: this cannot be the meaning, not because it is an untrue and foolish one, but because it contributes nothing to the declared purpose. The meaning must be here, as elsewhere, that of every authority not issuing from the nation in an express manner, every act is void: consequently ought to be treated as such—resisted, risen up against, and overthrown. Issuing from the nation in an express manner, is having been conferred by the nation, by a formal act, in the exercise of which the nation, i.e. the whole nation, joined.

An authority issues from the nation in one sense, in the ordinary implied manner, which the nation submits to the exercise of, having been in the habit of submitting to it, every man as long as he can remember, or to some superior authority from which it is derived. But this meaning it was the evident design of the article to put a negative upon; for it would not have answered the disorganizing purpose, all along apparent, and more than once avowed. It is accordingly for the purpose of putting a negative upon it, that the word *expressément—in an express way or manner*—is subjoined. Every authority is usurped and void, to which a man has been appointed in any other mode than that of popular election; and popular election made by the nation—

that is, the whole nation (for no distinction or division is intimated,) in each case.

And this is expressly declared to be the case, not only in France, under the government of France, but *everywhere*, and under every government whatsoever. Consequently, all the acts in every government in Europe, for example, are void, excepted, perhaps, or rather not excepted, two or three of the Swiss Cantons;—the persons exercising the powers of government in these countries, usurpers—resistance to them, and insurrection against them, lawful and commendable.

The French government itself not excepted:—whatever is, has been, or is to be, the government of France. Issue from *the* nation: that is, from the *whole* nation, for no part of it is excluded. Women consequently included, and children—children of every age. For if women and children are not part of the nation, what are they? Cattle? Indeed, how can a single soul be excluded, when all men—all human creatures—are, and are to be, equal in regard to rights—in regard to all sorts of rights, without exception or reserve?

ARTICLE IV

Liberty consists in being able to do that which is not hurtful to another, and therefore the exercise of the natural rights of each man has no other bounds than those which insure to the other members of the society the enjoyment of the same rights. These bounds cannot be determined but by the law.

In this article, three propositions are included: —

Proposition 1. *Liberty consists in being able to do that which is not hurtful to another.* What! in that, and nothing else? Is not the liberty of doing mischief liberty? If not, what is it? and what word is there for it in the language, or in any language by which it can be spoken of? How childish, how repugnant to the ends of language, is this perversion of language!—to attempt to confine a word in common and perpetual use, to an import to which nobody ever confined it before, or will continue to confine it! And so I am never to know whether I am at liberty or not to do or to omit doing one act, till I see whether or not there is anybody that may be hurt by it—till I see the whole extent of all its consequences? Liberty! What liberty?—as against what power? as against coercion from what source? As against coercion issuing from the law?—then to know whether the law have left me at liberty in any respect in relation to any act, I am to consult not the words of the law, but my own conception of what would be the consequences of the act. If among these consequences there be a single one by which anybody would be hurt, then, whatever the law says to me about it, I am not at liberty to do it. I am an officer of justice, appointed to superintend the execution of punishments ordered by justice:—if I am ordered to cause a thief to be whipped,—to know whether I am at liberty to cause the sentence to be executed, I must know whether whipping would hurt the thief: if it would, then I am not at liberty to whip the thief—to inflict the punishment which it is my duty to inflict.

Proposition 2. *And therefore the exercise of the natural rights of each man has no other bounds than those which insure to the other members of the society the enjoyment of those same rights.* Has no other bounds? Where is it that it has no other bounds? In what nation—under what government? If under any government, then the state of legislation under that government is in a state of absolute perfection. If there be no such government, then, by a confession necessarily implied, there is no nation upon earth in which this definition is conformable to the truth.

Proposition 3. *These bounds cannot be determined but by the law.* More contradiction, more confusion. What then?—this liberty, this right, which is one of four rights that existed before laws, and will exist in spite of all that laws can do, owes all the boundaries it has, all the extent it has, to the laws. Till you know what the laws say to it, you do not know what there is of it, nor what account to give of it: and yet it existed, and that in full force and vigour, before there were any such things as laws; and so will continue to exist, and that for ever, in spite of anything which laws can do to it. Still the same inaptitude of expressions—still the same confusion of that which it is supposed *is*, with that which it is conceived ought to be.

What says plain truth upon this subject? What is the sense most approaching to this nonsense?

The liberty which the law *ought* to allow of, and leave in existence—leave uncoerced, unremoved—is the liberty which concerns those acts only, by which, if exercised, no damage would be done to the community upon the whole; that is, either no damage at all, or none but what promises to be compensated by at least equal benefit.

Accordingly, the exercise of the rights allowed to and conferred upon each individual, ought to have no other bounds set to it by the law, than those which are necessary to enable it to maintain every other individual in the possession and exercise of such rights as it is consistent with the greatest good of the community that he should be allowed. The marking out of these bounds ought not to be left to anybody but the legislator acting as such—that is, to him or them who are acknowledged to be in possession of the sovereign power: that is, it ought not to be left to the occasional and arbitrary declaration of any individual, whatever share he may possess of subordinate authority.

The word *autrui*—another, is so loose,—making no distinction between the community and individuals,—as, according to the most natural construction, to deprive succeeding legislators of all power of repressing, by punishment or otherwise, any acts by which no individual sufferers are to be found; and to deprive them beyond a doubt of all power of affording protection to any man, woman, or child, against his or her own weakness, ignorance, or imprudence. […]

ARTICLE VI

The law is the expression of the general will. Every citizen has the right of concurring in person, or by his representatives, in the formation of it: it ought

to be the same for all, whether it protect, or whether it punish. All the citizens being equal in its eyes, are equally admissible to all dignities, public places, and employments, according to their capacity, and without any other distinction than that of their virtues and their talents.

This article is a *hodge-podge*, containing a variety of provisions, as wide from one another as any can be within the whole circuit of the law: some relating to the constitutional branch, some to the civil, some to the penal; and, in the constitutional department, some relating to the organization of the supreme power, others to that of the subordinate branches.

Proposition 1. *The law is the expression of the general will.* The law? What law is the expression of the general will? Where is it so? In what country?—at which period of time? In no country—at no period of time—in no other country than France—nor even in France. As to *general*, it means universal; for there are no exceptions made,—women, children, madmen, criminals—for these being human creatures, have already been declared equal in respect of rights: nature made them so; and even were it to be wished that the case were otherwise, nature's work being unalterable, and the rights unalienable, it would be to no purpose to attempt it.

What is certain is, that in any other nation at any rate, no such thing as a law ever existed to which this definition could be applied. But that is nothing to the purpose, since a favourite object of this effusion of universal benevolence, is to declare the governments of all other countries dissolved, and to persuade the people that the dissolution has taken place.

But anywhere—even in France—how can the law be the expression of the universal or even the general will of all the people, when by far the greater part have never entertained any will, or thought at all about the matter; and of those who have, a great part (as is the case with almost all laws made by a large assembly) would rather it had not taken place. [...]

CHAPTER VII

JOHN STUART MILL (1806-73)

Biographical Information

John Stuart Mill has been called the most influential philosopher of the 19th century in the English-speaking world,[1] though his genius lay more as a developer and 'synthesiser,' than as a creative thinker. Today best known for his philosophical activity, Mill was also an economist and a member of parliament – though he spent most of his professional life as an administrator working for the British East India Company (1823-58).

Mill was born in London on 20 May 1806, the eldest of three children. He was educated at home by his father, James, a friend and early disciple of Jeremy Bentham. Mill was intellectually precocious, and began to study Greek at the age of 3 and Latin at 8. His education included a study of the major Latin and Greek classics, world history, law, economics, mathematics, and the principles of the major sciences. This education and training, he was later to say, gave him the advantage of a quarter century over those of his own age.

At the age of 15 Mill read Etienne Dumont's edition of Bentham's *Treatise on Legislation*, which inspired him to become a reformer and, at the age of 19, was given Bentham's five volume *The Rationale of Judicial Evidence* to edit. But intellectual strain and the emphasis on reason in his education – and a corresponding lack of emotional and affective development (Mill wrote in [an early draft of] his *Autobiography* that he "grew up in the absence of love"[2]) – took its toll. In his *Autobiography*, Mill reports experiencing a mental crisis when he was 20. This, he later claimed, led him to reject 'Benthamism,' though it might better be seen as what led him to develop 'utilitarianism' beyond Bentham's articulation of it.

Once having broken with strict Benthamite philosophy, Mill came into contact with, and was importantly influenced by, some of the early 'social scientists,' such as Auguste Comte (1798-1857) and Claude Saint-Simon (1760-1825) – particularly by their empirical approaches to the study of politics and to their respective philosophies of history.

Mill was a prolific author, and the range of topics discussed in his work is significant. He held (like Bentham before him) that many of the social problems of late eighteenth and early nineteenth century England had their source in economic and political institutions that were resistant to change, and much of his writing was concerned with political reform—supporting, for example, suffrage for women, the removal of property requirement in voting, and humane labour laws (see *On Liberty* [1859][3], *Utilitarianism* [1861][4], and *Considerations on Representative Government* [1861]). Yet Mill wrote a number of important works in other areas of philosophy (e.g., *System of Logic* [1843]) and in literary theory (e.g., his

essay on *Coleridge* [1840]), and his discussions of inductive logic and of the nature of free will continue to be influential.

A significant figure in Mill's life – and, arguably in some of his philosophical work – was Harriet Taylor, a married woman two years his junior. Mill met her in 1830 and, though the relationship was apparently a purely intellectual one, it led him to become progressively estranged from his family and friends. It is sometimes (though, probably, incorrectly) claimed that Harriet was responsible for the quasi-socialistic character of Mill's later work in politics and political philosophy. Mill married her in 1851, two years after the death of her husband, but she died suddenly, in 1858, while they were visiting Avignon. Mill bought a house nearby, and frequently returned to France in order to be near her grave.[5]

In 1865 Mill was elected as an Independent Member of Parliament for Westminster, despite having refused to campaign, but he was defeated in the subsequent election in 1868. His later years were spent in relative isolation, and he died in 1873 in Avignon.

Method

Mill was not a systematic philosopher and he did not attempt to provide a complete and closed system of philosophical thought. He held, moreover, that there were significant differences between the sciences and the arts (in which he included morals and legislation), and that, while 'scientific' knowledge in both areas is possible, the certainty appropriate to the former could only with great difficulty be found in the latter.

Mill was influenced by Humean and Enlightenment empiricism in his moral theory. For example, experience is seen as the final judge in matters of morals and legislation. This is particularly evident in Mill's view that, in the event of uncertainty, in evaluating the value or the importance of a particular pleasure, the assessment is to be left to those who have experience of a wide range of pleasures – those to whom Mill refers, in *Utilitarianism*, as the 'judges.' A second example of this empiricism can be seen in Mill's view that—as Hume had held before him – it was not possible to infer an 'ought' from an 'is' – that there is a real and important distinction between facts and values. This conclusion is evident in *Utilitarianism*, where Mill recognises that, even if individuals *tend* to pursue the general interest, this was not sufficient to establish that they *ought to pursue* that interest.

Nevertheless, unlike many of his empiricist predecessors, Mill studiously avoided scepticism, and emphasised the value of inductive logic in coming to understand human behaviour and in making sense of human history. The principles outlining inductive method as well as the theory of human nature to which it was applied, are presented in his *System of Logic*.

Human Nature

Mill's account of human nature is of particular importance to his ethical and political thought. Mill subscribed to a version of psychological associationism – the view that consciousness itself can be explained by understanding the relations among mental states (e.g., perceptions, ideas) in terms of laws governing the association of ideas. This 'associationism' was reflected in Mill's hedonism. Here he held, like Bentham, that pleasure and pain are the only things desirable as ends, and that whatever is desirable is desirable either because it is inherently pleasurable or because it is a means to pleasure.

Yet Mill can be said to have had a more subtle understanding of human behaviour than Bentham, for he saw it as not so much mechanistic as developmental. While he held that human beings – like all beings – were determined in what they do by the laws of physical nature, he also argued that there was no inconsistency between this and being held responsible for one's actions. This enabled Mill to retain a 'scientific' (specifically, deterministic) world view and yet also emphasize the importance of individual choice and individual moral development. Admittedly, Mill followed Bentham in explaining human actions by reference to pleasure and pain, though he argued that, in matters of morality, it is the 'internal sanction' – the feeling of pain subsequent upon violations of duty – rather than external sanctions of punishment that explained why people obeyed the law.

Mill also held that while social life was certainly important for human development, it was not essential to being a person.[6] Thus, he writes that "Human beings in society have no properties but those which are derived from, and which may be resolved into, the laws of the nature of individual men."[7] Like Bentham, then, Mill maintained that the human 'individual' has the same reference as the biological entity, and that individuals are the basic units of the social sphere – they are 'atoms.'[8]

On Mill's view, there is a fundamental moral equality among individuals, largely for the negative reason that there is no morally significant difference among them. As his political philosophy suggests, however, he did not have great faith in people. He notes that people are 'moderate' in inclination and intellect,[9] that they tend to be ruled by custom and by their particular likes, rather than by concern for others, and that, while there is a natural sympathy in individuals to help one another, they also have a tendency to attempt to impose their own conception of the good.[10]

Still, Mill's account of human nature was not pessimistic; for example, education would contribute to the development of the individual and help to bring the pursuit of self interest into line with the general interest. It is important to note as well that such an education was to be not only intellectual but also of the sentiments.

Ethics and Political Philosophy

Mill's ethical theory can be described as being teleological, hedonistic and empiricistic.

To begin with, it is teleological – i.e., it is concerned with consequences, rather than principle. According to Mill, an act is right or wrong because of the consequences it produces, not because of anything in the motive or in the nature of the act itself. This is not to say that Mill was indifferent to the moral significance of motive, for his work also reflects a strong influence of a 19th century 'virtue' ethic or emphasis on 'character.'

Mill's theory is also hedonistic, though one which he would characterise as a 'universal hedonism,' for he is concerned that we should always perform that act which will bring happiness to *the greatest number* of people, happiness being defined simply as 'pleasure, and the absence of pain.' Mill notes, however, that there are different kinds of pleasure, that some pleasures can be preferred to others, and that what pleasure or happiness is, is something that may be different for each person. Nevertheless, if an action is purely sacrificial and does not contribute to the general happiness, it is thereby immoral.

Finally, as noted earlier, Mill's ethics lie within the empiricist tradition. For Mill, what produces 'the greatest happiness for the greatest number' is something that we can determine through observation and experience, it is something quantifiable or measurable, and it can be calculated objectively (at least, in principle). What constitutes happiness, then, and what are the most efficient means to achieving it, are not matters that can be established simply *a priori* or through appeals to reason alone.

Mill's ethical theory was – and is – especially attractive because it emphasises the equality of all people[11]; this is particularly clear from his political views on women's suffrage[12] and on the importance of representative government. Mill insists, first, that, "As between his own happiness and that of others, utilitarianism requires him to be as strictly impartial as a disinterested and benevolent spectator."[13] Moreover, he argued, when it comes to determining what we ought to do, each person is to "count" only as "one" – therefore guaranteeing an equality of concern and respect underlying the moral calculus. In fact, Mill's views here are much more far reaching than might first appear, for he says that his theory applies to "the whole of sentient creation."[14]

One of the fundamental issues discussed in Mill's political philosophy is that of the relation of the individual to the state. Like Bentham, Mill denied that political authority rested on a natural moral law or was the result of any kind of social contract, and its legitimacy rested simply on one's power to authoritatively and efficiently command. Still, Mill had an ambivalent attitude towards government. Clearly, he believed that government had not only an important, but a necessary, role in realising the good of the community, and that this 'common good' was also an individual good. One of the central tasks of government was to ensure

(though not to provide) education and thereby help to bring together the interests of the individuals.

In general, then, law and the state should provide order, security, ensure the preservation and respect of contracts, and reflect the public good. Democratic self (i.e., representative) government was important, both as a moral training ground for individuals and as an excellent way of determining their interests. Yet Mill's theory of government includes elements that seem to be inconsistent with his moral theory. He advocated an electoral process of proportional representation (to ensure that minority interests would not go unheard in government decision making) and supported the notion of 'plural voting', where better educated citizens would have more of a voice in elections.[15] Moreover, Mill recognised that there were several dangers with government which, he thought, could easily become a tyranny of the majority. He was sympathetic to putting restrictions on state action, and this – together with his defense of the value of the individual – has led some to see him as providing a case for pluralism.

As noted earlier, Mill rejects the view that it is useful or valuable to have a theory or mechanism (such as an account of a state of nature and a social contract) by which we can determine the legitimacy of a state. Social life, Mill holds, is something natural and habitual, and it is reinforced by our desires for the benefits of peace and order (see *Utilitarianism*, Ch 3). Mill adopts Austin's view that sovereignty is held by that being who can effectively wield power in a state. Still, this does not mean that one may not ask whether a ruler or a state is morally good. Here, presumably, Mill would say that this could be determined by an appeal to the principle of utility.

There has been a good deal of debate about the relation between Mill's moral philosophy and his political philosophy – this has largely concerned the compatibility of arguments made in *On Liberty* with those made in *Utilitarianism*. While Mill himself apparently regarded the two texts as consistent, some have argued that the defense of individual freedom and the limits imposed on the state in *On Liberty* can stand only if the arguments given in support are more than utilitarian ones.

Utilitarianism

In *Utilitarianism*, Mill provides a statement of 'the standard of right action' – that is, what makes right acts 'right'. Following Bentham, he called this standard, "utility" or 'the greatest happiness principle.' Mill did not use 'utility' as an explanatory principle of human behaviour, however, but simply as a term appropriate to morality. For Mill, the moral standard was that 'actions are right in proportion as they tend to promote happiness, wrong as they tend to promote the reverse of happiness'; appeals to a moral instinct, a moral sense, or intuition are, he said, inadequate or confused. In fact, as Bentham before him, Mill says that whatever steadiness or

consistency moral beliefs have attained has been mainly due to the tacit recognition and influence of utility as a standard.

While the basis for Mill's theory is hedonistic, he recognises that one can distinguish pleasures qualitatively – that there is a qualitative distinction between physical pleasures and mental pleasures – and, like Bentham, distinguishes his view from other hedonistic views by emphasising that the standard of 'happiness' is not the agent's own but the greatest amount of happiness altogether. The (moral) desire to work for the general happiness was not innate – though Mill does recognise that there is a natural sympathy for others, and that this sympathy is something that could, and should, be reinforced by education. The recognition of the identity of interests of all human persons is, however, not automatic and, as we have seen, by itself could not entail a moral obligation.

Why ought one to follow the principle of utility and pursue the greatest happiness? Mill writes that questions of ultimate ends are not amenable to direct proof. Nevertheless, he argues that this 'greatest happiness' criterion for morality is something for which one can provide at least an 'indirect' proof – and it is for this reason that we can know that it is morally obligatory. Mill argues that, just as the individual happiness is the good and desired by individual persons, so the general happiness is the good and is desired by the aggregate of person. Many critics have, however, challenged the validity of Mill's argument here.

The final chapter of *Utilitarianism* is, perhaps, rather striking, for it is here that Mill 'rehabilitates' the notion of justice, dismissed by Bentham as a 'fiction,' and associates it with the notion of 'right.' This emphasis on justice as being "a name for certain classes of moral rules"[16] and on the legitimacy of the term 'right', has led some to describe Mill as a 'rule utilitarian' – i.e., one who holds that we are called to obey those *moral principles or rules* that produce the greatest happiness. (This, it is argued, is distinct from the general utilitarian position that we should do those *acts* which maximise the general happiness – 'act utilitarianism.') Mill, however, does not make such a distinction explicitly himself.

On Liberty

On Liberty is largely a polemical work, though it raises issues (e.g., the value of pluralism and the limits of tolerance) that are still debated.

Mill writes that the central purpose of *On Liberty* is to defend the principle that the only legitimate justification for interfering in an individual's life is to prevent harm to others,[17] and this work has become known for its impassioned defence of individual liberty and human rights.

Here, Mill speaks of 'liberty' as "doing what one desires"[18] or as "pursuing our own good in our own way,"[19] understanding that individuals themselves (best) determine their own good.[20] In this respect, his definition of freedom closely resembles that of Hobbes. There are, however, some important differences between Mill's conception of liberty and that of

Hobbes – and even that of Bentham. Mill maintained that certain objective conditions had to be met if a moral claim to liberty is to succeed. Thus, Richard Bellamy argues that Mill's notion of freedom is related to the notion of autonomy (which has a rational dimension) and is not just (as in Bentham) the absence of constraints.[21] Again, like Hobbes, the liberty that Mill is interested in defending in this work is primarily 'negative' – the freedom from interference – and Mill is often considered to be a liberal individualist. Yet Mill did not draw on Hobbesian axioms to make this claim for, like Bentham, he argued that it made no sense to speak of a state of nature or a social contract. While he did allow that there was both 'natural' liberty and 'political' liberty, the existence of the former did not provide a reason for the latter.

For there to be genuine 'political liberty,' Mill maintained, there must exist a "region of human liberty"[22] within social life wherein one would be able to do as he or she chooses. This 'region of liberty' is "all that portion of a person's life and conduct which affects only himself or, if it also affects others, only with their free, voluntary, and undeceived consent and participation."[23] Here, in that "part which merely concerns himself, his independence is, of right, absolute. Over himself, over his own body and mind, the individual is sovereign."[24]

(It is important to recognise that 'being at liberty' to engage in some activity, however, is not identical to 'having a right' to do it. To have a right to something would, presumably, mean having a title to it; whereas to have a liberty simply means that no one else should interfere in one's acquiring it.)

The spheres of action where one's activities and their consequences are 'self-regarding' is to be distinguished from that sphere where they are 'other regarding.' 'Self-regarding' activities include the possession and exercise of a liberty of conscience and expression, the liberty to pursue our own good in our own way, and freedom of association. The only legitimate limits on liberty are to prevent or punish the violation of "a distinct and assignable obligation to any other person,"[25] a definite damage or risk of damage to another,[26] and to ensure that one bears one's share of the 'burdens of society.'[27] More extensive limits than these, Mill fears, would be liable to abuse by the state.

The 'liberty' that Mill defends, then, is a 'freedom from' the penalties of the law, from moral censure and, in general, from social and legal control or sanctions. He certainly recognises that law and government are necessary to social life in general and to the individual in particular. To the extent that they advance and protect economic and personal goods, and that, so far as what government there is, is self-government, law and government are justified. Nevertheless, Mill imposes three conditions on state action – which are, first, that the state must recognise that often what is 'to be done is likely to be better done by individuals than by the government,' second, that even where this will not be done well, the 'liberation' of the resources of character and intelligence that will follow in such a case is more

important than efficiency, and, finally, that the concentration of power in government is a 'great evil.'[28] Many have argued that the emphasis on the value of the individual here far exceeds anything that could plausibly be justified on purely utilitarian grounds.

Despite the 'positive' role of the state, Mill maintains that it is only so far as control by law and government is limited that the individual is free. Mill seems to hold, then, that law is a *prima facie* evil – for, he writes, "[a]ll restraint, *qua* restraint, is an evil,"[29] and he shares Bentham's opinion that law, even though necessary to social order, is still a "restriction on the natural liberty of mankind."[30]

As noted earlier, Mill's views in *On Liberty* have sometimes been seen to be at odds with his utilitarian ethical theory. Unlike other texts – such as his *Principles of Political Economy*[31], where he favours an interventionist attitude in law –, here Mill presents a rather dark view of the activity of the community and of the state, suggesting that throughout history they not only have been, but are, forces largely opposed to the well-being of the individual. Moreover, although Mill explicitly states that his defence of individual liberty is based on "utility"[32] – i.e., "utility in the large sense, grounded on the permanent interests of man as a progressive being"[33] – and that, by it "mankind are greater gainers,"[34] he does not, however, unequivocally explain why such liberty is justified. He says that the justification for it is that it serves to allow individual character to develop, but at times he also suggests that, in the end, it is largely because 'there is no good reason against it.' In light of this, and given Mill's defense of not only individuality but idiosyncrasy, some have claimed that his arguments in favour of political liberty might be seen as based on a 'natural' right after all.

Problems and Questions to be Addressed

In the selections that follow, Mill provides a definition of rights, a statement of the 'region of liberty' of the individual, and relates these to such diverse principles as 'self development,' 'justice,' and 'the principle of utility.' In order to provide some structure to Mill's view, it will be useful for the reader to keep the following questions in mind.

1. What, in general, is Mill's definition of a 'right'?
2. What are the different kinds of rights that Mill discusses? What is the relation between them? Are these rights 'positive' or are they simply 'negative'?
3. What is the relation between 'rights' and 'liberties'? Of 'rights' to other values, such as equality?
4. What are 'moral rights'?
5. What is the *basis* of these rights and/or liberties? What is the relation of rights to utility?
6. Who can legitimately claim or have access to these rights and/or

liberties?

7. What does Mill's account (particularly in *On Liberty*) suggest about the nature of individuality?
8. What are the limits on one's claims to justice? On rights?
9. What might Mill mean by 'harm to others'? Is it possible to distinguish 'affecting' others from 'affecting others' interests'?
10. What arguments could one make for seeing justice and rights as constituting utilitarian-justified moral rules?
11. What are the limits on the state? Why are these the limits?
12. Is Mill's view in *On Liberty* inconsistent? Is there an inconsistency between this work and *Utilitarianism?* - e.g., over telling others what to do for our own good?
13. How well does Mill incorporate rights into utilitarianism?

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NOTES

[1] Jerome B. Schneewind, "John Stuart Mill," *Encylopedia of Philosophy*, ed. Paul Edwards (New York: Macmillan & Free Press, 1967) Vol. 5, pp. 314-323.

[2] See Jack Stillinger, ed. *The Early Draft of John Stuart Mill's Autobiography* (Urbana: University of Illinois Press, 1961), p. 184.

[3] *On Liberty*, in *Collected Works of John Stuart Mill*, Vol. 18, *Essays on Politics and Society*, ed. J.M. Robson (Toronto: University of Toronto Press, 1977), pp. 213-310.

[4] *Utilitarianism*, in *Collected Works of John Stuart Mill*, Vol. 10, *Essays on Ethics, Religion and Society*, ed. J.M. Robson (Toronto: University of Toronto Press, 1969), pp 203-259.

[5] The account of Mill's life given here is indebted to that found in Leslie Stephen, *The English Utilitarians*, 3 vols. (London: Duckworth, 1900).

[6] Ellen Wood, for example, argues that this can be seen in Mill's 'associationist,' rather than dialectical, epistemology. See her *Mind and Politics: An Approach to the Meaning of Liberal and Socialist Individualism*, Berkeley: University of California Press, 1972, p. 13 (quoting R. Amschutz, *The Philosophy of J.S. Mill*, Oxford: Clarendon Press, 1953, pp. 179-180), p. 42, note 41, pp. 51 and 109-110. Martin Hollis also draws attention to the relation between Mill's epistemology and his atomistic individualism, in "J.S. Mill's Political Philosophy of Mind," in *Philosophy*, 47 (1972): 334-347, esp. pp. 336, 340.

[7] *System of Logic*, Bk. VI, Ch. 7, sec. 1, in *Collected Works*, Vol. 8, p. 879. This aspect of Mill's 'philosophical anthropology' is discussed in a number of articles, e.g., Frank Thilly, "The Individualism of John Stuart Mill," in *The Philosophical Review*, XXXII (1923): 1-17, p. 5, and Graeme Duncan and John Gray, "The Left Against Mill," in *New Essays on John Stuart Mill and Utilitarianism*, Eds. Wesley E. Cooper, Kai Nielsen and Steven C. Patten, Guelph: Canadian Association for Publishing in Philosophy, 1979 (*Canadian Journal of Philosophy*, Supplementary Volume V), pp. 203-230, p. 216.

[8] See Duncan and Gray, *op. cit.*, p. 209.

[9] *On Liberty*, p. 271.

[10] *On Liberty*, p. 227.

[11] See *On Liberty*, p. 301.

[12] *The Subjection of Women*, in *Collected Works of John Stuart Mill*, Vol. 21, *Essays on Equality, Law and Education*, ed. J.M. Robson (Toronto: University of Toronto Press, 1984), pp. 259-340.

[13] *Utilitarianism*, p. 218.

[14] *Utilitarianism*, p. 214.

[15] See Mill's *Considerations on Representative Government*, Ch. 8, in *Collected Works*, Vol. 19, p. 474.

[16] *Utilitarianism*, p. 255.

[17] *On Liberty*, p. 223.

[18] *On Liberty*, p. 294.

[19] *On Liberty*, p. 226.

[20] *On Liberty*, p. 277.

[21] See Richard Bellamy, "T.H. Green, J.S. Mill, and Isaiah Berlin on the Nature of Liberty and Liberalism," in *Jurisprudence: Cambridge Essays*, ed. H. Gross and R. Harrison (Oxford: Clarendon Press, 1992), pp. 257-285.

[22] *On Liberty*, p. 225.

[23] *On Liberty*, p. 225.

[24] *On Liberty*, p. 224.

[25] *On Liberty*, p. 281

[26] *On Liberty*, p. 299.

[27] *On Liberty*, p. 276.

[28] *On Liberty*, pp. 305-7.

[29] *On Liberty*, p. 293.

[30] *Utilitarianism*, p. 242.

[31] First edition 1848; 7th edition, 1871. In Vols. II-III, *Collected Works*. This aspect is obvious in Book V, Ch. I and Ch. XI, sec. 16, pp. 970-971. Note also Mill’s favorable attitude towards socialism in Bk. II, Ch. 1, sec. 4.

[32] *On Liberty*, p. 224; *Utilitarianism*, p. 250.

[33] *On Liberty*, p. 224.

[34] *On Liberty*, p. 226, Mill writes that it is necessary to develop an intellectually active (p. 243) and wise (p. 232) people (see also pp. 246, 261, 266), as well as individual genius (p. 267).

On Liberty (1859)

CHAPTER I: INTRODUCTORY

THE subject of this Essay is not the so-called Liberty of the Will, so unfortunately opposed to the misnamed doctrine of Philosophical Necessity; but Civil, or Social Liberty: the nature and limits of the power which can be legitimately exercised by society over the individual. A question seldom stated, and hardly ever discussed, in general terms, but which profoundly influences the practical controversies of the age by its latent presence, and is likely soon to make itself recognized as the vital question of the future. It is so far from being new, that, in a certain sense, it has divided mankind, almost from the remotest ages, but in the stage of progress into which the more civilized portions of the species have now entered, it presents itself under new conditions, and requires a different and more fundamental treatment.

The struggle between Liberty and Authority is the most conspicuous feature in the portions of history with which we are earliest familiar, particularly in that of Greece, Rome, and England. But in old times this contest was between subjects, or some classes of subjects, and the government. By liberty, was meant protection against the tyranny of the political rulers. The rulers were conceived (except in some of the popular governments of Greece) as in a necessarily antagonistic position to the people whom they ruled. They consisted of a governing One, or a governing tribe or caste, who derived their authority from inheritance or conquest; who, at all events, did not hold it at the pleasure of the governed, and whose supremacy men did not venture, perhaps did not desire, to contest, whatever precautions might be taken against its oppressive exercise. Their power was regarded as necessary, but also as highly dangerous; as a weapon which they would attempt to use against their subjects, no less than against external enemies. To prevent the weaker members of the community from being preyed upon by innumerable vultures, it was needful that there should be an animal of prey stronger than the rest, commissioned to keep them down. But as the king of the vultures would be no less bent upon preying upon the flock than any of the minor harpies, it was indispensable to be in a perpetual attitude of defence against his beak and claws. The aim, therefore, of patriots, was to set limits to the power which the ruler should be suffered to exercise over the community; and this limitation was what they meant by liberty. It was attempted in two ways. First, by obtaining a recognition of certain immunities, called political liberties or rights, which it was to be regarded as a breach of duty in the ruler to infringe, and which, if he did infringe, specific resistance, or general rebellion, was held to be justifiable. A second, and generally a later expedient, was the establishment of constitutional checks; by which the consent of the community, or of a body of some sort supposed to represent its interests, was made a necessary

condition to some of the more important acts of the governing power. To the first of these modes of limitation, the ruling power, in most European countries, was compelled, more or less, to submit. It was not so with the second; and to attain this, or when already in some degree possessed, to attain it more completely, became everywhere the principal object of the lovers of liberty. And so long as mankind were content to combat one enemy by another, and to be ruled by a master, on condition of being guaranteed more or less efficaciously against his tyranny, they did not carry their aspirations beyond this point.

A time, however, came in the progress of human affairs, when men ceased to think it a necessity of nature that their governors should be an independent power, opposed in interest to themselves. It appeared to them much better that the various magistrates of the State should be their tenants or delegates, revocable at their pleasure. In that way alone, it seemed, could they have complete security that the powers of government would never be abused to their disadvantage. By degrees, this new demand for elective and temporary rulers became the prominent object of the exertions of the popular party, wherever any such party existed; and superseded, to a considerable extent, the previous efforts to limit the power of rulers. As the struggle proceeded for making the ruling power emanate from the periodical choice of the ruled, some persons began to think that too much importance had been attached to the limitation of the power itself. *That* (it might seem) was a resource against rulers whose interests were habitually opposed to those of the people. What was now wanted was, that the rulers should be identified with the people; that their interest and will should be the interest and will of the nation. The nation did not need to be protected against its own will. There was no fear of its tyrannizing over itself. Let the rulers be effectually responsible to it, promptly removable by it, and it could afford to trust them with power of which it could itself dictate the use to be made. Their power was but the nation's own power, concentrated, and in a form convenient for exercise. This mode of thought, or rather perhaps of feeling, was common among the last generation of European liberalism, in the Continental section of which, it still apparently predominates. Those who admit any limit to what a government may do, except in the case of such governments as they think ought not to exist, stand out as brilliant exceptions among the political thinkers of the Continent. A similar tone of sentiment might by this time have been prevalent in our own country, if the circumstances which for a time encouraged it had continued unaltered.

But, in political and philosophical theories, as well as in persons, success discloses faults and infirmities which failure might have concealed from observation. The notion, that the people have no need to limit their power over themselves, might seem axiomatic, when popular government was a thing only dreamed about, or read of as having existed at some distant period of the past. Neither was that notion necessarily disturbed by such temporary aberrations as those of the French Revolution, the worst of which were the work of an usurping few, and which, in any case, belonged, not to

the permanent working of popular institutions, but to a sudden and convulsive outbreak against monarchical and aristocratic despotism. In time, however, a democratic republic came to occupy a large portion of the earth's surface, and made itself felt as one of the most powerful members of the community of nations; and elective and responsible government became subject to the observations and criticisms which wait upon a great existing fact. It was now perceived that such phrases as "self-government," and "the power of the people over themselves," do not express the true state of the case. The “people” who exercise the power, are not always the same people with those over whom it is exercised, and the “self-government” spoken of, is not the government of each by himself, but of each by all the rest. The will of the people, moreover, practically means, the will of the most numerous or the most active *part* of the people; the majority, or those who succeed in making themselves accepted as the majority; the people, consequently, may desire to oppress a part of their number; and precautions are as much needed against this, as against any other abuse of power. The limitation, therefore, of the power of government over individuals, loses none of its importance when the holders of power are regularly accountable to the community, that is, to the strongest party therein. This view of things, recommending itself equally to the intelligence of thinkers and to the inclination of those important classes in European society to whose real or supposed interests democracy is adverse, has had no difficulty in establishing itself; and in political speculations “the tyranny of the majority” is now generally included among the evils against which society requires to be on its guard.

Like other tyrannies, the tyranny of the majority was at first, and is still vulgarly, held in dread, chiefly as operating through the acts of the public authorities. But reflecting persons perceived that when society is itself the tyrant – society collectively, over the separate individuals who compose it – its means of tyrannizing are not restricted to the acts which it may do by the hands of its political functionaries. Society can and does execute its own mandates: and if it issues wrong mandates instead of right, or any mandates at all in things with which it ought not to meddle, it practises a social tyranny more formidable than many kinds of political oppression, since, though not usually upheld by such extreme penalties, it leaves fewer means of escape, penetrating much more deeply into the details of life, and enslaving the soul itself. Protection, therefore, against the tyranny of the magistrate is not enough; there needs protection also against the tyranny of the prevailing opinion and feeling; against the tendency of society to impose, by other means than civil penalties, its own ideas and practices as rules of conduct on those who dissent from them; to fetter the development, and, if possible, prevent the formation, of any individuality not in harmony with its ways, and compel all characters to fashion themselves upon the model of its own. There is a limit to the legitimate interference of collective opinion with individual independence; and to find

that limit, and maintain it against encroachment, is as indispensable to a good condition of human affairs, as protection against political despotism.

But though this proposition is not likely to be contested in general terms, the practical question, where to place the limit – how to make the fitting adjustment between individual independence and social control – is a subject on which nearly everything remains to be done. All that makes existence valuable to any one, depends on the enforcement of restraints upon the actions of other people. Some rules of conduct, therefore, must be imposed, by law in the first place, and by opinion on many things which are not fit subjects for the operation of law. What these rules should be, is the principal question in human affairs; but if we except a few of the most obvious cases, it is one of those which least progress has been made in resolving. No two ages, and scarcely any two countries, have decided it alike; and the decision of one age or country is a wonder to another. Yet the people of any given age and country no more suspect any difficulty in it, than if it were a subject on which mankind had always been agreed. The rules which obtain among themselves appear to them self-evident and self-justifying. This all but universal illusion is one of the examples of the magical influence of custom, which is not only, as the proverb says a second nature, but is continually mistaken for the first. The effect of custom, in preventing any misgiving respecting the rules of conduct which mankind impose on one another, is all the more complete because the subject is one on which it is not generally considered necessary that reasons should be given, either by one person to others, or by each to himself. People are accustomed to believe and have been encouraged in the belief by some who aspire to the character of philosophers, that their feelings, on subjects of this nature, are better than reasons, and render reasons unnecessary. The practical principle which guides them to their opinions on the regulation of human conduct, is the feeling in each person's mind that everybody should be required to act as he, and those with whom he sympathizes, would like them to act. No one, indeed, acknowledges to himself that his standard of judgment is his own liking; but an opinion on a point of conduct, not supported by reasons, can only count as one person's preference; and if the reasons, when given, are a mere appeal to a similar preference felt by other people, it is still only many people's liking instead of one. To an ordinary man, however, his own preference, thus supported, is not only a perfectly satisfactory reason, but the only one he generally has for any of his notions of morality, taste, or propriety, which are not expressly written in his religious creed; and his chief guide in the interpretation even of that. Men's opinions, accordingly, on what is laudable or blamable, are affected by all the multifarious causes which influence their wishes in regard to the conduct of others, and which are as numerous as those which determine their wishes on any other subject. Sometimes their reason – at other times their prejudices or superstitions: often their social affections, not seldom their antisocial ones, their envy or jealousy, their arrogance or contemptuousness: but most commonly, their desires or fears for themselves

– their legitimate or illegitimate self-interest. Wherever there is an ascendant class, a large portion of the morality of the country emanates from its class interests, and its feelings of class superiority. The morality between Spartans and Helots, between planters and negroes, between princes and subjects, between nobles and roturiers, between men and women, has been for the most part the creation of these class interests and feelings: and the sentiments thus generated, react in turn upon the moral feelings of the members of the ascendant class, in their relations among themselves. Where, on the other hand, a class, formerly ascendant, has lost its ascendency, or where its ascendency is unpopular, the prevailing moral sentiments frequently bear the impress of an impatient dislike of superiority. Another grand determining principle of the rules of conduct, both in act and forbearance which have been enforced by law or opinion, has been the servility of mankind towards the supposed preferences or aversions of their temporal masters, or of their gods. This servility though essentially selfish, is not hypocrisy; it gives rise to perfectly genuine sentiments of abhorrence; it made men burn magicians and heretics. Among so many baser influences, the general and obvious interests of society have of course had a share, and a large one, in the direction of the moral sentiments: less, however, as a matter of reason, and on their own account, than as a consequence of the sympathies and antipathies which grew out of them: and sympathies and antipathies which had little or nothing to do with the interests of society, have made themselves felt in the establishment of moralities with quite as great force.

The likings and dislikings of society, or of some powerful portion of it, are thus the main thing which has practically determined the rules laid down for general observance, under the penalties of law or opinion. And in general, those who have been in advance of society in thought and feeling, have left this condition of things unassailed in principle, however they may have come into conflict with it in some of its details. They have occupied themselves rather in inquiring what things society ought to like or dislike, than in questioning whether its likings or dislikings should be a law to individuals. They preferred endeavouring to alter the feelings of mankind on the particular points on which they were themselves heretical, rather than make common cause in defence of freedom, with heretics generally. The only case in which the higher ground has been taken on principle and maintained with consistency, by any but an individual here and there, is that of religious belief: a case instructive in many ways, and not least so as forming a most striking instance of the fallibility of what is called the moral sense: for the *odium theologicum*, in a sincere bigot, is one of the most unequivocal cases of moral feeling. Those who first broke the yoke of what called itself the Universal Church, were in general as little willing to permit difference of religious opinion as that church itself. But when the heat of the conflict was over, without giving a complete victory to any party, and each church or sect was reduced to limit its hopes to retaining possession of the ground it already occupied; minorities, seeing that they had no chance of

becoming majorities, were under the necessity of pleading to those whom they could not convert, for permission to differ. It is accordingly on this battle-field, almost solely, that the rights of the individual against society have been asserted on broad grounds of principle, and the claim of society to exercise authority over dissentients openly controverted. The great writers to whom the world owes what religious liberty it possesses, have mostly asserted freedom of conscience as an indefeasible right, and denied absolutely that a human being is accountable to others for his religious belief. Yet so natural to mankind is intolerance in whatever they really care about, that religious freedom has hardly anywhere been practically realized, except where religious indifference, which dislikes to have its peace disturbed by theological quarrels, has added its weight to the scale. In the minds of almost all religious persons, even in the most tolerant countries, the duty of toleration is admitted with tacit reserves. One person will bear with dissent in matters of church government, but not of dogma; another can tolerate everybody, short of a Papist or an Unitarian; another, every one who believes in revealed religion; a few extend their charity a little further, but stop at the belief in a God and in a future state. Wherever the sentiment of the majority is still genuine and intense, it is found to have abated little of its claim to be obeyed.

In England, from the peculiar circumstances of our political history, though the yoke of opinion is perhaps heavier, that of law is lighter, than in most other countries of Europe; and there is considerable jealousy of direct interference, by the legislative or the executive power with private conduct; not so much from any just regard for the independence of the individual, as from the still subsisting habit of looking on the government as representing an opposite interest to the public. The majority have not yet learnt to feel the power of the government their power, or its opinions their opinions. When they do so, individual liberty will probably be as much exposed to invasion from the government, as it already is from public opinion. But, as yet, there is a considerable amount of feeling ready to be called forth against any attempt of the law to control individuals in things in which they have not hitherto been accustomed to be controlled by it; and this with very little discrimination as to whether the matter is, or is not, within the legitimate sphere of legal control; insomuch that the feeling, highly salutary on the whole, is perhaps quite as often misplaced as well grounded in the particular instances of its application.

There is, in fact, no recognized principle by which the propriety or impropriety of government interference is customarily tested. People decide according to their personal preferences. Some, whenever they see any good to be done, or evil to be remedied, would willingly instigate the government to undertake the business; while others prefer to bear almost any amount of social evil, rather than add one to the departments of human interests amenable to governmental control. And men range themselves on one or the other side in any particular case, according to this general direction of their sentiments; or according to the degree of interest which they feel in the

particular thing which it is proposed that the government should do; or according to the belief they entertain that the government would, or would not, do it in the manner they prefer; but very rarely on account of any opinion to which they consistently adhere, as to what things are fit to be done by a government. And it seems to me that, in consequence of this absence of rule or principle, one side is at present as often wrong as the other; the interference of government is, with about equal frequency, improperly invoked and improperly condemned.

The object of this Essay is to assert one very simple principle, as entitled to govern absolutely the dealings of society with the individual in the way of compulsion and control, whether the means used be physical force in the form of legal penalties, or the moral coercion of public opinion. That principle is, that the sole end for which mankind are warranted, individually or collectively in interfering with the liberty of action of any of their number, is self-protection. That the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant. He cannot rightfully be compelled to do or forbear because it will be better for him to do so, because it will make him happier, because, in the opinions of others, to do so would be wise, or even right. These are good reasons for remonstrating with him, or reasoning with him, or persuading him, or entreating him, but not for compelling him, or visiting him with any evil, in case he do otherwise. To justify that, the conduct from which it is desired to deter him must be calculated to produce evil to some one else. The only part of the conduct of any one, for which he is amenable to society, is that which concerns others. In the part which merely concerns himself, his independence is, of right, absolute. Over himself, over his own body and mind, the individual is sovereign.

It is, perhaps, hardly necessary to say that this doctrine is meant to apply only to human beings in the maturity of their faculties. We are not speaking of children, or of young persons below the age which the law may fix as that of manhood or womanhood. Those who are still in a state to require being taken care of by others, must be protected against their own actions as well as against external injury. For the same reason, we may leave out of consideration those backward states of society in which the race itself may be considered as in its nonage. The early difficulties in the way of spontaneous progress are so great, that there is seldom any choice of means for overcoming them; and a ruler full of the spirit of improvement is warranted in the use of any expedients that will attain an end, perhaps otherwise unattainable. Despotism is a legitimate mode of government in dealing with barbarians, provided the end be their improvement, and the means justified by actually effecting that end. Liberty, as a principle, has no application to any state of things anterior to the time when mankind have become capable of being improved by free and equal discussion. Until then, there is nothing for them but implicit obedience to an Akbar or a Charlemagne, if they are so fortunate as to find one. But as soon as mankind

have attained the capacity of being guided to their own improvement by conviction or persuasion (a period long since reached in all nations with whom we need here concern ourselves), compulsion, either in the direct form or in that of pains and penalties for non-compliance, is no longer admissible as a means to their own good, and justifiable only for the security of others.

It is proper to state that I forego any advantage which could be derived to my argument from the idea of abstract right as a thing independent of utility. I regard utility as the ultimate appeal on all ethical questions; but it must be utility in the largest sense, grounded on the permanent interests of man as a progressive being. Those interests, I contend, authorize the subjection of individual spontaneity to external control, only in respect to those actions of each, which concern the interest of other people. If any one does an act hurtful to others, there is a *prima facie* case for punishing him, by law, or, where legal penalties are not safely applicable, by general disapprobation. There are also many positive acts for the benefit of others, which he may rightfully be compelled to perform; such as, to give evidence in a court of justice; to bear his fair share in the common defence, or in any other joint work necessary to the interest of the society of which he enjoys the protection; and to perform certain acts of individual beneficence, such as saving a fellow-creature's life, or interposing to protect the defenceless against ill-usage, things which whenever it is obviously a man's duty to do, he may rightfully be made responsible to society for not doing. A person may cause evil to others not only by his actions but by his inaction, and in neither case he is justly accountable to them for the injury. The latter case, it is true, requires a much more cautious exercise of compulsion than the former. To make any one answerable for doing evil to others, is the rule; to make him answerable for not preventing evil, is, comparatively speaking, the exception. Yet there are many cases clear enough and grave enough to justify that exception. In all things which regard the external relations of the individual, he is *de jure* amenable to those whose interests are concerned, and if need be, to society as their protector. There are often good reasons for not holding him to the responsibility; but these reasons must arise from the special expediencies of the case: either because it is a kind of case in which he is on the whole likely to act better, when left to his own discretion, than when controlled in any way in which society have it in their power to control him; or because the attempt to exercise control would produce other evils, greater than those which it would prevent. When such reasons as these preclude the enforcement of responsibility, the conscience of the agent himself should step into the vacant judgment-seat, and protect those interests of others which have no external protection; judging himself all the more rigidly, because the case does not admit of his being made accountable to the judgment of his fellow-creatures.

But there is a sphere of action in which society, as distinguished from the individual, has, if any, only an indirect interest; comprehending all

that portion of a person's life and conduct which affects only himself, or, if it also affects others, only with their free, voluntary, and undeceived consent and participation. When I say only himself, I mean directly, and in the first instance: for whatever affects himself, may affect others through himself; and the objection which may be grounded on this contingency, will receive consideration in the sequel. This, then, is the appropriate region of human liberty. It comprises, first, the inward domain of consciousness; demanding liberty of conscience, in the most comprehensive sense; liberty of thought and feeling; absolute freedom of opinion and sentiment on all subjects, practical or speculative, scientific, moral, or theological. The liberty of expressing and publishing opinions may seem to fall under a different principle, since it belongs to that part of the conduct of an individual which concerns other people; but, being almost of as much importance as the liberty of thought itself, and resting in great part on the same reasons, is practically inseparable from it. Secondly, the principle requires liberty of tastes and pursuits; of framing the plan of our life to suit our own character; of doing as we like, subject to such consequences as may follow; without impediment from our fellow-creatures, so long as what we do does not harm them even though they should think our conduct foolish, perverse, or wrong. Thirdly, from this liberty of each individual, follows the liberty, within the same limits, of combination among individuals; freedom to unite, for any purpose not involving harm to others: the persons combining being supposed to be of full age, and not forced or deceived.

No society in which these liberties are not, on the whole, respected, is free, whatever may be its form of government; and none is completely free in which they do not exist absolute and unqualified. The only freedom which deserves the name, is that of pursuing our own good in our own way, so long as we do not attempt to deprive others of theirs, or impede their efforts to obtain it. Each is the proper guardian of his own health, whether bodily, or mental or spiritual. Mankind are greater gainers by suffering each other to live as seems good to themselves, than by compelling each to live as seems good to the rest.

Though this doctrine is anything but new, and, to some persons, may have the air of a truism, there is no doctrine which stands more directly opposed to the general tendency of existing opinion and practice. Society has expended fully as much effort in the attempt (according to its lights) to compel people to conform to its notions of personal, as of social excellence. The ancient commonwealths thought themselves entitled to practise, and the ancient philosophers countenanced, the regulation of every part of private conduct by public authority, on the ground that the State had a deep interest in the whole bodily and mental discipline of every one of its citizens, a mode of thinking which may have been admissible in small republics surrounded by powerful enemies, in constant peril of being subverted by foreign attack or internal commotion, and to which even a short interval of relaxed energy and self-command might so easily be fatal, that they could not afford to wait for the salutary permanent effects of freedom. In the

modern world, the greater size of political communities, and above all, the separation between the spiritual and temporal authority (which placed the direction of men's consciences in other hands than those which controlled their worldly affairs), prevented so great an interference by law in the details of private life; but the engines of moral repression have been wielded more strenuously against divergence from the reigning opinion in self-regarding, than even in social matters; religion, the most powerful of the elements which have entered into the formation of moral feeling, having almost always been governed either by the ambition of a hierarchy, seeking control over every department of human conduct, or by the spirit of Puritanism. And some of those modern reformers who have placed themselves in strongest opposition to the religions of the past, have been noway behind either churches or sects in their assertion of the right of spiritual domination: M. Comte, in particular, whose social system, as unfolded in his *Traité* [Système] *de Politique Positive*, aims at establishing (though by moral more than by legal appliances) a despotism of society over the individual, surpassing anything contemplated in the political ideal of the most rigid disciplinarian among the ancient philosophers.

Apart from the peculiar tenets of individual thinkers, there is also in the world at large an increasing inclination to stretch unduly the powers of society over the individual, both by the force of opinion and even by that of legislation: and as the tendency of all the changes taking place in the world is to strengthen society, and diminish the power of the individual, this encroachment is not one of the evils which tend spontaneously to disappear, but, on the contrary, to grow more and more formidable. The disposition of mankind, whether as rulers or as fellow-citizens, to impose their own opinions and inclinations as a rule of conduct on others, is so energetically supported by some of the best and by some of the worst feelings incident to human nature, that it is hardly ever kept under restraint by anything but want of power; and as the power is not declining, but growing, unless a strong barrier of moral conviction can be raised against the mischief, we must expect, in the present circumstances of the world, to see it increase.

It will be convenient for the argument, if, instead of at once entering upon the general thesis, we confine ourselves in the first instance to a single branch of it, on which the principle here stated is, if not fully, yet to a certain point, recognized by the current opinions. This one branch is the Liberty of Thought: from which it is impossible to separate the cognate liberty of speaking and of writing. Although these liberties, to some considerable amount, form part of the political morality of all countries which profess religious toleration and free institutions, the grounds, both philosophical and practical, on which they rest, are perhaps not so familiar to the general mind, nor so thoroughly appreciated by many even of the leaders of opinion, as might have been expected. Those grounds, when rightly understood, are of much wider application than to only one division of the subject, and a thorough consideration of this part of the question will be found the best introduction to the remainder. Those to whom nothing

which I am about to say will be new, may therefore, I hope, excuse me, if on a subject which for now three centuries has been so often discussed, I venture on one discussion more.

CHAPTER II: OF THE LIBERTY OF THOUGHT AND DISCUSSION

THE time, it is to be hoped, is gone by when any defence would be necessary of the "liberty of the press" as one of the securities against corrupt or tyrannical government. No argument, we may suppose, can now be needed, against permitting a legislature or an executive, not identified in interest with the people, to prescribe opinions to them, and determine what doctrines or what arguments they shall be allowed to hear. This aspect of the question, besides, has been so often and so triumphantly enforced by preceding writers, that it needs not be specially insisted on in this place. Though the law of England, on the subject of the press, is as servile to this day as it was in the time of the Tudors, there is little danger of its being actually put in force against political discussion, except during some temporary panic, when fear of insurrection drives ministers and judges from their propriety;[1] and, speaking generally, it is not, in constitutional countries, to be apprehended that the government, whether completely responsible to the people or not, will often attempt to control the expression of opinion, except when in doing so it makes itself the organ of the general intolerance of the public. Let us suppose, therefore, that the government is entirely at one with the people, and never thinks of exerting any power of coercion unless in agreement with what it conceives to be their voice. But I deny the right of the people to exercise such coercion, either by themselves or by their government. The power itself is illegitimate. The best government has no more title to it than the worst. It is as noxious, or more noxious, when exerted in accordance with public opinion, than when in opposition to it. If all mankind minus one, were of one opinion, and only one person were of the contrary opinion, mankind would be no more justified in silencing that one person, than he, if he had the power, would be justified in silencing mankind. Were an opinion a personal possession of no value except to the owner; if to be obstructed in the enjoyment of it were simply a private injury, it would make some difference whether the injury was inflicted only on a few persons or on many. But the peculiar evil of silencing the expression of an opinion is, that it is robbing the human race; posterity as well as the existing generation; those who dissent from the opinion, still more than those who hold it. If the opinion is right, they are deprived of the opportunity of exchanging error for truth: if wrong, they lose, what is almost as great a benefit, the clearer perception and livelier impression of truth, produced by its collision with error.

It is necessary to consider separately these two hypotheses, each of which has a distinct branch of the argument corresponding to it. We can

never be sure that the opinion we are endeavouring to stifle is a false opinion; and if we were sure, stifling it would be an evil still.

First: the opinion which it is attempted to suppress by authority may possibly be true. Those who desire to suppress it, of course deny its truth; but they are not infallible. They have no authority to decide the question for all mankind, and exclude every other person from the means of judging. To refuse a hearing to an opinion, because they are sure that it is false, is to assume that *their* certainty is the same thing as *absolute* certainty. All silencing of discussion is an assumption of infallibility. Its condemnation may be allowed to rest on this common argument, not the worse for being common.

[...]

We have now recognized the necessity to the mental well-being of mankind (on which all their other well-being depends) of freedom of opinion, and freedom of the expression of opinion, on four distinct grounds; which we will now briefly recapitulate.

First, if any opinion is compelled to silence, that opinion may, for aught we can certainly know, be true. To deny this is to assume our own infallibility.

Secondly, though the silenced opinion be an error, it may, and very commonly does, contain a portion of truth; and since the general or prevailing opinion on any object is rarely or never the whole truth, it is only by the collision of adverse opinions that the remainder of the truth has any chance of being supplied.

Thirdly, even if the received opinion be not only true, but the whole truth; unless it is suffered to be, and actually is, vigorously and earnestly contested, it will, by most of those who receive it, be held in the manner of a prejudice, with little comprehension or feeling of its rational grounds. And not only this, but, fourthly, the meaning of the doctrine itself will be in danger of being lost, or enfeebled, and deprived of its vital effect on the character and conduct: the dogma becoming a mere formal profession, inefficacious for good, but cumbering the ground, and preventing the growth of any real and heartfelt conviction, from reason or personal experience.

Before quitting the subject of freedom of opinion, it is fit to take notice of those who say, that the free expression of all opinions should be permitted, on condition that the manner be temperate, and do not pass the bounds of fair discussion. Much might be said on the impossibility of fixing where these supposed bounds are to be placed; for if the test be offence to those whose opinion is attacked, I think experience testifies that this offence is given whenever the attack is telling and powerful, and that every opponent who pushes them hard, and whom they find it difficult to answer, appears to them, if he shows any strong feeling on the subject, an intemperate opponent. But this, though an important consideration in a practical point of view, merges in a more fundamental objection. Undoubtedly the manner of asserting an opinion, even though it be a true

one, may be very objectionable, and may justly incur severe censure. But the principal offences of the kind are such as it is mostly impossible, unless by accidental self-betrayal, to bring home to conviction. The gravest of them is, to argue sophistically, to suppress facts or arguments, to misstate the elements of the case, or misrepresent the opposite opinion. But all this, even to the most aggravated degree, is so continually done in perfect good faith, by persons who are not considered, and in many other respects may not deserve to be considered, ignorant or incompetent, that it is rarely possible on adequate grounds conscientiously to stamp the misrepresentation as morally culpable; and still less could law presume to interfere with this kind of controversial misconduct. With regard to what is commonly meant by intemperate discussion, namely, invective, sarcasm, personality, and the like, the denunciation of these weapons would deserve more sympathy if it were ever proposed to interdict them equally to both sides; but it is only desired to restrain the employment of them against the prevailing opinion: against the unprevailing they may not only be used without general disapproval, but will be likely to obtain for him who uses them the praise of honest zeal and righteous indignation. Yet whatever mischief arises from their use, is greatest when they are employed against the comparatively defenceless; and whatever unfair advantage can be derived by any opinion from this mode of asserting it, accrues almost exclusively to received opinions. The worst offence of this kind which can be committed by a polemic, is to stigmatize those who hold the contrary opinion as bad and immoral men. To calumny of this sort, those who hold any unpopular opinion are peculiarly exposed, because they are in general few and uninfluential, and nobody but themselves feels much interest in seeing justice done them; but this weapon is, from the nature of the case, denied to those who attack a prevailing opinion: they can neither use it with safety to themselves, nor if they could, would it do anything but recoil on their own cause. In general, opinions contrary to those commonly received can only obtain a hearing by studied moderation of language, and the most cautious avoidance of unnecessary offence, from which they hardly ever deviate even in a slight degree without losing ground: while unmeasured vituperation employed on the side of the prevailing opinion, really does deter people from professing contrary opinions, and from listening to those who profess them. For the interest, therefore, of truth and justice, it is far more important to restrain this employment of vituperative language than the other; and, for example, if it were necessary to choose, there would be much more need to discourage offensive attacks on infidelity, than on religion. It is, however, obvious that law and authority have no business with restraining either, while opinion ought, in every instance, to determine its verdict by the circumstances of the individual case; condemning every one, on whichever side of the argument he places himself, in whose mode of advocacy either want of candor, or malignity, bigotry or intolerance of feeling manifest themselves, but not inferring these vices from the side which a person takes, though it be the contrary side of the question to our

own; and giving merited honor to every one, whatever opinion he may hold, who has calmness to see and honesty to state what his opponents and their opinions really are, exaggerating nothing to their discredit, keeping nothing back which tells, or can be supposed to tell, in their favor. This is the real morality of public discussion; and if often violated, I am happy to think that there are many controversialists who to a great extent observe it, and a still greater number who conscientiously strive towards it.

CHAPTER III: ON INDIVIDUALITY, AS ONE OF THE ELEMENTS OF WELL-BEING

SUCH being the reasons which make it imperative that human beings should be free to form opinions, and to express their opinions without reserve; and such the baneful consequences to the intellectual, and through that to the moral nature of man, unless this liberty is either conceded, or asserted in spite of prohibition; let us next examine whether the same reasons do not require that men should be free to act upon their opinions – to carry these out in their lives, without hindrance, either physical or moral, from their fellow-men, so long as it is at their own risk and peril. This last proviso is of course indispensable. No one pretends that actions should be as free as opinions. On the contrary, even opinions lose their immunity, when the circumstances in which they are expressed are such as to constitute their expression a positive instigation to some mischievous act. An opinion that corn-dealers are starvers of the poor, or that private property is robbery, ought to be unmolested when simply circulated through the press, but may justly incur punishment when delivered orally to an excited mob assembled before the house of a corn-dealer, or when handed about among the same mob in the form of a placard. Acts of whatever kind, which, without justifiable cause, do harm to others, may be, and in the more important cases absolutely require to be, controlled by the unfavorable sentiments, and, when needful, by the active interference of mankind. The liberty of the individual must be thus far limited; he must not make himself a nuisance to other people. But if he refrains from molesting others in what concerns them, and merely acts according to his own inclination and judgment in things which concern himself, the same reasons which show that opinion should be free, prove also that he should be allowed, without molestation, to carry his opinions into practice at his own cost. That mankind are not infallible; that their truths, for the most part, are only half-truths; that unity of opinion, unless resulting from the fullest and freest comparison of opposite opinions, is not desirable, and diversity not an evil, but a good, until mankind are much more capable than at present of recognizing all sides of the truth, are principles applicable to men’s modes of action, not less than to their opinions. As it is useful that while mankind are imperfect there should be different opinions, so is it that there should be different experiments of living; that free scope should be given to varieties of character, short of injury to others; and that the worth of different modes of

life should be proved practically, when any one thinks fit to try them. It is desirable, in short, that in things which do not primarily concern others, individuality should assert itself. Where, not the person's own character, but the traditions of customs of other people are the rule of conduct, there is wanting one of the principal ingredients of human happiness, and quite the chief ingredient of individual and social progress.

In maintaining this principle, the greatest difficulty to be encountered does not lie in the appreciation of means towards an acknowledged end, but in the indifference of persons in general to the end itself. If it were felt that the free development of individuality is one of the leading essentials of well-being; that it is not only a coordinate element with all that is designated by the terms civilization, instruction, education, culture, but is itself a necessary part and condition of all those things; there would be no danger that liberty should be undervalued, and the adjustment of the boundaries between it and social control would present no extraordinary difficulty. But the evil is, that individual spontaneity is hardly recognized by the common modes of thinking as having any intrinsic worth, or deserving any regard on its own account. The majority, being satisfied with the ways of mankind as they now are (for it is they who make them what they are), cannot comprehend why those ways should not be good enough for everybody; and what is more, spontaneity forms no part of the ideal of the majority of moral and social reformers, but is rather looked on with jealousy, as a troublesome and perhaps rebellious obstruction to the general acceptance of what these reformers, in their own judgment, think would be best for mankind. Few persons, out of Germany, even comprehend the meaning of the doctrine which Wilhelm von Humboldt, so eminent both as a savant and as a politician, made the text of a treatise – that "the end of man, or that which is prescribed by the eternal or immutable dictates of reason, and not suggested by vague and transient desires, is the highest and most harmonious development of his powers to a complete and consistent whole;" that, therefore, the object "towards which every human being must ceaselessly direct his efforts, and on which especially those who design to influence their fellow-men must ever keep their eyes, is the individuality of power and development;" that for this there are two requisites, "freedom, and a variety of situations;" and that from the union of these arise "individual vigor and manifold diversity," which combine themselves in "originality."[2]

Little, however, as people are accustomed to a doctrine like that of Von Humboldt, and surprising as it may be to them to find so high a value attached to individuality, the question, one must nevertheless think, can only be one of degree. No one's idea of excellence in conduct is that people should do absolutely nothing but copy one another. No one would assert that people ought not to put into their mode of life, and into the conduct of their concerns, any impress whatever of their own judgment, or of their own individual character. On the other hand, it would be absurd to pretend that people ought to live as if nothing whatever had been known in the world

before they came into it; as if experience had as yet done nothing towards showing that one mode of existence, or of conduct, is preferable to another. Nobody denies that people should be so taught and trained in youth, as to know and benefit by the ascertained results of human experience. But it is the privilege and proper condition of a human being, arrived at the maturity of his faculties, to use and interpret experience in his own way. It is for him to find out what part of recorded experience is properly applicable to his own circumstances and character. The traditions and customs of other people are, to a certain extent, evidence of what their experience has taught them; presumptive evidence, and as such, have a claim to this deference: but, in the first place, their experience may be too narrow; or they may not have interpreted it rightly. Secondly, their interpretation of experience may be correct but unsuitable to him. Customs are made for customary circumstances, and customary characters: and his circumstances or his character may be uncustomary. Thirdly, though the customs be both good as customs, and suitable to him, yet to conform to custom, merely as custom, does not educate or develop in him any of the qualities which are the distinctive endowment of a human being. The human faculties of perception, judgment, discriminative feeling, mental activity, and even moral preference, are exercised only in making a choice. He who does anything because it is the custom, makes no choice. He gains no practice either in discerning or in desiring what is best. The mental and moral, like the muscular powers, are improved only by being used. The faculties are called into no exercise by doing a thing merely because others do it, no more than by believing a thing only because others believe it. If the grounds of an opinion are not conclusive to the person's own reason, his reason cannot be strengthened, but is likely to be weakened by his adopting it: and if the inducements to an act are not such as are consentaneous to his own feelings and character (where affection, or the rights of others are not concerned), it is so much done towards rendering his feelings and character inert and torpid, instead of active and energetic.

He who lets the world, or his own portion of it, choose his plan of life for him, has no need of any other faculty than the ape-like one of imitation. He who chooses his plan for himself, employs all his faculties. He must use observation to see, reasoning and judgment to foresee, activity to gather materials for decision, discrimination to decide, and when he has decided, firmness and self-control to hold to his deliberate decision. And these qualities he requires and exercises exactly in proportion as the part of his conduct which he determines according to his own judgment and feelings is a large one. It is possible that he might be guided in some good path, and kept out of harm's way, without any of these things. But what will be his comparative worth as a human being? It really is of importance, not only what men do, but also what manner of men they are that do it. Among the works of man, which human life is rightly employed in perfecting and beautifying, the first in importance surely is man himself. Supposing it were possible to get houses built, corn grown, battles fought, causes tried, and

even churches erected and prayers said, by machinery – by automatons in human form – it would be a considerable loss to exchange for these automatons even the men and women who at present inhabit the more civilized parts of the world, and who assuredly are but starved specimens of what nature can and will produce. Human nature is not a machine to be built after a model, and set to do exactly the work prescribed for it, but a tree, which requires to grow and develop itself on all sides, according to the tendency of the inward forces which make it a living thing.

It will probably be conceded that it is desirable people should exercise their understandings, and that an intelligent following of custom, or even occasionally an intelligent deviation from custom, is better than a blind and simply mechanical adhesion to it. To a certain extent it is admitted, that our understanding should be our own: but there is not the same willingness to admit that our desires and impulses should be our own likewise; or that to possess impulses of our own, and of any strength, is anything but a peril and a snare. Yet desires and impulses are as much a part of a perfect human being, as beliefs and restraints: and strong impulses are only perilous when not properly balanced; when one set of aims and inclinations is developed into strength, while others, which ought to coexist with them, remain weak and inactive. It is not because men's desires are strong that they act ill; it is because their consciences are weak. There is no natural connection between strong impulses and a weak conscience. The natural connection is the other way. To say that one person's desires and feelings are stronger and more various than those of another, is merely to say that he has more of the raw material of human nature, and is therefore capable, perhaps of more evil, but certainly of more good. Strong impulses are but another name for energy. Energy may be turned to bad uses; but more good may always be made of an energetic nature, than of an indolent and impassive one. Those who have most natural feeling, are always those whose cultivated feelings may be made the strongest. The same strong susceptibilities which make the personal impulses vivid and powerful, are also the source from whence are generated the most passionate love of virtue, and the sternest self-control. It is through the cultivation of these, that society both does its duty and protects its interests: not by rejecting the stuff of which heroes are made, because it knows not how to make them. A person whose desires and impulses are his own – are the expression of his own nature, as it has been developed and modified by his own culture – is said to have a character. One whose desires and impulses are not his own, has no character, no more than a steam-engine has a character. If, in addition to being his own, his impulses are strong, and are under the government of a strong will, he has an energetic character. Whoever thinks that individuality of desires and impulses should not be encouraged to unfold itself, must maintain that society has no need of strong natures – is not the better for containing many persons who have much character – and that a high general average of energy is not desirable.

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In some such insidious form there is at present a strong tendency to this narrow theory of life, and to the pinched and hidebound type of human character which it patronizes. Many persons, no doubt, sincerely think that human beings thus cramped and dwarfed, are as their Maker designed them to be; just as many have thought that trees are a much finer thing when clipped into pollards, or cut out into figures of animals, than as nature made them. But if it be any part of religion to believe that man was made by a good Being, it is more consistent with that faith to believe, that this Being gave all human faculties that they might be cultivated and unfolded, not rooted out and consumed, and that he takes delight in every nearer approach made by his creatures to the ideal conception embodied in them, every increase in any of their capabilities of comprehension, of action, or of enjoyment. There is a different type of human excellence from the Calvinistic; a conception of humanity as having its nature bestowed on it for other purposes than merely to be abnegated. "Pagan self-assertion" is one of the elements of human worth, as well as "Christian self-denial."[3] There is a Greek ideal of self-development, which the Platonic and Christian ideal of self-government blends with, but does not supersede. It may be better to be a John Knox than an Alcibiades, but it is better to be a Pericles than either; nor would a Pericles, if we had one in these days, be without anything good which belonged to John Knox.

It is not by wearing down into uniformity all that is individual in themselves, but by cultivating it and calling it forth, within the limits imposed by the rights and interests of others, that human beings become a noble and beautiful object of contemplation; and as the works partake the character of those who do them, by the same process human life also becomes rich, diversified, and animating, furnishing more abundant aliment to high thoughts and elevating feelings, and strengthening the tie which binds every individual to the race, by making the race infinitely better worth belonging to. In proportion to the development of his individuality, each person becomes more valuable to himself, and is therefore capable of being more valuable to others. There is a greater fulness of life about his own existence, and when there is more life in the units there is more in the mass which is composed of them. As much compression as is necessary to prevent the stronger specimens of human nature from encroaching on the rights of others, cannot be dispensed with; but for this there is ample compensation even in the point of view of human development. The means of development which the individual loses by being prevented from gratifying his inclinations to the injury of others, are chiefly obtained at the expense of the development of other people. And even to himself there is a full equivalent in the better development of the social part of his nature, rendered possible by the restraint put upon the selfish part. To be held to rigid rules of justice for the sake of others, develops the feelings and capacities which have the good of others for their object. But to be restrained in things not affecting their good, by their mere displeasure, develops nothing valuable, except such force of character as may unfold

itself in resisting the restraint. If acquiesced in, it dulls and blunts the whole nature. To give any fair play to the nature of each, it is essential that different persons should be allowed to lead different lives. In proportion as this latitude has been exercised in any age, has that age been noteworthy to posterity. Even despotism does not produce its worst effects, so long as Individuality exists under it; and whatever crushes individuality is despotism, by whatever name it may be called, and whether it professes to be enforcing the will of God or the injunctions of men.

Having said that Individuality is the same thing with development, and that it is only the cultivation of individuality which produces, or can produce, well-developed human beings, I might here close the argument: for what more or better can be said of any condition of human affairs, than that it brings human beings themselves nearer to the best thing they can be? or what worse can be said of any obstruction to good, than that it prevents this? Doubtless, however, these considerations will not suffice to convince those who most need convincing; and it is necessary further to show, that these developed human beings are of some use to the undeveloped – to point out to those who do not desire liberty, and would not avail themselves of it, that they may be in some intelligible manner rewarded for allowing other people to make use of it without hindrance.

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In sober truth, whatever homage may be professed, or even paid, to real or supposed mental superiority, the general tendency of things throughout the world is to render mediocrity the ascendant power among mankind. In ancient history, in the Middle Ages, and in a diminishing degree through the long transition from feudality to the present time, the individual was a power in himself; and if he had either great talents or a high social position, he was a considerable power. At present individuals are lost in the crowd. In politics it is almost a triviality to say that public opinion now rules the world. The only power deserving the name is that of masses, and of governments while they make themselves the organ of the tendencies and instincts of masses. This is as true in the moral and social relations of private life as in public transactions. Those whose opinions go by the name of public opinion, are not always the same sort of public: in America, they are the whole white population; in England, chiefly the middle class. But they are always a mass, that is to say, collective mediocrity. And what is still greater novelty, the mass do not now take their opinions from dignitaries in Church or State, from ostensible leaders, or from books. Their thinking is done for them by men much like themselves, addressing them or speaking in their name, on the spur of the moment, through the newspapers. I am not complaining of all this. I do not assert that anything better is compatible, as a general rule, with the present low state of the human mind. But that does not hinder the government of mediocrity from being mediocre government. No government by a democracy or a numerous aristocracy, either in its political acts or in the opinions, qualities, and tone of mind which it fosters, ever did or could rise above mediocrity,

except in so far as the sovereign Many have let themselves be guided (which in their best times they always have done) by the counsels and influence of a more highly gifted and instructed *One* or *Few*. The initiation of all wise or noble things, comes and must come from individuals; generally at first from some one individual. The honor and glory of the average man is that he is capable of following that initiative; that he can respond internally to wise and noble things, and be led to them with his eyes open. I am not countenancing the sort of "hero-worship" which applauds the strong man of genius for forcibly seizing on the government of the world and making it do his bidding in spite of itself. All he can claim is, freedom to point out the way. The power of compelling others into it, is not only inconsistent with the freedom and development of all the rest, but corrupting to the strong man himself. It does seem, however, that when the opinions of masses of merely average men are everywhere become or becoming the dominant power, the counterpoise and corrective to that tendency would be, the more and more pronounced individuality of those who stand on the higher eminences of thought. It Is in these circumstances most especially, that exceptional individuals, instead of being deterred, should be encouraged in acting differently from the mass. In other times there was no advantage in their doing so, unless they acted not only differently, but better. In this age the mere example of non-conformity, the mere refusal to bend the knee to custom, is itself a service. Precisely because the tyranny of opinion is such as to make eccentricity a reproach, it is desirable, in order to break through that tyranny, that people should be eccentric. Eccentricity has always abounded when and where strength of character has abounded; and the amount of eccentricity in a society has generally been proportional to the amount of genius, mental vigor, and moral courage which it contained. That so few now dare to be eccentric, marks the chief danger of the time.

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There is one characteristic of the present direction of public opinion, peculiarly calculated to make it intolerant of any marked demonstration of individuality. The general average of mankind are not only moderate in intellect, but also moderate in inclinations: they have no tastes or wishes strong enough to incline them to do anything unusual, and they consequently do not understand those who have, and class all such with the wild and intemperate whom they are accustomed to look down upon. Now, in addition to this fact which is general, we have only to suppose that a strong movement has set in towards the improvement of morals, and it is evident what we have to expect. In these days such a movement has set in; much has actually been effected in the way of increased regularity of conduct, and discouragement of excesses; and there is a philanthropic spirit abroad, for the exercise of which there is no more inviting field than the moral and prudential improvement of our fellow-creatures. These tendencies of the times cause the public to be more disposed than at most former periods to prescribe general rules of conduct, and endeavor to make

every one conform to the approved standard. And that standard, express or tacit, is to desire nothing strongly. Its ideal of character is to be without any marked character; to maim by compression, like a Chinese lady's foot, every part of human nature which stands out prominently, and tends to make the person markedly dissimilar in outline to commonplace humanity.

As is usually the case with ideals which exclude one half of what is desirable, the present standard of approbation produces only an inferior imitation of the other half. Instead of great energies guided by vigorous reason, and strong feelings strongly controlled by a conscientious will, its result is weak feelings and weak energies, which therefore can be kept in outward conformity to rule without any strength either of will or of reason. Already energetic characters on any large scale are becoming merely traditional. There is now scarcely any outlet for energy in this country except business. The energy expended in that may still be regarded as considerable. What little is left from that employment, is expended on some hobby; which may be a useful, even a philanthropic hobby, but is always some one thing, and generally a thing of small dimensions. The greatness of England is now all collective: individually small, we only appear capable of anything great by our habit of combining; and with this our moral and religious philanthropists are perfectly contented. But it was men of another stamp than this that made England what it has been; and men of another stamp will be needed to prevent its decline.

The despotism of custom is everywhere the standing hindrance to human advancement, being in unceasing antagonism to that disposition to aim at something better than customary, which is called, according to circumstances, the spirit of liberty, or that of progress or improvement. The spirit of improvement is not always a spirit of liberty, for it may aim at forcing improvements on an unwilling people; and the spirit of liberty, in so far as it resists such attempts, may ally itself locally and temporarily with the opponents of improvement; but the only unfailing and permanent source of improvement is liberty, since by it there are as many possible independent centres of improvement as there are individuals. The progressive principle, however, in either shape, whether as the love of liberty or of improvement, is antagonistic to the sway of Custom, involving at least emancipation from that yoke; and the contest between the two constitutes the chief interest of the history of mankind. The greater part of the world has, properly speaking, no history, because the despotism of Custom is complete. This is the case over the whole East. Custom is there, in all things, the final appeal; Justice and right mean conformity to custom; the argument of custom no one, unless some tyrant intoxicated with power, thinks of resisting. And we see the result. Those nations must once have had originality; they did not start out of the ground populous, lettered, and versed in many of the arts of life; they made themselves all this, and were then the greatest and most powerful nations in the world. What are they now? The subjects or dependents of tribes whose forefathers wandered in the forests when theirs had magnificent palaces and gorgeous temples, but

over whom custom exercised only a divided rule with liberty and progress. A people, it appears, may be progressive for a certain length of time, and then stop: when does it stop? When it ceases to possess individuality. If a similar change should befall the nations of Europe, it will not be in exactly the same shape: the despotism of custom with which these nations are threatened is not precisely stationariness. It proscribes singularity, but it does not preclude change, provided all change together. We have discarded the fixed costumes of our forefathers; every one must still dress like other people, but the fashion may change once or twice a year. We thus take care that when there is change, it shall be for change's sake, and not from any idea of beauty or convenience; for the same idea of beauty or convenience would not strike all the world at the same moment, and be simultaneously thrown aside by all at another moment. But we are progressive as well as changeable: we continually make new inventions in mechanical things, and keep them until they are again superseded by better; we are eager for improvement in politics, in education, even in morals, though in this last our idea of improvement chiefly consists in persuading or forcing other people to be as good as ourselves. It is not progress that we object to; on the contrary, we flatter ourselves that we are the most progressive people who ever lived. It is individuality that we war against: we should think we had done wonders if we had made ourselves all alike; forgetting that the unlikeness of one person to another is generally the first thing which draws the attention of either to the imperfection of his own type, and the superiority of another, or the possibility, by combining the advantages of both, of producing something better than either. We have a warning example in China – a nation of much talent, and, in some respects, even wisdom, owing to the rare good fortune of having been provided at an early period with a particularly good set of customs, the work, in some measure, of men to whom even the most enlightened European must accord, under certain limitations, the title of sages and philosophers. They are remarkable, too, in the excellence of their apparatus for impressing, as far as possible, the best wisdom they possess upon every mind in the community, and securing that those who have appropriated most of it shall occupy the posts of honor and power. Surely the people who did this have discovered the secret of human progressiveness, and must have kept themselves steadily at the head of the movement of the world. On the contrary, they have become stationary – have remained so for thousands of years; and if they are ever to be farther improved, it must be by foreigners. They have succeeded beyond all hope in what English philanthropists are so industriously working at – in making a people all alike, all governing their thoughts and conduct by the same maxims and rules; and these are the fruits. The modern *régime* of public opinion is, in an unorganized form, what the Chinese educational and political systems are in an organized; and unless individuality shall be able successfully to assert itself against this yoke, Europe, notwithstanding its noble antecedents and its professed Christianity, will tend to become another China.

What is it that has hitherto preserved Europe from this lot? What has made the European family of nations an improving, instead of a stationary portion of mankind? Not any superior excellence in them, which when it exists, exists as the effect, not as the cause; but their remarkable diversity of character and culture. Individuals, classes, nations, have been extremely unlike one another: they have struck out a great variety of paths, each leading to something valuable; and although at every period those who travelled in different paths have been intolerant of one another, and each would have thought it an excellent thing if all the rest could have been compelled to travel his road, their attempts to thwart each other's development have rarely had any permanent success, and each has in time endured to receive the good which the others have offered. Europe is, in my judgment, wholly indebted to this plurality of paths for its progressive and many-sided development. But it already begins to possess this benefit in a considerably less degree. It is decidedly advancing towards the Chinese ideal of making all people alike. M. de Tocqueville, in his last important work, remarks how much more the Frenchmen of the present day resemble one another, than did those even of the last generation. The same remark might be made of Englishmen in a far greater degree. In a passage already quoted from Wilhelm von Humboldt, he points out two things as necessary conditions of human development, because necessary to render people unlike one another; namely, freedom, and variety of situations. The second of these two conditions is in this country every day diminishing. The circumstances which surround different classes and individuals, and shape their characters, are daily becoming more assimilated. Formerly, different ranks, different neighborhoods, different trades and professions lived in what might be called different worlds; at present, to a great degree, in the same. Comparatively speaking, they now read the same things, listen to the same things, see the same things, go to the same places, have their hopes and fears directed to the same objects, have the same rights and liberties, and the same means of asserting them. Great as are the differences of position which remain, they are nothing to those which have ceased. And the assimilation is still proceeding. All the political changes of the age promote it, since they all tend to raise the low and to lower the high. Every extension of education promotes it, because education brings people under common influences, and gives them access to the general stock of facts and sentiments. Improvements in the means of communication promote it, by bringing the inhabitants of distant places into personal contact, and keeping up a rapid flow of changes of residence between one place and another. The increase of commerce and manufactures promotes it, by diffusing more widely the advantages of easy circumstances, and opening all objects of ambition, even the highest, to general competition, whereby the desire of rising becomes no longer the character of a particular class, but of all classes. A more powerful agency than even all these, in bringing about a general similarity among mankind, is the complete establishment, in this and other free countries, of the ascendancy of public opinion in the State. As

the various social eminences which enabled persons entrenched on them to disregard the opinion of the multitude, gradually became levelled; as the very idea of resisting the will of the public, when it is positively known that they have a will, disappears more and more from the minds of practical politicians; there ceases to be any social support for non-conformity – any substantive power in society, which, itself opposed to the ascendancy of numbers, is interested in taking under its protection opinions and tendencies at variance with those of the public.

The combination of all these causes forms so great a mass of influences hostile to Individuality, that it is not easy to see how it can stand its ground. It will do so with increasing difficulty, unless the intelligent part of the public can be made to feel its value – to see that it is good there should be differences, even though not for the better, even though, as it may appear to them, some should be for the worse. If the claims of Individuality are ever to be asserted, the time is now, while much is still wanting to complete the enforced assimilation. It is only in the earlier stages that any stand can be successfully made against the encroachment. The demand that all other people shall resemble ourselves, grows by what it feeds on. If resistance waits till life is reduced *nearly* to one uniform type, all deviations from that type will come to be considered impious, immoral, even monstrous and contrary to nature. Mankind speedily become unable to conceive diversity, when they have been for some time unaccustomed to see it.

CHAPTER IV: OF THE LIMITS TO THE AUTHORITY OF SOCIETY OVER THE INDIVIDUAL

WHAT, then, is the rightful limit to the sovereignty of the individual over himself? Where does the authority of society begin? How much of human life should be assigned to individuality, and how much to society?

Each will receive its proper share, if each has that which more particularly concerns it. To individuality should belong the part of life in which it is chiefly the individual that is interested; to society, the part which chiefly interests society.

Though society is not founded on a contract, and though no good purpose is answered by inventing a contract in order to deduce social obligations from it, every one who receives the protection of society owes a return for the benefit, and the fact of living in society renders it indispensable that each should be bound to observe a certain line of conduct towards the rest. This conduct consists, first, in not injuring the interests of one another; or rather certain interests, which, either by express legal provision or by tacit understanding, ought to be considered as rights; and secondly, in each person's bearing his share (to be fixed on some equitable principle) of the labors and sacrifices incurred for defending the society or its members from injury and molestation. These conditions society is justified in enforcing, at all costs to those who endeavor to withhold

fulfilment. Nor is this all that society may do. The acts of an individual may be hurtful to others, or wanting in due consideration for their welfare, without going the length of violating any of their constituted rights. The offender may then be justly punished by opinion, though not by law. As soon as any part of a person's conduct affects prejudicially the interests of others, society has jurisdiction over it, and the question whether the general welfare will or will not be promoted by interfering with it, becomes open to discussion. But there is no room for entertaining any such question when a person's conduct affects the interests of no persons besides himself, or needs not affect them unless they like (all the persons concerned being of full age, and the ordinary amount of understanding). In all such cases there should be perfect freedom, legal and social, to do the action and stand the consequences.

It would be a great misunderstanding of this doctrine, to suppose that it is one of selfish indifference, which pretends that human beings have no business with each other's conduct in life, and that they should not concern themselves about the well-doing or well-being of one another, unless their own interest is involved. Instead of any diminution, there is need of a great increase of disinterested exertion to promote the good of others. But disinterested benevolence can find other instruments to persuade people to their good, than whips and scourges, either of the literal or the metaphorical sort. I am the last person to undervalue the self-regarding virtues; they are only second in importance, if even second, to the social. It is equally the business of education to cultivate both. But even education works by conviction and persuasion as well as by compulsion, and it is by the former only that, when the period of education is past, the self-regarding virtues should be inculcated. Human beings owe to each other help to distinguish the better from the worse, and encouragement to choose the former and avoid the latter. They should be forever stimulating each other to increased exercise of their higher faculties, and increased direction of their feelings and aims towards wise instead of foolish, elevating instead of degrading, objects and contemplations. But neither one person, nor any number of persons, is warranted in saying to another human creature of ripe years, that he shall not do with his life for his own benefit what he chooses to do with it. He is the person most interested in his own well-being, the interest which any other person, except in cases of strong personal attachment, can have in it, is trifling, compared with that which he himself has; the interest which society has in him individually (except as to his conduct to others) is fractional, and altogether indirect: while, with respect to his own feelings and circumstances, the most ordinary man or woman has means of knowledge immeasurably surpassing those that can be possessed by any one else. The interference of society to overrule his judgment and purposes in what only regards himself, must be grounded on general presumptions; which may be altogether wrong, and even if right, are as likely as not to be misapplied to individual cases, by persons no better acquainted with the circumstances of such cases than those are who look at

them merely from without. In this department, therefore, of human affairs, Individuality has its proper field of action. In the conduct of human beings towards one another, it is necessary that general rules should for the most part be observed, in order that people may know what they have to expect; but in each person's own concerns, his individual spontaneity is entitled to free exercise. Considerations to aid his judgment, exhortations to strengthen his will, may be offered to him, even obtruded on him, by others; but he, himself, is the final judge. All errors which he is likely to commit against advice and warning, are far outweighed by the evil of allowing others to constrain him to what they deem his good.

I do not mean that the feelings with which a person is regarded by others, ought not to be in any way affected by his self-regarding qualities or deficiencies. This is neither possible nor desirable. If he is eminent in any of the qualities which conduce to his own good, he is, so far, a proper object of admiration. He is so much the nearer to the ideal perfection of human nature. If he is grossly deficient in those qualities, a sentiment the opposite of admiration will follow. There is a degree of folly, and a degree of what may be called (though the phrase is not unobjectionable) lowness or depravation of taste, which, though it cannot justify doing harm to the person who manifests it, renders him necessarily and properly a subject of distaste, or, in extreme cases, even of contempt: a person could not have the opposite qualities in due strength without entertaining these feelings. Though doing no wrong to any one, a person may so act as to compel us to judge him, and feel to him, as a fool, or as a being of an inferior order: and since this judgment and feeling are a fact which he would prefer to avoid, it is doing him a service to warn him of it beforehand, as of any other disagreeable consequence to which he exposes himself. It would be well, indeed, if this good office were much more freely rendered than the common notions of politeness at present permit, and if one person could honestly point out to another that he thinks him in fault, without being considered unmannerly or presuming. We have a right, also, in various ways, to act upon our unfavorable opinion of any one, not to the oppression of his individuality, but in the exercise of ours. We are not bound, for example, to seek his society; we have a right to avoid it (though not to parade the avoidance), for we have a right to choose the society most acceptable to us. We have a right, and it may be our duty, to caution others against him, if we think his example or conversation likely to have a pernicious effect on those with whom he associates. We may give others a preference over him in optional good offices, except those which tend to his improvement. In these various modes a person may suffer very severe penalties at the hands of others, for faults which directly concern only himself; but he suffers these penalties only in so far as they are the natural, and, as it were, the spontaneous consequences of the faults themselves, not because they are purposely inflicted on him for the sake of punishment. A person who shows rashness, obstinacy, self-conceit – who cannot live within moderate means – who cannot restrain himself from hurtful

indulgences – who pursues animal pleasures at the expense of those of feeling and intellect – must expect to be lowered in the opinion of others, and to have a less share of their favorable sentiments, but of this he has no right to complain, unless he has merited their favor by special excellence in his social relations, and has thus established a title to their good offices, which is not affected by his demerits towards himself.

What I contend for is, that the inconveniences which are strictly inseparable from the unfavorable judgment of others, are the only ones to which a person should ever be subjected for that portion of his conduct and character which concerns his own good, but which does not affect the interests of others in their relations with him. Acts injurious to others require a totally different treatment. Encroachment on their rights; infliction on them of any loss or damage not justified by his own rights; falsehood or duplicity in dealing with them; unfair or ungenerous use of advantages over them; even selfish abstinence from defending them against injury – these are fit objects of moral reprobation, and, in grave cases, of moral retribution and punishment. And not only these acts, but the dispositions which lead to them, are properly immoral, and fit subjects of disapprobation which may rise to abhorrence. Cruelty of disposition; malice and ill-nature; that most anti-social and odious of all passions, envy; dissimulation and insincerity, irascibility on insufficient cause, and resentment disproportioned to the provocation; the love of domineering over others; the desire to engross more than one's share of advantages (the [greekword] of the Greeks); the pride which derives gratification from the abasement of others; the egotism which thinks self and its concerns more important than everything else, and decides all doubtful questions in his own favor; – these are moral vices, and constitute a bad and odious moral character: unlike the self-regarding faults previously mentioned, which are not properly immoralities, and to whatever pitch they may be carried, do not constitute wickedness. They may be proofs of any amount of folly, or want of personal dignity and self-respect; but they are only a subject of moral reprobation when they involve a breach of duty to others, for whose sake the individual is bound to have care for himself. What are called duties to ourselves are not socially obligatory, unless circumstances render them at the same time duties to others. The term duty to oneself, when it means anything more than prudence, means self-respect or self-development; and for none of these is any one accountable to his fellow-creatures, because for none of them is it for the good of mankind that he be held accountable to them.

The distinction between the loss of consideration which a person may rightly incur by defect of prudence or of personal dignity, and the reprobation which is due to him for an offence against the rights of others, is not a merely nominal distinction. It makes a vast difference both in our feelings and in our conduct towards him, whether he displeases us in things in which we think we have a right to control him, or in things in which we know that we have not. If he displeases us, we may express our distaste, and we may stand aloof from a person as well as from a thing that displeases us;

but we shall not therefore feel called on to make his life uncomfortable. We shall reflect that he already bears, or will bear, the whole penalty of his error; if he spoils his life by mismanagement, we shall not, for that reason, desire to spoil it still further: instead of wishing to punish him, we shall rather endeavor to alleviate his punishment, by showing him how he may avoid or cure the evils his conduct tends to bring upon him. He may be to us an object of pity, perhaps of dislike, but not of anger or resentment; we shall not treat him like an enemy of society: the worst we shall think ourselves justified in doing is leaving him to himself, If we do not interfere benevolently by showing interest or concern for him. It is far otherwise if he has infringed the rules necessary for the protection of his fellow-creatures, individually or collectively. The evil consequences of his acts do not then fall on himself, but on others; and society, as the protector of all its members, must retaliate on him; must inflict pain on him for the express purpose of punishment, and must take care that it be sufficiently severe. In the one case, he is an offender at our bar, and we are called on not only to sit in judgment on him, but, in one shape or another, to execute our own sentence: in the other case, it is not our part to inflict any suffering on him, except what may incidentally follow from our using the same liberty in the regulation of our own affairs, which we allow to him in his.

The distinction here pointed out between the part of a person's life which concerns only himself, and that which concerns others, many persons will refuse to admit. How (it may be asked) can any part of the conduct of a member of society be a matter of indifference to the other members? No person is an entirely isolated being; it is impossible for a person to do anything seriously or permanently hurtful to himself, without mischief reaching at least to his near connections, and often far beyond them. If he injures his property, he does harm to those who directly or indirectly derived support from it, and usually diminishes, by a greater or less amount, the general resources of the community. If he deteriorates his bodily or mental faculties, he not only brings evil upon all who depended on him for any portion of their happiness, but disqualifies himself for rendering the services which he owes to his fellow-creatures generally; perhaps becomes a burden on their affection or benevolence; and if such conduct were very frequent, hardly any offence that is committed would detract more from the general sum of good. Finally, if by his vices or follies a person does no direct harm to others, he is nevertheless (it may be said) injurious by his example; and ought to be compelled to control himself, for the sake of those whom the sight or knowledge of his conduct might corrupt or mislead.

And even (it will be added) if the consequences of misconduct could be confined to the vicious or thoughtless individual, ought society to abandon to their own guidance those who are manifestly unfit for it? If protection against themselves is confessedly due to children and persons under age, is not society equally bound to afford it to persons of mature years who are equally incapable of self-government? If gambling, or drunkenness, or incontinence, or idleness, or uncleanliness, are as injurious

to happiness, and as great a hindrance to improvement, as many or most of the acts prohibited by law, why (it may be asked) should not law, so far as is consistent with practicability and social convenience, endeavor to repress these also? And as a supplement to the unavoidable imperfections of law, ought not opinion at least to organize a powerful police against these vices, and visit rigidly with social penalties those who are known to practise them? There is no question here (it may be said) about restricting individuality, or impeding the trial of new and original experiments in living. The only things it is sought to prevent are things which have been tried and condemned from the beginning of the world until now; things which experience has shown not to be useful or suitable to any person's individuality. There must be some length of time and amount of experience, after which a moral or prudential truth may be regarded as established, and it is merely desired to prevent generation after generation from falling over the same precipice which has been fatal to their predecessors.

I fully admit that the mischief which a person does to himself, may seriously affect, both through their sympathies and their interests, those nearly connected with him, and in a minor degree, society at large. When, by conduct of this sort, a person is led to violate a distinct and assignable obligation to any other person or persons, the case is taken out of the self-regarding class, and becomes amenable to moral disapprobation in the proper sense of the term. If, for example, a man, through intemperance or extravagance, becomes unable to pay his debts, or, having undertaken the moral responsibility of a family, becomes from the same cause incapable of supporting or educating them, he is deservedly reprobated, and might be justly punished; but it is for the breach of duty to his family or creditors, not for the extravagence. If the resources which ought to have been devoted to them, had been diverted from them for the most prudent investment, the moral culpability would have been the same. George Barnwell murdered his uncle to get money for his mistress, but if he had done it to set himself up in business, he would equally have been hanged. Again, in the frequent case of a man who causes grief to his family by addiction to bad habits, he deserves reproach for his unkindness or ingratitude; but so he may for cultivating habits not in themselves vicious, if they are painful to those with whom he passes his life, or who from personal ties are dependent on him for their comfort. Whoever fails in the consideration generally due to the interests and feelings of others, not being compelled by some more imperative duty, or justified by allowable self-preference, is a subject of moral disapprobation for that failure, but not for the cause of it, nor for the errors, merely personal to himself, which may have remotely led to it. In like manner, when a person disables himself, by conduct purely self-regarding, from the performance of some definite duty incumbent on him to the public, he is guilty of a social offence. No person ought to be punished simply for being drunk; but a soldier or a policeman should be punished for being drunk on duty. Whenever, in short, there is a definite damage, or a definite

risk of damage, either to an individual or to the public, the case is taken out of the province of liberty, and placed in that of morality or law.

But with regard to the merely contingent or, as it may be called, constructive injury which a person causes to society, by conduct which neither violates any specific duty to the public, nor occasions perceptible hurt to any assignable individual except himself; the inconvenience is one which society can afford to bear, for the sake of the greater good of human freedom. If grown persons are to be punished for not taking proper care of themselves, I would rather it were for their own sake, than under pretence of preventing them from impairing their capacity of rendering to society benefits which society does not pretend it has a right to exact. But I cannot consent to argue the point as if society had no means of bringing its weaker members up to its ordinary standard of rational conduct, except waiting till they do something irrational, and then punishing them, legally or morally, for it. Society has had absolute power over them during all the early portion of their existence: it has had the whole period of childhood and nonage in which to try whether it could make them capable of rational conduct in life. The existing generation is master both of the training and the entire circumstances of the generation to come; it cannot indeed make them perfectly wise and good, because it is itself so lamentably deficient in goodness and wisdom; and its best efforts are not always, in individual cases, its most successful ones; but it is perfectly well able to make the rising generation, as a whole, as good as, and a little better than, itself. If society lets any considerable number of its members grow up mere children, incapable of being acted on by rational consideration of distant motives, society has itself to blame for the consequences. Armed not only with all the powers of education, but with the ascendency which the authority of a received opinion always exercises over the minds who are least fitted to judge for themselves; and aided by the natural penalties which cannot be prevented from falling on those who incur the distaste or the contempt of those who know them; let not society pretend that it needs, besides all this, the power to issue commands and enforce obedience in the personal concerns of individuals, in which, on all principles of justice and policy, the decision ought to rest with those who are to abide the consequences. Nor is there anything which tends more to discredit and frustrate the better means of influencing conduct, than a resort to the worse. If there be among those whom it is attempted to coerce into prudence or temperance, any of the material of which vigorous and independent characters are made, they will infallibly rebel against the yoke. No such person will ever feel that others have a right to control him in his concerns, such as they have to prevent him from injuring them in theirs; and it easily comes to be considered a mark of spirit and courage to fly in the face of such usurped authority, and do with ostentation the exact opposite of what it enjoins; as in the fashion of grossness which succeeded, in the time of Charles II., to the fanatical moral intolerance of the Puritans. With respect to what is said of the necessity of protecting society from the bad example set to others by the vicious or the

self-indulgent; it is true that bad example may have a pernicious effect, especially the example of doing wrong to others with impunity to the wrong-doer. But we are now speaking of conduct which, while it does no wrong to others, is supposed to do great harm to the agent himself: and I do not see how those who believe this, can think otherwise than that the example, on the whole, must be more salutary than hurtful, since, if it displays the misconduct, it displays also the painful or degrading consequences which, if the conduct is justly censured, must be supposed to be in all or most cases attendant on it.

But the strongest of all the arguments against the interference of the public with purely personal conduct, is that when it does interfere, the odds are that it interferes wrongly, and in the wrong place. On questions of social morality, of duty to others, the opinion of the public, that is, of an overruling majority, though often wrong, is likely to be still oftener right; because on such questions they are only required to judge of their own interests; of the manner in which some mode of conduct, if allowed to be practised, would affect themselves. But the opinion of a similar majority, imposed as a law on the minority, on questions of self-regarding conduct, is quite as likely to be wrong as right; for in these cases public opinion means, at the best, some people's opinion of what is good or bad for other people; while very often it does not even mean that; the public, with the most perfect indifference, passing over the pleasure or convenience of those whose conduct they censure, and considering only their own preference. There are many who consider as an injury to themselves any conduct which they have a distaste for, and resent it as an outrage to their feelings; as a religious bigot, when charged with disregarding the religious feelings of others, has been known to retort that they disregard his feelings, by persisting in their abominable worship or creed. But there is no parity between the feeling of a person for his own opinion, and the feeling of another who is offended at his holding it; no more than between the desire of a thief to take a purse, and the desire of the right owner to keep it. And a person's taste is as much his own peculiar concern as his opinion or his purse. It is easy for any one to imagine an ideal public, which leaves the freedom and choice of individuals in all uncertain matters undisturbed, and only requires them to abstain from modes of conduct which universal experience has condemned. But where has there been seen a public which set any such limit to its censorship? or when does the public trouble itself about universal experience. In its interferences with personal conduct it is seldom thinking of anything but the enormity of acting or feeling differently from itself; and this standard of judgment, thinly disguised, is held up to mankind as the dictate of religion and philosophy, by nine tenths of all moralists and speculative writers. These teach that things are right because they are right; because we feel them to be so. They tell us to search in our own minds and hearts for laws of conduct binding on ourselves and on all others. What can the poor public do but apply these instructions, and make

their own personal feelings of good and evil, if they are tolerably unanimous in them, obligatory on all the world?

[...]

But, without dwelling upon supposititious cases, there are, in our own day, gross usurpations upon the liberty of private life actually practised, and still greater ones threatened with some expectation of success, and opinions proposed which assert an unlimited right in the public not only to prohibit by law everything which it thinks wrong, but in order to get at what it thinks wrong, to prohibit any number of things which it admits to be innocent.

Under the name of preventing intemperance the people of one English colony, and of nearly half the United States, have been interdicted by law from making any use whatever of fermented drinks, except for medical purposes: for prohibition of their sale is in fact, as it is intended to be, prohibition of their use. And though the impracticability of executing the law has caused its repeal in several of the States which had adopted it, including the one from which it derives its name, an attempt has notwithstanding been commenced, and is prosecuted with considerable zeal by many of the professed philanthropists, to agitate for a similar law in this country. The association, or "alliance" as it terms itself, which has been formed for this purpose, has acquired some notoriety through the publicity given to a correspondence between its Secretary and one of the very few English public men who hold that a politician's opinions ought to be founded on principles. Lord Stanley's share in this correspondence is calculated to strengthen the hopes already built on him, by those who know how rare such qualities as are manifested in some of his public appearances, unhappily are among those who figure in political life. The organ of the Alliance, who would "deeply deplore the recognition of any principle which could be wrested to justify bigotry and persecution," undertakes to point out the "broad and impassable barrier" which divides such principles from those of the association. "All matters relating to thought, opinion, conscience, appear to me," he says, "to be without the sphere of legislation; all pertaining to social act, habit, relation, subject only to a discretionary power vested in the State itself, and not in the individual, to be within it." No mention is made of a third class, different from either of these, viz., acts and habits which are not social, but individual; although it is to this class, surely, that the act of drinking fermented liquors belongs. Selling fermented liquors, however, is trading, and trading is a social act. But the infringement complained of is not on the liberty of the seller, but on that of the buyer and consumer; since the State might just as well forbid him to drink wine, as purposely make it impossible for him to obtain it. The Secretary, however, says, "I claim, as a citizen, a right to legislate whenever my social rights are invaded by the social act of another." And now for the definition of these "social rights." "If anything invades my social rights, certainly the traffic in strong drink does. It destroys my primary right of security, by constantly creating and stimulating social disorder. It invades my right of equality, by

deriving a profit from the creation of a misery, I am taxed to support. It impedes my right to free moral and intellectual development, by surrounding my path with dangers, and by weakening and demoralizing society, from which I have a right to claim mutual aid and intercourse." A theory of "social rights," the like of which probably never before found its way into distinct language – being nothing short of this – that it is the absolute social right of every individual, that every other individual shall act in every respect exactly as he ought; that whosoever fails thereof in the smallest particular, violates my social right, and entitles me to demand from the legislature the removal of the grievance. So monstrous a principle is far more dangerous than any single interference with liberty; there is no violation of liberty which it would not justify; it acknowledges no right to any freedom whatever, except perhaps to that of holding opinions in secret, without ever disclosing them; for the moment an opinion which I consider noxious, passes any one's lips, it invades all the "social rights" attributed to me by the Alliance. The doctrine ascribes to all mankind a vested interest in each other's moral, intellectual, and even physical perfection, to be defined by each claimant according to his own standard.

[...]

I cannot refrain from adding to these examples of the little account commonly made of human liberty, the language of downright persecution which breaks out from the press of this country, whenever it feels called on to notice the remarkable phenomenon of Mormonism. Much might be said on the unexpected and instructive fact, that an alleged new revelation, and a religion, founded on it, the product of palpable imposture, not even supported by the prestige of extraordinary qualities in its founder, is believed by hundreds of thousands, and has been made the foundation of a society, in the age of newspapers, railways, and the electric telegraph. What here concerns us is, that this religion, like other and better religions, has its martyrs; that its prophet and founder was, for his teaching, put to death by a mob; that others of its adherents lost their lives by the same lawless violence; that they were forcibly expelled, in a body, from the country in which they first grew up; while, now that they have been chased into a solitary recess in the midst of a desert, many in this country openly declare that it would be right (only that it is not convenient) to send an expedition against them, and compel them by force to conform to the opinions of other people. The article of the Mormonite doctrine which is the chief provocative to the antipathy which thus breaks through the ordinary restraints of religious tolerance, is its sanction of polygamy; which, though permitted to Mahomedans, and Hindoos, and Chinese, seems to excite unquenchable animosity when practised by persons who speak English, and profess to be a kind of Christians. No one has a deeper disapprobation than I have of this Mormon institution; both for other reasons, and because, far from being in any way countenanced by the principle of liberty, it is a direct infraction of that principle, being a mere riveting of the chains of one half of the community, and an emancipation of the other from reciprocity of obligation

towards them. Still, it must be remembered that this relation is as much voluntary on the part of the women concerned in it, and who may be deemed the sufferers by it, as is the case with any other form of the marriage institution; and however surprising this fact may appear, it has its explanation in the common ideas and customs of the world, which teaching women to think marriage the one thing needful, make it intelligible that many a woman should prefer being one of several wives, to not being a wife at all. Other countries are not asked to recognize such unions, or release any portion of their inhabitants from their own laws on the score of Mormonite opinions. But when the dissentients have conceded to the hostile sentiments of others, far more than could justly be demanded; when they have left the countries to which their doctrines were unacceptable, and established themselves in a remote corner of the earth, which they have been the first to render habitable to human beings; it is difficult to see on what principles but those of tyranny they can be prevented from living there under what laws they please, provided they commit no aggression on other nations, and allow perfect freedom of departure to those who are dissatisfied with their ways. A recent writer, in some respects of considerable merit, proposes (to use his own words,) not a crusade, but a civilizade, against this polygamous community, to put an end to what seems to him a retrograde step in civilization. It also appears so to me, but I am not aware that any community has a right to force another to be civilized. So long as the sufferers by the bad law do not invoke assistance from other communities, I cannot admit that persons entirely unconnected with them ought to step in and require that a condition of things with which all who are directly interested appear to be satisfied, should be put an end to because it is a scandal to persons some thousands of miles distant, who have no part or concern in it. Let them send missionaries, if they please, to preach against it; and let them, by any fair means, (of which silencing the teachers is not one,) oppose the progress of similar doctrines among their own people. If civilization has got the better of barbarism when barbarism had the world to itself, it is too much to profess to be afraid lest barbarism, after having been fairly got under, should revive and conquer civilization. A civilization that can thus succumb to its vanquished enemy must first have become so degenerate, that neither its appointed priests and teachers, nor anybody else, has the capacity, or will take the trouble, to stand up for it. If this be so, the sooner such a civilization receives notice to quit, the better. It can only go on from bad to worse, until destroyed and regenerated (like the Western Empire) by energetic barbarians.

CHAPTER V: APPLICATIONS

THE principles asserted in these pages must be more generally admitted as the basis for discussion of details, before a consistent application of them to all the various departments of government and morals can be attempted with any prospect of advantage. The few observations I propose to make on

questions of detail, are designed to illustrate the principles, rather than to follow them out to their consequences. I offer, not so much applications, as specimens of application; which may serve to bring into greater clearness the meaning and limits of the two maxims which together form the entire doctrine of this Essay and to assist the judgment in holding the balance between them, in the cases where it appears doubtful which of them is applicable to the case.

The maxims are, first, that the individual is not accountable to society for his actions, in so far as these concern the interests of no person but himself. Advice, instruction, persuasion, and avoidance by other people, if thought necessary by them for their own good, are the only measures by which society can justifiably express its dislike or disapprobation of his conduct. Secondly, that for such actions as are prejudicial to the interests of others, the individual is accountable, and may be subjected either to social or to legal punishments, if society is of opinion that the one or the other is requisite for its protection.

In the first place, it must by no means be supposed, because damage, or probability of damage, to the interests of others, can alone justify the interference of society, that therefore it always does justify such interference. In many cases, an individual, in pursuing a legitimate object, necessarily and therefore legitimately causes pain or loss to others, or intercepts a good which they had a reasonable hope of obtaining. Such oppositions of interest between individuals often arise from bad social institutions, but are unavoidable while those institutions last; and some would be unavoidable under any institutions. Whoever succeeds in an overcrowded profession, or in a competitive examination; whoever is preferred to another in any contest for an object which both desire, reaps benefit from the loss of others, from their wasted exertion and their disappointment. But it is, by common admission, better for the general interest of mankind, that persons should pursue their objects undeterred by this sort of consequences. In other words, society admits no right, either legal or moral, in the disappointed competitors, to immunity from this kind of suffering; and feels called on to interfere, only when means of success have been employed which it is contrary to the general interest to permit – namely, fraud or treachery, and force.

Again, trade is a social act. Whoever undertakes to sell any description of goods to the public, does what affects the interest of other persons, and of society in general; and thus his conduct, in principle, comes within the jurisdiction of society: accordingly, it was once held to be the duty of governments, in all cases which were considered of importance, to fix prices, and regulate the processes of manufacture. But it is now recognized, though not till after a long struggle, that both the cheapness and the good quality of commodities are most effectually provided for by leaving the producers and sellers perfectly free, under the sole check of equal freedom to the buyers for supplying themselves elsewhere. This is the so-called doctrine of Free Trade, which rests on grounds different from,

though equally solid with, the principle of individual liberty asserted in this Essay. Restrictions on trade, or on production for purposes of trade, are indeed restraints; and all restraint, qua restraint, is an evil: but the restraints in question affect only that part of conduct which society is competent to restrain, and are wrong solely because they do not really produce the results which it is desired to produce by them. As the principle of individual liberty is not involved in the doctrine of Free Trade so neither is it in most of the questions which arise respecting the limits of that doctrine: as for example, what amount of public control is admissible for the prevention of fraud by adulteration; how far sanitary precautions, or arrangements to protect work-people employed in dangerous occupations, should be enforced on employers. Such questions involve considerations of liberty, only in so far as leaving people to themselves is always better, caeteris paribus, than controlling them: but that they may be legitimately controlled for these ends, is in principle undeniable. On the other hand, there are questions relating to interference with trade which are essentially questions of liberty; such as the Maine Law, already touched upon; the prohibition of the importation of opium into China; the restriction of the sale of poisons; all cases, in short, where the object of the interference is to make it impossible or difficult to obtain a particular commodity. These interferences are objectionable, not as infringements on the liberty of the producer or seller, but on that of the buyer.

One of these examples, that of the sale of poisons, opens a new question; the proper limits of what may be called the functions of police; how far liberty may legitimately be invaded for the prevention of crime, or of accident. It is one of the undisputed functions of government to take precautions against crime before it has been committed, as well as to detect and punish it afterwards. The preventive function of government, however, is far more liable to be abused, to the prejudice of liberty, than the punitory function; for there is hardly any part of the legitimate freedom of action of a human being which would not admit of being represented, and fairly too, as increasing the facilities for some form or other of delinquency. Nevertheless, if a public authority, or even a private person, sees any one evidently preparing to commit a crime, they are not bound to look on inactive until the crime is committed, but may interfere to prevent it. If poisons were never bought or used for any purpose except the commission of murder, it would be right to prohibit their manufacture and sale. They may, however, be wanted not only for innocent but for useful purposes, and restrictions cannot be imposed in the one case without operating in the other. Again, it is a proper office of public authority to guard against accidents. If either a public officer or any one else saw a person attempting to cross a bridge which had been ascertained to be unsafe, and there were no time to warn him of his danger, they might seize him and turn him back without any real infringement of his liberty; for liberty consists in doing what one desires, and he does not desire to fall into the river. Nevertheless, when there is not a certainty, but only a danger of mischief, no one but the

person himself can judge of the sufficiency of the motive which may prompt him to incur the risk: in this case, therefore, (unless he is a child, or delirious, or in some state of excitement or absorption incompatible with the full use of the reflecting faculty,) he ought, I conceive, to be only warned of the danger; not forcibly prevented from exposing himself to it. Similar considerations, applied to such a question as the sale of poisons, may enable us to decide which among the possible modes of regulation are or are not contrary to principle. Such a precaution, for example, as that of labelling the drug with some word expressive of its dangerous character, may be enforced without violation of liberty: the buyer cannot wish not to know that the thing he possesses has poisonous qualities. But to require in all cases the certificate of a medical practitioner, would make it sometimes impossible, always expensive, to obtain the article for legitimate uses. The only mode apparent to me, in which difficulties may be thrown in the way of crime committed through this means, without any infringement, worth taking into account, Upon the liberty of those who desire the poisonous substance for other purposes, consists in providing what, in the apt language of Bentham, is called "preappointed evidence." This provision is familiar to every one in the case of contracts. It is usual and right that the law, when a contract is entered into, should require as the condition of its enforcing performance, that certain formalities should be observed, such as signatures, attestation of witnesses, and the like, in order that in case of subsequent dispute, there may be evidence to prove that the contract was really entered into, and that there was nothing in the circumstances to render it legally invalid: the effect being, to throw great obstacles in the way of fictitious contracts, or contracts made in circumstances which, if known, would destroy their validity. Precautions of a similar nature might be enforced in the sale of articles adapted to be instruments of crime. The seller, for example, might be required to enter in a register the exact time of the transaction, the name and address of the buyer, the precise quality and quantity sold; to ask the purpose for which it was wanted, and record the answer he received. When there was no medical prescription, the presence of some third person might be required, to bring home the fact to the purchaser, in case there should afterwards be reason to believe that the article had been applied to criminal purposes. Such regulations would in general be no material impediment to obtaining the article, but a very considerable one to making an improper use of it without detection.

The right inherent in society, to ward off crimes against itself by antecedent precautions, suggests the obvious limitations to the maxim, that purely self-regarding misconduct cannot properly be meddled with in the way of prevention or punishment. Drunkennesses, for example, in ordinary cases, is not a fit subject for legislative interference; but I should deem it perfectly legitimate that a person, who had once been convicted of any act of violence to others under the influence of drink, should be placed under a special legal restriction, personal to himself; that if he were afterwards found drunk, he should be liable to a penalty, and that if when in that state

he committed another offence, the punishment to which he would be liable for that other offence should be increased in severity. The making himself drunk, in a person whom drunkenness excites to do harm to others, is a crime against others. So, again, idleness, except in a person receiving support from the public, or except when it constitutes a breach of contract, cannot without tyranny be made a subject of legal punishment; but if either from idleness or from any other avoidable cause, a man fails to perform his legal duties to others, as for instance to support his children, it is no tyranny to force him to fulfil that obligation, by compulsory labor, if no other means are available.

Again, there are many acts which, being directly injurious only to the agents themselves, ought not to be legally interdicted, but which, if done publicly, are a violation of good manners, and coming thus within the category of offences against others, may rightfully be prohibited. Of this kind are offences against decency; on which it is unnecessary to dwell, the rather as they are only connected indirectly with our subject, the objection to publicity being equally strong in the case of many actions not in themselves condemnable, nor supposed to be so.

[...]

A further question is, whether the State while it permits, should nevertheless indirectly discourage conduct which it deems contrary to the best interests of the agent; whether, for example, it should take measures to render the means of drunkenness more costly, or add to the difficulty of procuring them, by limiting the number of the places of sale. On this as on most other practical questions, many distinctions require to be made. To tax stimulants for the sole purpose of making them more difficult to be obtained, is a measure differing only in degree from their entire prohibition; and would be justifiable only if that were justifiable. Every increase of cost is a prohibition, to those whose means do not come up to the augmented price; and to those who do, it is a penalty laid on them for gratifying a particular taste. Their choice of pleasures, and their mode of expending their income, after satisfying their legal and moral obligations to the State and to individuals, are their own concern, and must rest with their own judgment. These considerations may seem at first sight to condemn the selection of stimulants as special subjects of taxation for purposes of revenue. But it must be remembered that taxation for fiscal purposes is absolutely inevitable; that in most countries it is necessary that a considerable part of that taxation should be indirect; that the State, therefore, cannot help imposing penalties, which to some persons may be prohibitory, on the use of some articles of consumption. It is hence the duty of the State to consider, in the imposition of taxes, what commodities the consumers can best spare; and a fortiori, to select in preference those of which it deems the use, beyond a very moderate quantity, to be positively injurious. Taxation, therefore, of stimulants, up to the point which produces the largest amount of revenue (supposing that the State needs all the revenue which it yields) is not only admissible, but to be approved of.

The question of making the sale of these commodities a more or less exclusive privilege, must be answered differently, according to the purposes to which the restriction is intended to be subservient. All places of public resort require the restraint of a police, and places of this kind peculiarly, because offences against society are especially apt to originate there. It is, therefore, fit to confine the power of selling these commodities (at least for consumption on the spot) to persons of known or vouched-for respectability of conduct; to make such regulations respecting hours of opening and closing as may be requisite for public surveillance, and to withdraw the license if breaches of the peace repeatedly take place through the connivance or incapacity of the keeper of the house, or if it becomes a rendezvous for concocting and preparing offences against the law. Any further restriction I do not conceive to be, in principle, justifiable. The limitation in number, for instance, of beer and spirit-houses, for the express purpose of rendering them more difficult of access, and diminishing the occasions of temptation, not only exposes all to an inconvenience because there are some by whom the facility would be abused, but is suited only to a state of society in which the laboring classes are avowedly treated as children or savages, and placed under an education of restraint, to fit them for future admission to the privileges of freedom. This is not the principle on which the laboring classes are professedly governed in any free country; and no person who sets due value on freedom will give his adhesion to their being so governed, unless after all efforts have been exhausted to educate them for freedom and govern them as freemen, and it has been definitively proved that they can only be governed as children. The bare statement of the alternative shows the absurdity of supposing that such efforts have been made in any case which needs be considered here. It is only because the institutions of this country are a mass of inconsistencies, that things find admittance into our practice which belong to the system of despotic, or what is called paternal, government, while the general freedom of our institutions precludes the exercise of the amount of control necessary to render the restraint of any real efficacy as a moral education.

It was pointed out in an early part of this Essay, that the liberty of the individual, in things wherein the individual is alone concerned, implies a corresponding liberty in any number of individuals to regulate by mutual agreement such things as regard them jointly, and regard no persons but themselves. This question presents no difficulty, so long as the will of all the persons implicated remains unaltered; but since that will may change, it is often necessary, even in things in which they alone are concerned, that they should enter into engagements with one another; and when they do, it is fit, as a general rule, that those engagements should be kept. Yet in the laws probably, of every country, this general rule has some exceptions. Not only persons are not held to engagements which violate the rights of third parties, but it is sometimes considered a sufficient reason for releasing them from an engagement, that it is injurious to themselves. In this and most other civilized countries, for example, an engagement by which a person

should sell himself, or allow himself to be sold, as a slave, would be null and void; neither enforced by law nor by opinion. The ground for thus limiting his power of voluntarily disposing of his own lot in life, is apparent, and is very clearly seen in this extreme case. The reason for not interfering, unless for the sake of others, with a person's voluntary acts, is consideration for his liberty. His voluntary choice is evidence that what he so chooses is desirable, or at the least endurable, to him, and his good is on the whole best provided for by allowing him to take his own means of pursuing it. But by selling himself for a slave, he abdicates his liberty; he foregoes any future use of it, beyond that single act. He therefore defeats, in his own case, the very purpose which is the justification of allowing him to dispose of himself. He is no longer free; but is thenceforth in a position which has no longer the presumption in its favor, that would be afforded by his voluntarily remaining in it. The principle of freedom cannot require that he should be free not to be free. It is not freedom, to be allowed to alienate his freedom. These reasons, the force of which is so conspicuous in this peculiar case, are evidently of far wider application; yet a limit is everywhere set to them by the necessities of life, which continually require, not indeed that we should resign our freedom, but that we should consent to this and the other limitation of it. The principle, however, which demands uncontrolled freedom of action in all that concerns only the agents themselves, requires that those who have become bound to one another, in things which concern no third party, should be able to release one another from the engagement: and even without such voluntary release, there are perhaps no contracts or engagements, except those that relate to money or money's worth, of which one can venture to say that there ought to be no liberty whatever of retractation. Baron Wilhelm von Humboldt, in the excellent Essay from which I have already quoted, states it as his conviction, that engagements which involve personal relations or services, should never be legally binding beyond a limited duration of time; and that the most important of these engagements, marriage, having the peculiarity that its objects are frustrated unless the feelings of both the parties are in harmony with it, should require nothing more than the declared will of either party to dissolve it. This subject is too important, and too complicated, to be discussed in a parenthesis, and I touch on it only so far as is necessary for purposes of illustration. If the conciseness and generality of Baron Humboldt's dissertation had not obliged him in this instance to content himself with enunciating his conclusion without discussing the premises, he would doubtless have recognized that the question cannot be decided on grounds so simple as those to which he confines himself. When a person, either by express promise or by conduct, has encouraged another to rely upon his continuing to act in a certain way – to build expectations and calculations, and stake any part of his plan of life upon that supposition, a new series of moral obligations arises on his part towards that person, which may possibly be overruled, but can not be ignored. And again, if the relation between two contracting parties has been followed by consequences

to others; if it has placed third parties in any peculiar position, or, as in the case of marriage, has even called third parties into existence, obligations arise on the part of both the contracting parties towards those third persons, the fulfilment of which, or at all events, the mode of fulfilment, must be greatly affected by the continuance or disruption of the relation between the original parties to the contract. It does not follow, nor can I admit, that these obligations extend to requiring the fulfilment of the contract at all costs to the happiness of the reluctant party; but they are a necessary element in the question; and even if, as Von Humboldt maintains, they ought to make no difference in the legal freedom of the parties to release themselves from the engagement (and I also hold that they ought not to make much difference), they necessarily make a great difference in the moral freedom. A person is bound to take all these circumstances into account, before resolving on a step which may affect such important interests of others; and if he does not allow proper weight to those interests, he is morally responsible for the wrong. I have made these obvious remarks for the better illustration of the general principle of liberty, and not because they are at all needed on the particular question, which, on the contrary, is usually discussed as if the interest of children was everything, and that of grown persons nothing.

I have already observed that, owing to the absence of any recognized general principles, liberty is often granted where it should be withheld, as well as withheld where it should be granted; and one of the cases in which, in the modern European world, the sentiment of liberty is the strongest, is a case where, in my view, it is altogether misplaced. A person should be free to do as he likes in his own concerns; but he ought not to be free to do as he likes in acting for another under the pretext that the affairs of another are his own affairs. The State, while it respects the liberty of each in what specially regards himself, is bound to maintain a vigilant control over his exercise of any power which it allows him to possess over others. This obligation is almost entirely disregarded in the case of the family relations, a case, in its direct influence on human happiness, more important than all the others taken together. The almost despotic power of husbands over wives needs not be enlarged upon here, because nothing more is needed for the complete removal of the evil, than that wives should have the same rights, and should receive the protection of law in the same manner, as all other persons; and because, on this subject, the defenders of established injustice do not avail themselves of the plea of liberty, but stand forth openly as the champions of power. It is in the case of children, that misapplied notions of liberty are a real obstacle to the fulfilment by the State of its duties. One would almost think that a man's children were supposed to be literally, and not metaphorically, a part of himself, so jealous is opinion of the smallest interference of law with his absolute and exclusive control over them; more jealous than of almost any interference with his own freedom of action: so much less do the generality of mankind value liberty than power. Consider, for example, the case of education. Is it not almost a self-evident axiom, that the State should require and compel the

education, up to a certain standard, of every human being who is born its citizen? Yet who is there that is not afraid to recognize and assert this truth? Hardly any one indeed will deny that it is one of the most sacred duties of the parents (or, as law and usage now stand, the father), after summoning a human being into the world, to give to that being an education fitting him to perform his part well in life towards others and towards himself. But while this is unanimously declared to be the father's duty, scarcely anybody, in this country, will bear to hear of obliging him to perform it. Instead of his being required to make any exertion or sacrifice for securing education to the child, it is left to his choice to accept it or not when it is provided gratis! It still remains unrecognized, that to bring a child into existence without a fair prospect of being able, not only to provide food for its body, but instruction and training for its mind, is a moral crime, both against the unfortunate offspring and against society; and that if the parent does not fulfil this obligation, the State ought to see it fulfilled, at the charge, as far as possible, of the parent.

Were the duty of enforcing universal education once admitted, there would be an end to the difficulties about what the State should teach, and how it should teach, which now convert the subject into a mere battle-field for sects and parties, causing the time and labor which should have been spent in educating, to be wasted in quarrelling about education. If the government would make up its mind to require for every child a good education, it might save itself the trouble of providing one. It might leave to parents to obtain the education where and how they pleased, and content itself with helping to pay the school fees of the poorer classes of children, and defraying the entire school expenses of those who have no one else to pay for them. The objections which are urged with reason against State education, do not apply to the enforcement of education by the State, but to the State's taking upon itself to direct that education: which is a totally different thing. That the whole or any large part of the education of the people should be in State hands, I go as far as any one in deprecating. All that has been said of the importance of individuality of character, and diversity in opinions and modes of conduct, involves, as of the same unspeakable importance, diversity of education. A general State education is a mere contrivance for moulding people to be exactly like one another: and as the mould in which it casts them is that which pleases the predominant power in the government, whether this be a monarch, a priesthood, an aristocracy, or the majority of the existing generation, in proportion as it is efficient and successful, it establishes a despotism over the mind, leading by natural tendency to one over the body. An education established and controlled by the State, should only exist, if it exist at all, as one among many competing experiments, carried on for the purpose of example and stimulus, to keep the others up to a certain standard of excellence. Unless, indeed, when society in general is in so backward a state that it could not or would not provide for itself any proper institutions of education, unless the government undertook the task; then, indeed, the government may, as the

less of two great evils, take upon itself the business of schools and universities, as it may that of joint-stock companies, when private enterprise, in a shape fitted for undertaking great works of industry does not exist in the country. But in general, if the country contains a sufficient number of persons qualified to provide education under government auspices, the same persons would be able and willing to give an equally good education on the voluntary principle, under the assurance of remuneration afforded by a law rendering education compulsory, combined with State aid to those unable to defray the expense.

The instrument for enforcing the law could be no other than public examinations, extending to all children, and beginning at an early age. An age might be fixed at which every child must be examined, to ascertain if he (or she) is able to read. If a child proves unable, the father, unless he has some sufficient ground of excuse, might be subjected to a moderate fine, to be worked out, if necessary, by his labor, and the child might be put to school at his expense. Once in every year the examination should be renewed, with a gradually extending range of subjects, so as to make the universal acquisition, and what is more, retention, of a certain minimum of general knowledge, virtually compulsory. Beyond that minimum, there should be voluntary examinations on all subjects, at which all who come up to a certain standard of proficiency might claim a certificate. To prevent the State from exercising through these arrangements, an improper influence over opinion, the knowledge required for passing an examination (beyond the merely instrumental parts of knowledge, such as languages and their use) should, even in the higher class of examinations, be confined to facts and positive science exclusively. The examinations on religion, politics, or other disputed topics, should not turn on the truth or falsehood of opinions, but on the matter of fact that such and such an opinion is held, on such grounds, by such authors, or schools, or churches. Under this system, the rising generation would be no worse off in regard to all disputed truths, than they are at present; they would be brought up either churchmen or dissenters as they now are, the State merely taking care that they should be instructed churchmen, or instructed dissenters. There would be nothing to hinder them from being taught religion, if their parents chose, at the same schools where they were taught other things. All attempts by the State to bias the conclusions of its citizens on disputed subjects, are evil; but it may very properly offer to ascertain and certify that a person possesses the knowledge requisite to make his conclusions, on any given subject, worth attending to. A student of philosophy would be the better for being able to stand an examination both in Locke and in Kant, whichever of the two he takes up with, or even if with neither: and there is no reasonable objection to examining an atheist in the evidences of Christianity, provided he is not required to profess a belief in them. The examinations, however, in the higher branches of knowledge should, I conceive, be entirely voluntary. It would be giving too dangerous a power to governments, were they allowed to exclude any one from professions, even from the profession of teacher,

for alleged deficiency of qualifications: and I think, with Wilhelm von Humboldt, that degrees, or other public certificates of scientific or professional acquirements, should be given to all who present themselves for examination, and stand the test; but that such certificates should confer no advantage over competitors, other than the weight which may be attached to their testimony by public opinion.

It is not in the matter of education only that misplaced notions of liberty prevent moral obligations on the part of parents from being recognized, and legal obligations from being imposed, where there are the strongest grounds for the former always, and in many cases for the latter also. The fact itself, of causing the existence of a human being, is one of the most responsible actions in the range of human life. To undertake this responsibility – to bestow a life which may be either a curse or a blessing – unless the being on whom it is to be bestowed will have at least the ordinary chances of a desirable existence, is a crime against that being. And in a country either over-peopled or threatened with being so, to produce children, beyond a very small number, with the effect of reducing the reward of labor by their competition, is a serious offence against all who live by the remuneration of their labor. The laws which, in many countries on the Continent, forbid marriage unless the parties can show that they have the means of supporting a family, do not exceed the legitimate powers of the State: and whether such laws be expedient or not (a question mainly dependent on local circumstances and feelings), they are not objectionable as violations of liberty. Such laws are interferences of the State to prohibit a mischievous act – an act injurious to others, which ought to be a subject of reprobation, and social stigma, even when it is not deemed expedient to superadd legal punishment. Yet the current ideas of liberty, which bend so easily to real infringements of the freedom of the individual, in things which concern only himself, would repel the attempt to put any restraint upon his inclinations when the consequence of their indulgence is a life, or lives, of wretchedness and depravity to the offspring, with manifold evils to those sufficiently within reach to be in any way affected by their actions. When we compare the strange respect of mankind for liberty, with their strange want of respect for it, we might imagine that a man had an indispensable right to do harm to others, and no right at all to please himself without giving pain to any one.

I have reserved for the last place a large class of questions respecting the limits of government interference, which, though closely connected with the subject of this Essay, do not, in strictness, belong to it. These are cases in which the reasons against interference do not turn upon the principle of liberty: the question is not about restraining the actions of individuals, but about helping them: it is asked whether the government should do, or cause to be done, something for their benefit, instead of leaving it to be done by themselves, individually, or in voluntary combination.

The objections to government interference, when it is not such as to involve infringement of liberty, may be of three kinds.

The first is, when the thing to be done is likely to be better done by individuals than by the government. Speaking generally, there is no one so fit to conduct any business, or to determine how or by whom it shall be conducted, as those who are personally interested in it. This principle condemns the interferences, once so common, of the legislature, or the officers of government, with the ordinary processes of industry. But this part of the subject has been sufficiently enlarged upon by political economists, and is not particularly related to the principles of this Essay.

The second objection is more nearly allied to our subject. In many cases, though individuals may not do the particular thing so well, on the average, as the officers of government, it is nevertheless desirable that it should be done by them, rather than by the government, as a means to their own mental education – a mode of strengthening their active faculties, exercising their judgment, and giving them a familiar knowledge of the subjects with which they are thus left to deal. This is a principal, though not the sole, recommendation of jury trial (in cases not political); of free and popular local and municipal institutions; of the conduct of industrial and philanthropic enterprises by voluntary associations. These are not questions of liberty, and are connected with that subject only by remote tendencies; but they are questions of development. It belongs to a different occasion from the present to dwell on these things as parts of national education; as being, in truth, the peculiar training of a citizen, the practical part of the political education of a free people, taking them out of the narrow circle of personal and family selfishness, and accustoming them to the comprehension of joint interests, the management of joint concerns – habituating them to act from public or semipublic motives, and guide their conduct by aims which unite instead of isolating them from one another. Without these habits and powers, a free constitution can neither be worked nor preserved, as is exemplified by the too-often transitory nature of political freedom in countries where it does not rest upon a sufficient basis of local liberties. The management of purely local business by the localities, and of the great enterprises of industry by the union of those who voluntarily supply the pecuniary means, is further recommended by all the advantages which have been set forth in this Essay as belonging to individuality of development, and diversity of modes of action. Government operations tend to be everywhere alike. With individuals and voluntary associations, on the contrary, there are varied experiments, and endless diversity of experience. What the State can usefully do, is to make itself a central depository, and active circulator and diffuser, of the experience resulting from many trials. Its business is to enable each experimentalist to benefit by the experiments of others, instead of tolerating no experiments but its own.

The third, and most cogent reason for restricting the interference of government, is the great evil of adding unnecessarily to its power. Every

function superadded to those already exercised by the government, causes its influence over hopes and fears to be more widely diffused, and converts, more and more, the active and ambitious part of the public into hangers-on of the government, or of some party which aims at becoming the government. If the roads, the railways, the banks, the insurance offices, the great joint-stock companies, the universities, and the public charities, were all of them branches of the government; if, in addition, the municipal corporations and local boards, with all that now devolves on them, became departments of the central administration; if the employes of all these different enterprises were appointed and paid by the government, and looked to the government for every rise in life; not all the freedom of the press and popular constitution of the legislature would make this or any other country free otherwise than in name. And the evil would be greater, the more efficiently and scientifically the administrative machinery was constructed – the more skilful the arrangements for obtaining the best qualified hands and heads with which to work it. [...]

To determine the point at which evils, so formidable to human freedom and advancement begin, or rather at which they begin to predominate over the benefits attending the collective application of the force of society, under its recognized chiefs, for the removal of the obstacles which stand in the way of its well-being, to secure as much of the advantages of centralized power and intelligence, as can be had without turning into governmental channels too great a proportion of the general activity, is one of the most difficult and complicated questions in the art of government. It is, in a great measure, a question of detail, in which many and various considerations must be kept in view, and no absolute rule can be laid down. But I believe that the practical principle in which safety resides, the ideal to be kept in view, the standard by which to test all arrangements intended for overcoming the difficulty, may be conveyed in these words: the greatest dissemination of power consistent with efficiency; but the greatest possible centralization of information, and diffusion of it from the centre. [...] Such, in its general conception, is the central superintendence which the Poor Law Board is intended to exercise over the administrators of the Poor Rate throughout the country. Whatever powers the Board exercises beyond this limit, were right and necessary in that peculiar case, for the cure of rooted habits of mal-administration in matters deeply affecting not the localities merely, but the whole community; since no locality has a moral right to make itself by mismanagement a nest of pauperism, necessarily overflowing into other localities, and impairing the moral and physical condition of the whole laboring community. The powers of administrative coercion and subordinate legislation possessed by the Poor Law Board (but which, owing to the state of opinion on the subject, are very scantily exercised by them), though perfectly justifiable in a case of a first-rate national interest, would be wholly out of place in the superintendence of interests purely local. But a central organ of information and instruction for all the localities, would be equally valuable in all departments of

administration. A government cannot have too much of the kind of activity which does not impede, but aids and stimulates, individual exertion and development. The mischief begins when, instead of calling forth the activity and powers of individuals and bodies, it substitutes its own activity for theirs; when, instead of informing, advising, and upon occasion denouncing, it makes them work in fetters or bids them stand aside and does their work instead of them. The worth of a State, in the long run, is the worth of the individuals composing it; and a State which postpones the interests of their mental expansion and elevation, to a little more of administrative skill or that semblance of it which practice gives, in the details of business; a State, which dwarfs its men, in order that they may be more docile instruments in its hands even for beneficial purposes, will find that with small men no great thing can really be accomplished; and that the perfection of machinery to which it has sacrificed everything, will in the end avail it nothing, for want of the vital power which, in order that the machine might work more smoothly, it has preferred to banish.

NOTES

[1] These words had scarcely been written, when, as if to give them an emphatic contradiction, occurred the Government Press Prosecutions of 1858. That ill-judged interference with the liberty of public discussion has not, however, induced me to alter a single word in the text, nor has it at all weakened my conviction that, moments of panic excepted, the era of pains and penalties far political discussion has, in our own country, passed away. For, in the first place, the prosecutions were not persisted in; and in the second, they were never, properly speaking, political prosecutions. The offence charged was not that of criticizing institutions, or the acts or persons of rulers, but of circulating what was deemed an immoral doctrine, the lawfulness of Tyrannicide.

If the arguments of the present chapter are of any validity, there ought to exist the fullest liberty of professing and discussing, as a matter of ethical conviction, any doctrine, however immoral it may be considered. It would, therefore, be irrelevant and out of place to examine here, whether the doctrine of Tyrannicide deserves that title. I shall content myself with saying, that the subject has been at all times one of the open questions of morals, that the act of a private citizen in striking down a criminal, who, by raising himself above the law, has placed himself beyond the reach of legal punishment or control, has been accounted by whole nations, and by some of the best and wisest of men, not a crime, but an act of exalted virtue and that, right or wrong, it is not of the nature of assassination but of civil war. As such, I hold that the instigation to it, in a specific case, may be a proper subject of punishment, but only if an overt act has followed, and at least a probable connection can be established between the act and the instigation. Even then it is not a foreign government, but the very government assailed, which alone, in the exercise of self-defence, can legitimately punish attacks directed against its own existence.

[2] *The Sphere and Duties of Government*, from the German of Baron Wilhelm von Humboldt, pp. 11-13.

[3] [John] Sterling's *Essays* [*and Tales*, collected and ed., with a memoir, by J.C. Hare (London: Parker, 1848), 2 vols., Vol. 1, p. 190; the original text reads: "Christian self-denial and Pagan self-assertion had attained an equipoise, strengthening and elevating each other." – Ed.]

Utilitarianism (1861)

CHAPTER 5: ON THE CONNECTION BETWEEN JUSTICE AND UTILITY

IN ALL ages of speculation, one of the strongest obstacles to thereception of the doctrine that idea of justice. The powerful sentiment, and apparently clear perception, which that word recalls with a rapidity and certainty resembling an instinct, have seemed to the majority of thinkers to point to an inherent quality in things; to show that the just must have an existence in Nature as something absolute, generically distinct from every variety of the Expedient, and, in idea, opposed to it, though Utility or Happiness is the criterion of right and wrong, has been drawn from the (as is commonly acknowledged) never, in the long run, disjoined from it in fact.

In the case of this, as of our other moral sentiments, there is no necessary connection between the question of its origin, and that of its binding force. That a feeling is bestowed on us by Nature, does not necessarily legitimate all its promptings. The feeling of justice might be a peculiar instinct, and might yet require, like our other instincts, to be controlled and enlightened by a higher reason. If we have intellectual instincts, leading us to judge in a particular way, as well as animal instincts that prompt us to act in a particular way, there is no necessity that the former should be more infallible in their sphere than the latter in theirs: it may as well happen that wrong judgments are occasionally suggested by those, as wrong actions by these. But though it is one thing to believe that we have natural feelings of justice, and another to acknowledge them as an ultimate criterion of conduct, these two opinions are very closely connected in point of fact. Mankind are always predisposed to believe that any subjective feeling, not otherwise accounted for, is a revelation of some objective reality. Our present object is to determine whether the reality, to which the feeling of justice corresponds, is one which needs any such special revelation; whether the justice or injustice of an action is a thing intrinsically peculiar, and distinct from all its other qualities, or only a combination of certain of those qualities, presented under a peculiar aspect. For the purpose of this inquiry it is practically important to consider whether the feeling itself, of justice and injustice, is sui generis like our sensations of colour and taste, or a derivative feeling, formed by a combination of others. And this it is the more essential to examine, as people are in general willing enough to allow, that objectively the dictates of justice coincide with a part of the field of General Expediency; but inasmuch as the subjective mental feeling of justice is different from that which commonly attaches to simple expediency, and, except in the extreme cases of the latter, is far more imperative in its demands, people find it difficult to see, in justice, only a particular kind or branch of general utility, and think that its superior binding force requires a totally different origin.

To throw light upon this question, it is necessary to attempt to ascertain what is the distinguishing character of justice, or of injustice: what is the quality, or whether there is any quality, attributed in common to all modes of conduct designated as unjust (for justice, like many other moral attributes, is best defined by its opposite), and distinguishing them from such modes of conduct as are disapproved, but without having that particular epithet of disapprobation applied to them. If in everything which men are accustomed to characterise as just or unjust, some one common attribute or collection of attributes is always present, we may judge whether this particular attribute or combination of attributes would be capable of gathering round it a sentiment of that peculiar character and intensity by virtue of the general laws of our emotional constitution, or whether the sentiment is inexplicable, and requires to be regarded as a special provision of Nature. If we find the former to be the case, we shall, in resolving this question, have resolved also the main problem: if the latter, we shall have to seek for some other mode of investigating it.

To find the common attributes of a variety of objects, it is necessary to begin by surveying the objects themselves in the concrete. Let us therefore advert successively to the various modes of action, and arrangements of human affairs, which are classed, by universal or widely spread opinion, as Just or as Unjust. The things well known to excite the sentiments associated with those names are of a very multifarious character. I shall pass them rapidly in review, without studying any particular arrangement.

In the first place, it is mostly considered unjust to deprive any one of his personal liberty, his property, or any other thing which belongs to him by law. Here, therefore, is one instance of the application of the terms just and unjust in a perfectly definite sense, namely, that it is just to respect, unjust to violate, the *legal rights* of any one. But this judgment admits of several exceptions, arising from the other forms in which the notions of justice and injustice present themselves. For example, the person who suffers the deprivation may (as the phrase is) have *forfeited* the rights which he is so deprived of: a case to which we shall return presently. But also,

Secondly; the legal rights of which he is deprived, may be rights which *ought* not to have belonged to him; in other words, the law which confers on him these rights, may be a bad law. When it is so, or when (which is the same thing for our purpose) it is supposed to be so, opinions will differ as to the justice or injustice of infringing it. Some maintain that no law, however bad, ought to be disobeyed by an individual citizen; that his opposition to it, if shown at all, should only be shown in endeavouring to get it altered by competent authority. This opinion (which condemns many of the most illustrious benefactors of mankind, and would often protect pernicious institutions against the only weapons which, in the state of things existing at the time, have any chance of succeeding against them) is defended, by those who hold it, on grounds of expediency; principally on that of the importance, to the common interest of mankind, of maintaining

inviolate the sentiment of submission to law. Other persons, again, hold the directly contrary opinion, that any law, judged to be bad, may blamelessly be disobeyed, even though it be not judged to be unjust, but only inexpedient; while others would confine the licence of disobedience to the case of unjust laws: but again, some say, that all laws which are inexpedient are unjust; since every law imposes some restriction on the natural liberty of mankind, which restriction is an injustice, unless legitimated by tending to their good. Among these diversities of opinion, it seems to be universally admitted that there may be unjust laws, and that law, consequently, is not the ultimate criterion of justice, but may give to one person a benefit, or impose on another an evil, which justice condemns. When, however, a law is thought to be unjust, it seems always to be regarded as being so in the same way in which a breach of law is unjust, namely, by infringing somebody's right; which, as it cannot in this case be a legal right, receives a different appellation, and is called a moral right. We may say, therefore, that a second case of injustice consists in taking or withholding from any person that to which he has a *moral right*.

Thirdly, it is universally considered just that each person should obtain that (whether good or evil) which he *deserves*; and unjust that he should obtain a good, or be made to undergo an evil, which he does not deserve. This is, perhaps, the clearest and most emphatic form in which the idea of justice is conceived by the general mind. As it involves the notion of desert, the question arises, what constitutes desert? Speaking in a general way, a person is understood to deserve good if he does right, evil if he does wrong; and in a more particular sense, to deserve good from those to whom he does or has done good, and evil from those to whom he does or has done evil. The precept of returning good for evil has never been regarded as a case of the fulfilment of justice, but as one in which the claims of justice are waived, in obedience to other considerations.

Fourthly, it is confessedly unjust to *break faith* with any one: to violate an engagement, either express or implied, or disappoint expectations raised by our conduct, at least if we have raised those expectations knowingly and voluntarily. Like the other obligations of justice already spoken of, this one is not regarded as absolute, but as capable of being overruled by a stronger obligation of justice on the other side; or by such conduct on the part of the person concerned as is deemed to absolve us from our obligation to him, and to constitute a *forfeiture* of the benefit which he has been led to expect.

Fifthly, it is, by universal admission, inconsistent with justice to be *partial*; to show favour or preference to one person over another, in matters to which favour and preference do not properly apply. Impartiality, however, does not seem to be regarded as a duty in itself, but rather as instrumental to some other duty; for it is admitted that favour and preference are not always censurable, and indeed the cases in which they are condemned are rather the exception than the rule. A person would be more likely to be blamed than applauded for giving his family or friends no

superiority in good offices over strangers, when he could do so without violating any other duty; and no one thinks it unjust to seek one person in preference to another as a friend, connection, or companion. Impartiality where rights are concerned is of course obligatory, but this is involved in the more general obligation of giving to every one his right. A tribunal, for example, must be impartial, because it is bound to award, without regard to any other consideration, a disputed object to the one of two parties who has the right to it. There are other cases in which impartiality means, being solely influenced by desert; as with those who, in the capacity of judges, preceptors, or parents, administer reward and punishment as such. There are cases, again, in which it means, being solely influenced by consideration for the public interest; as in making a selection among candidates for a government employment. Impartiality, in short, as an obligation of justice, may be said to mean, being exclusively influenced by the considerations which it is supposed ought to influence the particular case in hand; and resisting the solicitation of any motives which prompt to conduct different from what those considerations would dictate.

Nearly allied to the idea of impartiality is that of *equality*; which often enters as a component part both into the conception of justice and into the practice of it, and, in the eyes of many persons, constitutes its essence. But in this, still more than in any other case, the notion of justice varies in different persons, and always conforms in its variations to their notion of utility. Each person maintains that equality is the dictate of justice, except where he thinks that expediency requires inequality. The justice of giving equal protection to the rights of all, is maintained by those who support the most outrageous inequality in the rights themselves. Even in slave countries it is theoretically admitted that the rights of the slave, such as they are, ought to be as sacred as those of the master; and that a tribunal which fails to enforce them with equal strictness is wanting in justice; while, at the same time, institutions which leave to the slave scarcely any rights to enforce, are not deemed unjust, because they are not deemed inexpedient. Those who think that utility requires distinctions of rank, do not consider it unjust that riches and social privileges should be unequally dispensed; but those who think this inequality inexpedient, think it unjust also. Whoever thinks that government is necessary, sees no injustice in as much inequality as is constituted by giving to the magistrate powers not granted to other people. Even among those who hold levelling doctrines, there are as many questions of justice as there are differences of opinion about expediency. Some Communists consider it unjust that the produce of the labour of the community should be shared on any other principle than that of exact equality; others think it just that those should receive most whose wants are greatest; while others hold that those who work harder, or who produce more, or whose services are more valuable to the community, may justly claim a larger quota in the division of the produce. And the sense of natural justice may be plausibly appealed to in behalf of every one of these opinions.

Among so many diverse applications of the term 'justice,' which yet is not regarded as ambiguous, it is a matter of some difficulty to seize the mental link which holds them together, and on which the moral sentiment adhering to the term essentially depends. Perhaps, in this embarrassment, some help may be derived from the history of the word, as indicated by its etymology.

In most, if not in all, languages, the etymology of the word which corresponds to Just, points distinctly to an origin connected with the ordinances of law. *Justum* is a form of *jussum*, that which has been ordered. *Dikaion* comes directly from *dike*, a suit at law. *Recht*, from which came *right* and *righteous*, is synonymous with law. The courts of justice, the administration of justice, are the courts and the administration of law. *La justice*, in French, is the established term for judicature. I am not committing the fallacy imputed with some show of truth to Horne Tooke, of assuming that a word must still continue to mean what it originally meant. Etymology is slight evidence of what the idea now signified is, but the very best evidence of how it sprang up. There can, I think, be no doubt that the *idée mère*, the primitive element, in the formation of the notion of justice, was conformity to law. It constituted the entire idea among the Hebrews, up to the birth of Christianity; as might be expected in the case of a people whose laws attempted to embrace all subjects on which precepts were required, and who believed those laws to be a direct emanation from the Supreme Being. But other nations, and in particular the Greeks and Romans, who knew that their laws had been made originally, and still continued to be made, by men, were not afraid to admit that those men might make bad laws; might do, by law, the same things, and from the same motives, which if done by individuals without the sanction of law, would be called unjust. And hence the sentiment of injustice came to be attached, not to all violations of law, but only to violations of such laws as *ought* to exist, including such as ought to exist, but do not; and to laws themselves, if supposed to be contrary to what ought to be law. In this manner the idea of law and of its injunctions was still predominant in the notion of justice, even when the laws actually in force ceased to be accepted as the standard of it.

It is true that mankind consider the idea of justice and its obligations as applicable to many things which neither are, nor is it desired that they should be, regulated by law. Nobody desires that laws should interfere with the whole detail of private life; yet every one allows that in all daily conduct a person may and does show himself to be either just or unjust. But even here, the idea of the breach of what ought to be law, still lingers in a modified shape. It would always give us pleasure, and chime in with our feelings of fitness, that acts which we deem unjust should be punished, though we do not always think it expedient that this should be done by the tribunals. We forego that gratification on account of incidental inconveniences. We should be glad to see just conduct enforced and injustice repressed, even in the minutest details, if we were not, with reason, afraid of trusting the magistrate with so unlimited an amount of power over

individuals. When we think that a person is bound in justice to do a thing, it is an ordinary form of language to say, that he ought to be compelled to do it. We should be gratified to see the obligation enforced by anybody who had the power. If we see that its enforcement by law would be inexpedient, we lament the impossibility, we consider the impunity given to injustice as an evil, and strive to make amends for it by bringing a strong expression of our own and the public disapprobation to bear upon the offender. Thus the idea of legal constraint is still the generating idea of the notion of justice, though undergoing several transformations before that notion, as it exists in an advanced state of society, becomes complete.

The above is, I think, a true account, as far as it goes, of the origin and progressive growth of the idea of justice. But we must observe, that it contains, as yet, nothing to distinguish that obligation from moral obligation in general. For the truth is, that the idea of penal sanction, which is the essence of law, enters not only into the conception of injustice, but into that of any kind of wrong. We do not call anything wrong, unless we mean to imply that a person ought to be punished in some way or other for doing it; if not by law, by the opinion of his fellow creatures; if not by opinion, by the reproaches of his own conscience. This seems the real turning point of the distinction between morality and simple expediency. It is a part of the notion of Duty in every one of its forms, that a person may rightfully be compelled to fulfil it. Duty is a thing which may be *exacted* from a person, as one exacts a debt. Unless we think that it may be exacted from him, we do not call it his duty. Reasons of prudence, or the interest of other people, may militate against actually exacting it; but the person himself, it is clearly understood, would not be entitled to complain. There are other things, on the contrary, which we wish that people should do, which we like or admire them for doing, perhaps dislike or despise them for not doing, but yet admit that they are not bound to do; it is not a case of moral obligation; we do not blame them, that is, we do not think that they are proper objects of punishment. How we come by these ideas of deserving and not deserving punishment, will appear, perhaps, in the sequel; but I think there is no doubt that this distinction lies at the bottom of the notions of right and wrong; that we call any conduct wrong, or employ, instead, some other term of dislike or disparagement, according as we think that the person ought, or ought not, to be punished for it; and we say, it would be right, to do so and so, or merely that it would be desirable or laudable, according as we would wish to see the person whom it concerns, compelled, or only persuaded and exhorted, to act in that manner.[1]

This, therefore, being the characteristic difference which marks off, not justice, but morality in general, from the remaining provinces of Expediency and Worthiness; the character is still to be sought which distinguishes justice from other branches of morality. Now it is known that ethical writers divide moral duties into two classes, denoted by the ill-chosen expressions, duties of perfect and of imperfect obligation; the latter being those in which, though the act is obligatory, the particular occasions

of performing it are left to our choice, as in the case of charity or beneficence, which we are indeed bound to practise, but not towards any definite person, nor at any prescribed time. In the more precise language of philosophic jurists, duties of perfect obligation are those duties in virtue of which a correlative *right* resides in some person or persons; duties of imperfect obligation are those moral obligations which do not give birth to any right. I think it will be found that this distinction exactly coincides with that which exists between justice and the other obligations of morality. In our survey of the various popular acceptations of justice, the term appeared generally to involve the idea of a personal right- a claim on the part of one or more individuals, like that which the law gives when it confers a proprietary or other legal right. Whether the injustice consists in depriving a person of a possession, or in breaking faith with him, or in treating him worse than he deserves, or worse than other people who have no greater claims, in each case the supposition implies two things- a wrong done, and some assignable person who is wronged. Injustice may also be done by treating a person better than others; but the wrong in this case is to his competitors, who are also assignable persons. It seems to me that this feature in the case- a right in some person, correlative to the moral obligation- constitutes the specific difference between justice, and generosity or beneficence. Justice implies something which it is not only right to do, and wrong not to do, but which some individual person can claim from us as his moral right. No one has a moral right to our generosity or beneficence, because we are not morally bound to practise those virtues towards any given individual. And it will be found with respect to this, as to every correct definition, that the instances which seem to conflict with it are those which most confirm it. For if a moralist attempts, as some have done, to make out that mankind generally, though not any given individual, have a right to all the good we can do them, he at once, by that thesis, includes generosity and beneficence within the category of justice. He is obliged to say, that our utmost exertions are *due* to our fellow creatures, thus assimilating them to a debt; or that nothing less can be a sufficient *return* for what society does for us, thus classing the case as one of gratitute; both of which are acknowledged cases of justice. Wherever there is right, the case is one of justice, and not of the virtue of beneficence: and whoever does not place the distinction between justice and morality in general, where we have now placed it, will be found to make no distinction between them at all, but to merge all morality in justice.

Having thus endeavoured to determine the distinctive elements which enter into the composition of the idea of justice, we are ready to enter on the inquiry, whether the feeling, which accompanies the idea, is attached to it by a special dispensation of nature, or whether it could have grown up, by any known laws, out of the idea itself; and in particular, whether it can have originated in considerations of general expediency.

I conceive that the sentiment itself does not arise from anything which would commonly, or correctly, be termed an idea of expediency; but that though the sentiment does not, whatever is moral in it does.

We have seen that the two essential ingredients in the sentiment of justice are, the desire to punish a person who has done harm, and the knowledge or belief that there is some definite individual or individuals to whom harm has been done.

Now it appears to me, that the desire to punish a person who has done harm to some individual is a spontaneous outgrowth from two sentiments, both in the highest degree natural, and which either are or resemble instincts; the impulse of self-defence, and the feeling of sympathy.

It is natural to resent, and to repel or retaliate, any harm done or attempted against ourselves, or against those with whom we sympathise. The origin of this sentiment it is not necessary here to discuss. Whether it be an instinct or a result of intelligence, it is, we know, common to all animal nature; for every animal tries to hurt those who have hurt, or who it thinks are about to hurt, itself or its young. Human beings, on this point, only differ from other animals in two particulars. First, in being capable of sympathising, not solely with their offspring, or, like some of the more noble animals, with some superior animal who is kind to them, but with all human, and even with all sentient, beings. Secondly, in having a more developed intelligence, which gives a wider range to the whole of their sentiments, whether self-regarding or sympathetic. By virtue of his superior intelligence, even apart from his superior range of sympathy, a human being is capable of apprehending a community of interest between himself and the human society of which he forms a part, such that any conduct which threatens the security of the society generally, is threatening to his own, and calls forth his instinct (if instinct it be) of self-defence. The same superiority of intelligence joined to the power of sympathising with human beings generally, enables him to attach himself to the collective idea of his tribe, his country, or mankind, in such a manner that any act hurtful to them, raises his instinct of sympathy, and urges him to resistance.

The sentiment of justice, in that one of its elements which consists of the desire to punish, is thus, I conceive, the natural feeling of retaliation or vengeance, rendered by intellect and sympathy applicable to those injuries, that is, to those hurts, which wound us through, or in common with, society at large. This sentiment, in itself, has nothing moral in it; what is moral is, the exclusive subordination of it to the social sympathies, so as to wait on and obey their call. For the natural feeling would make us resent indiscriminately whatever any one does that is disagreeable to us; but when moralised by the social feeling, it only acts in the directions conformable to the general good: just persons resenting a hurt to society, though not otherwise a hurt to themselves, and not resenting a hurt to themselves, however painful, unless it be of the kind which society has a common interest with them in the repression of.

It is no objection against this doctrine to say, that when we feel our sentiment of justice outraged, we are not thinking of society at large, or of any collective interest, but only of the individual case. It is common enough certainly, though the reverse of commendable, to feel resentment merely because we have suffered pain; but a person whose resentment is really a moral feeling, that is, who considers whether an act is blamable before he allows himself to resent it- such a person, though he may not say expressly to himself that he is standing up for the interest of society, certainly does feel that he is asserting a rule which is for the benefit of others as well as for his own. If he is not feeling this- if he is regarding the act solely as it affects him individually- he is not consciously just; he is not concerning himself about the justice of his actions. This is admitted even by anti-utilitarian moralists. When Kant (as before remarked) propounds as the fundamental principle of morals, "So act, that thy rule of conduct might be adopted as a law by all rational beings," he virtually acknowledges that the interest of mankind collectively, or at least of mankind indiscriminately, must be in the mind of the agent when conscientiously deciding on the morality of the act. Otherwise he uses words without a meaning: for, that a rule even of utter selfishness could not *possibly* be adopted by all rational beings- that there is any insuperable obstacle in the nature of things to its adoption- cannot be even plausibly maintained. To give any meaning to Kant□s principle, the sense put upon it must be, that we ought to shape our conduct by a rule which all rational beings might adopt *with benefit to their collective interest*.

To recapitulate: the idea of justice supposes two things; a rule of conduct, and a sentiment which sanctions the rule. The first must be supposed common to all mankind, and intended for their good. The other (the sentiment) is a desire that punishment may be suffered by those who infringe the rule. There is involved, in addition, the conception of some definite person who suffers by the infringement; whose rights (to use the expression appropriated to the case) are violated by it. And the sentiment of justice appears to me to be, the animal desire to repel or retaliate a hurt or damage to oneself, or to those with whom one sympathises, widened so as to include all persons, by the human capacity of enlarged sympathy, and the human conception of intelligent self-interest. From the latter elements, the feeling derives its morality; from the former, its peculiar impressiveness, and energy of self-assertion.

I have, throughout, treated the idea of a *right* residing in the injured person, and violated by the injury, not as a separate element in the composition of the idea and sentiment, but as one of the forms in which the other two elements clothe themselves. These elements are, a hurt to some assignable person or persons on the one hand, and a demand for punishment on the other. An examination of our own minds, I think, will show, that these two things include all that we mean when we speak of violation of a right. When we call anything a person□s right, we mean that he has a valid claim on society to protect him in the possession of it, either by the force of law, or by that of education and opinion. If he has what we consider a

sufficient claim, on whatever account, to have something guaranteed to him by society, we say that he has a right to it. If we desire to prove that anything does not belong to him by right, we think this done as soon as it is admitted that society ought not to take measures for securing it to him, but should leave him to chance, or to his own exertions. Thus, a person is said to have a right to what he can earn in fair professional competition; because society ought not to allow any other person to hinder him from endeavouring to earn in that manner as much as he can. But he has not a right to three hundred a-year, though he may happen to be earning it; because society is not called on to provide that he shall earn that sum. On the contrary, if he owns ten thousand pounds three per cent stock, he *has* a right to three hundred a-year; because society has come under an obligation to provide him with an income of that amount.

To have a right, then, is, I conceive, to have something which society ought to defend me in the possession of. If the objector goes on to ask, why it ought? I can give him no other reason than general utility. If that expression does not seem to convey a sufficient feeling of the strength of the obligation, nor to account for the peculiar energy of the feeling, it is because there goes to the composition of the sentiment, not a rational only, but also an animal element, the thirst for retaliation; and this thirst derives its intensity, as well as its moral justification, from the extraordinarily important and impressive kind of utility which is concerned. The interest involved is that of security, to every one's feelings the most vital of all interests. All other earthly benefits are needed by one person, not needed by another; and many of them can, if necessary, be cheerfully foregone, or replaced by something else; but security no human being can possibly do without on it we depend for all our immunity from evil, and for the whole value of all and every good, beyond the passing moment; since nothing but the gratification of the instant could be of any worth to us, if we could be deprived of anything the next instant by whoever was momentarily stronger than ourselves. Now this most indispensable of all necessaries, after physical nutriment, cannot be had, unless the machinery for providing it is kept unintermittedly in active play. Our notion, therefore, of the claim we have on our fellow-creatures to join in making safe for us the very groundwork of our existence, gathers feelings around it so much more intense than those concerned in any of the more common cases of utility, that the difference in degree (as is often the case in psychology) becomes a real difference in kind. The claim assumes that character of absoluteness, that apparent infinity, and incommensurability with all other considerations, which constitute the distinction between the feeling of right and wrong and that of ordinary expediency and inexpediency. The feelings concerned are so powerful, and we count so positively on finding a responsive feeling in others (all being alike interested), that *ought* and *should* grow into *must*, and recognised indispensability becomes a moral necessity, analogous to physical, and often not inferior to it in binding force.

If the preceding analysis, or something resembling it, be not the correct account of the notion of justice; if justice be totally independent of utility, and be a standard *per se*, which the mind can recognise by simple introspection of itself; it is hard to understand why that internal oracle is so ambiguous, and why so many things appear either just or unjust, according to the light in which they are regarded.

We are continually informed that Utility is an uncertain standard, which every different person interprets differently, and that there is no safety but in the immutable, ineffaceable, and unmistakable dictates of justice, which carry their evidence in themselves, and are independent of the fluctuations of opinion. One would suppose from this that on questions of justice there could be no controversy; that if we take that for our rule, its application to any given case could leave us in as little doubt as a mathematical demonstration. So far is this from being the fact, that there is as much difference of opinion, and as much discussion, about what is just, as about what is useful to society. Not only have different nations and individuals different notions of justice, but in the mind of one and the same individual, justice is not some one rule, principle, or maxim, but many, which do not always coincide in their dictates, and in choosing between which, he is guided either by some extraneous standard, or by his own personal predilections.

For instance, there are some who say, that it is unjust to punish any one for the sake of example to others; that punishment is just, only when intended for the good of the sufferer himself. Others maintain the extreme reverse, contending that to punish persons who have attained years of discretion, for their own benefit, is despotism and injustice, since if the matter at issue is solely their own good, no one has a right to control their own judgment of it; but that they may justly be punished to prevent evil to others, this being the exercise of the legitimate right of self-defence. Mr. Owen, again, affirms that it is unjust to punish at all; for the criminal did not make his own character; his education, and the circumstances which surrounded him, have made him a criminal, and for these he is not responsible. All these opinions are extremely plausible; and so long as the question is argued as one of justice simply, without going down to the principles which lie under justice and are the source of its authority, I am unable to see how any of these reasoners can be refuted. For in truth every one of the three builds upon rules of justice confessedly true. The first appeals to the acknowledged injustice of singling out an individual, and making a sacrifice, without his consent, for other people's benefit. The second relies on the acknowledged justice of self-defence, and the admitted injustice of forcing one person to conform to another's notions of what constitutes his good. The Owenite invokes the admitted principle, that it is unjust to punish any one for what he cannot help. Each is triumphant so long as he is not compelled to take into consideration any other maxims of justice than the one he has selected; but as soon as their several maxims are brought face to face, each disputant seems to have exactly as much to say

for himself as the others. No one of them can carry out his own notion of justice without trampling upon another equally binding. These are difficulties; they have always been felt to be such; and many devices have been invented to turn rather than to overcome them. As a refuge from the last of the three, men imagined what they called the freedom of the will; fancying that they could not justify punishing a man whose will is in a thoroughly hateful state, unless it be supposed to have come into that state through no influence of anterior circumstances. To escape from the other difficulties, a favourite contrivance has been the fiction of a contract, whereby at some unknown period all the members of society engaged to obey the laws, and consented to be punished for any disobedience to them, thereby giving to their legislators the right, which it is assumed they would not otherwise have had, of punishing them, either for their own good or for that of society. This happy thought was considered to get rid of the whole difficulty, and to legitimate the infliction of punishment, in virtue of another received maxim of justice, *volenti non fit injuria* – that is not unjust which is done with the consent of the person who is supposed to be hurt by it. I need hardly remark, that even if the consent were not a mere fiction, this maxim is not superior in authority to the others which it is brought in to supersede. It is, on the contrary, an instructive specimen of the loose and irregular manner in which supposed principles of justice grow up. This particular one evidently came into use as a help to the coarse exigencies of courts of law, which are sometimes obliged to be content with very uncertain presumptions, on account of the greater evils which would often arise from any attempt on their part to cut finer. But even courts of law are not able to adhere consistently to the maxim, for they allow voluntary engagements to be set aside on the ground of fraud, and sometimes on that of mere mistake or misinformation.

Again, when the legitimacy of inflicting punishment is admitted, how many conflicting conceptions of justice come to light in discussing the proper apportionment of punishments to offences. No rule on the subject recommends itself so strongly to the primitive and spontaneous sentiment of justice, as the *lex talionis*, an eye for an eye and a tooth for a tooth. Though this principle of the Jewish and of the Mahometan law has been generally abandoned in Europe as a practical maxim, there is, I suspect, in most minds, a secret hankering after it; and when retribution accidentally falls on an offender in that precise shape, the general feeling of satisfaction evinced bears witness how natural is the sentiment to which this repayment in kind is acceptable. With many, the test of justice in penal infliction is that the punishment should be proportioned to the offence; meaning that it should be exactly measured by the moral guilt of the culprit (whatever be their standard for measuring moral guilt): the consideration, what amount of punishment is necessary to deter from the offence, having nothing to do with the question of justice, in their estimation: while there are others to whom that consideration is all in all; who maintain that it is not just, at least for man, to inflict on a fellow creature, whatever may be his offences, any

amount of suffering beyond the least that will suffice to prevent him from repeating, and others from imitating, his misconduct.

To take another example from a subject already once referred to. In a co-operative industrial association, is it just or not that talent or skill should give a title to superior remuneration? On the negative side of the question it is argued, that whoever does the best he can, deserves equally well, and ought not in justice to be put in a position of inferiority for no fault of his own; that superior abilities have already advantages more than enough, in the admiration they excite, the personal influence they command, and the internal sources of satisfaction attending them, without adding to these a superior share of the world's goods; and that society is bound in justice rather to make compensation to the less favoured, for this unmerited inequality of advantages, than to aggravate it. On the contrary side it is contended, that society receives more from the more efficient labourer; that his services being more useful, society owes him a larger return for them; that a greater share of the joint result is actually his work, and not to allow his claim to it is a kind of robbery; that if he is only to receive as much as others, he can only be justly required to produce as much, and to give a smaller amount of time and exertion, proportioned to his superior efficiency. Who shall decide between these appeals to conflicting principles of justice? justice has in this case two sides to it, which it is impossible to bring into harmony, and the two disputants have chosen opposite sides; the one looks to what it is just that the individual should receive, the other to what it is just that the community should give. Each, from his own point of view, is unanswerable; and any choice between them, on grounds of justice, must be perfectly arbitrary. Social utility alone can decide the preference.

How many, again, and how irreconcilable, are the standards of justice to which reference is made in discussing the repartition of taxation. One opinion is, that payment to the State should be in numerical proportion to pecuniary means. Others think that justice dictates what they term graduated taxation; taking a higher percentage from those who have more to spare. In point of natural justice a strong case might be made for disregarding means altogether, and taking the same absolute sum (whenever it could be got) from every one: as the subscribers to a mess, or to a club, all pay the same sum for the same privileges, whether they can all equally afford it or not. Since the protection (it might be said) of law and government is afforded to, and is equally required by all, there is no injustice in making all buy it at the same price. It is reckoned justice, not injustice, that a dealer should charge to all customers the same price for the same article, not a price varying according to their means of payment. This doctrine, as applied to taxation, finds no advocates, because it conflicts so strongly with man's feelings of humanity and of social expediency; but the principle of justice which it invokes is as true and as binding as those which can be appealed to against it. Accordingly it exerts a tacit influence on the line of defence employed for other modes of assessing taxation. People feel obliged to argue that the State does more for the rich than for the poor, as a

justification for its taking more from them: though this is in reality not true, for the rich would be far better able to protect themselves, in the absence of law or government, than the poor, and indeed would probably be successful in converting the poor into their slaves. Others, again, so far defer to the same conception of justice, as to maintain that all should pay an equal capitation tax for the protection of their persons (these being of equal value to all), and an unequal tax for the protection of their property, which is unequal. To this others reply, that the all of one man is as valuable to him as the all of another. From these confusions there is no other mode of extrication than the utilitarian.

Is, then, the difference between the just and the Expedient a merely imaginary distinction? Have mankind been under a delusion in thinking that justice is a more sacred thing than policy, and that the latter ought only to be listened to after the former has been satisfied? By no means. The exposition we have given of the nature and origin of the sentiment, recognises a real distinction; and no one of those who profess the most sublime contempt for the consequences of actions as an element in their morality, attaches more importance to the distinction than I do. While I dispute the pretensions of any theory which sets up an imaginary standard of justice not grounded on utility, I account the justice which is grounded on utility to be the chief part, and incomparably the most sacred and binding part, of all morality. justice is a name for certain classes of moral rules, which concern the essentials of human well-being more nearly, and are therefore of more absolute obligation, than any other rules for the guidance of life; and the notion which we have found to be of the essence of the idea of justice, that of a right residing in an individual implies and testifies to this more binding obligation.

The moral rules which forbid mankind to hurt one another (in which we must never forget to include wrongful interference with each other's freedom) are more vital to human well-being than any maxims, however important, which only point out the best mode of managing some department of human affairs. They have also the peculiarity, that they are the main element in determining the whole of the social feelings of mankind. It is their observance which alone preserves peace among human beings: if obedience to them were not the rule, and disobedience the exception, every one would see in every one else an enemy, against whom he must be perpetually guarding himself. What is hardly less important, these are the precepts which mankind have the strongest and the most direct inducements for impressing upon one another. By merely giving to each other prudential instruction or exhortation, they may gain, or think they gain, nothing: in inculcating on each other the duty of positive beneficence they have an unmistakable interest, but far less in degree: a person may possibly not need the benefits of others; but he always needs that they should not do him hurt. Thus the moralities which protect every individual from being harmed by others, either directly or by being hindered in his freedom of pursuing his own good, are at once those which he himself has

most at heart, and those which he has the strongest interest in publishing and enforcing by word and deed. It is by a person's observance of these that his fitness to exist as one of the fellowship of human beings is tested and decided; for on that depends his being a nuisance or not to those with whom he is in contact. Now it is these moralities primarily which compose the obligations of justice. The most marked cases of injustice, and those which give the tone to the feeling of repugnance which characterises the sentiment, are acts of wrongful aggression, or wrongful exercise of power over some one; the next are those which consist in wrongfully withholding from him something which is his due; in both cases, inflicting on him a positive hurt, either in the form of direct suffering, or of the privation of some good which he had reasonable ground, either of a physical or of a social kind, for counting upon.

The same powerful motives which command the observance of these primary moralities, enjoin the punishment of those who violate them; and as the impulses of self-defence, of defence of others, and of vengeance, are all called forth against such persons, retribution, or evil for evil, becomes closely connected with the sentiment of justice, and is universally included in the idea. Good for good is also one of the dictates of justice; and this, though its social utility is evident, and though it carries with it a natural human feeling, has not at first sight that obvious connection with hurt or injury, which, existing in the most elementary cases of just and unjust, is the source of the characteristic intensity of the sentiment. But the connection, though less obvious, is not less real. He who accepts benefits, and denies a return of them when needed, inflicts a real hurt, by disappointing one of the most natural and reasonable of expectations, and one which he must at least tacitly have encouraged, otherwise the benefits would seldom have been conferred. The important rank, among human evils and wrongs, of the disappointment of expectation, is shown in the fact that it constitutes the principal criminality of two such highly immoral acts as a breach of friendship and a breach of promise. Few hurts which human beings can sustain are greater, and none wound more, than when that on which they habitually and with full assurance relied, fails them in the hour of need; and few wrongs are greater than this mere withholding of good; none excite more resentment, either in the person suffering, or in a sympathising spectator. The principle, therefore, of giving to each what they deserve, that is, good for good as well as evil for evil, is not only included within the idea of justice as we have defined it, but is a proper object of that intensity of sentiment, which places the just, in human estimation, above the simply expedient.

Most of the maxims of justice current in the world, and commonly appealed to in its transactions, are simply instrumental to carrying into effect the principles of justice which we have now spoken of. That a person is only responsible for what he has done voluntarily, or could voluntarily have avoided; that it is unjust to condemn any person unheard; that the punishment ought to be proportioned to the offence, and the like, are

maxims intended to prevent the just principle of evil for evil from being perverted to the infliction of evil without that justification. The greater part of these common maxims have come into use from the practice of courts of justice, which have been naturally led to a more complete recognition and elaboration than was likely to suggest itself to others, of the rules necessary to enable them to fulfil their double function, of inflicting punishment when due, and of awarding to each person his right.

That first of judicial virtues, impartiality, is an obligation of justice, partly for the reason last mentioned; as being a necessary condition of the fulfilment of the other obligations of justice. But this is not the only source of the exalted rank, among human obligations, of those maxims of equality and impartiality, which, both in popular estimation and in that of the most enlightened, are included among the precepts of justice. In one point of view, they may be considered as corollaries from the principles already laid down. If it is a duty to do to each according to his deserts, returning good for good as well as repressing evil by evil, it necessarily follows that we should treat all equally well (when no higher duty forbids) who have deserved equally well of us, and that society should treat all equally well who have deserved equally well of it, that is, who have deserved equally well absolutely. This is the highest abstract standard of social and distributive justice; towards which all institutions, and the efforts of all virtuous citizens, should be made in the utmost possible degree to converge. But this great moral duty rests upon a still deeper foundation, being a direct emanation from the first principle of morals, and not a mere logical corollary from secondary or derivative doctrines. It is involved in the very meaning of Utility, or the Greatest Happiness Principle. That principle is a mere form of words without rational signification, unless one person's happiness, supposed equal in degree (with the proper allowance made for kind), is counted for exactly as much as another's. Those conditions being supplied, Bentham's dictum, "everybody to count for one, nobody for more than one," might be written under the principle of utility as an explanatory commentary.[2] The equal claim of everybody to happiness in the estimation of the moralist and the legislator, involves an equal claim to all the means of happiness, except in so far as the inevitable conditions of human life, and the general interest, in which that of every individual is included, set limits to the maxim; and those limits ought to be strictly construed. As every other maxim of justice, so this is by no means applied or held applicable universally; on the contrary, as I have already remarked, it bends to every person's ideas of social expediency. But in whatever case it is deemed applicable at all, it is held to be the dictate of justice. All persons are deemed to have a right to equality of treatment, except when some recognised social expediency requires the reverse. And hence all social inequalities which have ceased to be considered expedient, assume the character not of simple inexpediency, but of injustice, and appear so tyrannical, that people are apt to wonder how they ever could have. been tolerated; forgetful that they themselves perhaps tolerate other inequalities

under an equally mistaken notion of expediency, the correction of which would make that which they approve seem quite as monstrous as what they have at last learnt to condemn. The entire history of social improvement has been a series of transitions, by which one custom or institution after another, from being a supposed primary necessity of social existence, has passed into the rank of a universally stigmatised injustice and tyranny. So it has been with the distinctions of slaves and freemen, nobles and serfs, patricians and plebeians; and so it will be, and in part already is, with the aristocracies of colour, race, and sex.

It appears from what has been said, that justice is a name for certain moral requirements, which, regarded collectively, stand higher in the scale of social utility, and are therefore of more paramount obligation, than any others; though particular cases may occur in which some other social duty is so important, as to overrule any one of the general maxims of justice. Thus, to save a life, it may not only be allowable, but a duty, to steal, or take by force, the necessary food or medicine, or to kidnap, and compel to officiate, the only qualified medical practitioner. In such cases, as we do not call anything justice which is not a virtue, we usually say, not that justice must give way to some other moral principle, but that what is just in ordinary cases is, by reason of that other principle, not just in the particular case. By this useful accommodation of language, the character of indefeasibility attributed to justice is kept up, and we are saved from the necessity of maintaining that there can be laudable injustice. The considerations which have now been adduced resolve, I conceive, the only real difficulty in the utilitarian theory of morals. It has always been evident that all cases of justice are also cases of expediency: the difference is in the peculiar sentiment which attaches to the former, as contradistinguished from the latter. If this characteristic sentiment has been sufficiently accounted for; if there is no necessity to assume for it any peculiarity of origin; if it is simply the natural feeling of resentment, moralised by being made coextensive with the demands of social good; and if this feeling not only does but ought to exist in all the classes of cases to which the idea of justice corresponds; that idea no longer presents itself as a stumbling-block to the utilitarian ethics. Justice remains the appropriate name for certain social utilities which are vastly more important, and therefore more absolute and imperative, than any others are as a class (though not more so than others may be in particular cases); and which, therefore, ought to be, as well as naturally are, guarded by a sentiment not only different in degree, but also in kind; distinguished from the milder feeling which attaches to the mere idea of promoting human pleasure or convenience, at once by the more definite nature of its commands, and by the sterner character of its sanctions.

NOTES

[1] See this point enforced and illustrated by Professor [Alexander] Bain, in an admirable chapter (entitled 'The Ethical Emotions, or the Moral Sense'), of the second of the two treatises composing his elaborate and profound work on the Mind [i.e., *The Emotions and the Will* (London: John Parker and Son, 1859) – Ed.].

[2] This implication, in the first principle of the utilitarian scheme, of perfect impartiality between persons, is regarded by Mr. Herbert Spencer (in his *Social Statics*) as a disproof of the pretensions of utility to be a sufficient guide to right; since (he says) the principle of utility presupposes the anterior principle, that everybody has an equal right to happiness. It may be more correctly described as supposing that equal amounts of happiness are equally desirable, whether felt by the same or by different persons. This, however, is not a pre-supposition; not a premise needful to support the principle of utility, but the very principle itself; for what is the principle of utility, if it be not that 'happiness' and 'desirable' are synonymous terms? If there is any anterior principle implied, it can be no other than this, that the truths of arithmetic are applicable to the valuation of happiness, as of all other measurable quantities.

[Mr. Herbert Spencer, in a private communication on the subject of the preceding Note, objects to being considered an opponent of utilitarianism, and states that he regards happiness as the ultimate end of morality; but deems that end only partially attainable by empirical generalisations from the observed results of conduct, and completely attainable only by deducing, from the laws of life and the conditions of existence, what kinds of action necessarily tend to produce happiness, and what kinds to produce unhappiness. What the exception of the word 'necessarily,' I have no dissent to express from this doctrine; and (omitting that word) I am not aware that any modern advocate of utilitarianism is of a different opinion. Bentham, certainly, to whom in the *Social Statics* Mr. Spencer particularly referred, is, least of all writers, chargeable with unwillingness to deduce the effect of actions on happiness from the laws of human nature and the universal conditions of human life. The common charge against him is of relying too exclusively upon such deductions, and declining altogether to be bound by the generalisations from specific experience which Mr. Spencer thinks that utilitarians generally confine themselves to. My own opinion (and, as I collect, Mr. Spencer's) is, that in ethics, as in all other branches of scientific study, the consilience of the results of both these processes, each corroborating and verifying the other, is requisite to give to any general proposition the kind degree of evidence which constitutes scientific proof.]

CHAPTER VIII

HERBERT SPENCER (1820-1903)

Biographical Information

British philosopher and sociologist, Herbert Spencer was a major figure in the intellectual life of the Victorian era. Although once best known for developing and applying evolutionary theory to philosophy, psychology and the study of society – what he called his "synthetic philosophy" – Spencer is usually remembered in philosophical circles for his political thought, and primarily for his defense of natural rights and for criticisms of utilitarian positivism.

Spencer was born in Derby, England on April 27, 1820, the eldest of nine children, but the only one to survive infancy. He was the product of an undisciplined, largely informal education. His father, George, was a school teacher, but an unconventional man, and Spencer's family were Methodist 'Dissenters', with Quaker sympathies. From an early age, Herbert was strongly influenced by the individualism and the anti-establishment and anti-clerical views of his father, and the Benthamite radical views of his uncle Thomas. Indeed, Spencer's early years showed a good deal of resistance to authority and independence.

Spencer trained as a civil engineer for railways but, in his early 20s, turned to journalism and political writing. A person of eclectic interests, he was initially an advocate of many of the causes of philosophic radicalism and some of his ideas (e.g., the definition of 'good' and 'bad' in terms of their pleasurable or painful consequences, and his adoption of a version of the 'greatest happiness principle') show similarities to utilitarianism.

From 1848 to 1853, Spencer worked as a writer and subeditor for *The Economist* financial weekly and, as a result, came into contact with a number of political controversialists such as George Henry Lewes, Thomas Carlyle, Lewes' future lover George Eliot (Mary Ann Evans [1819-1880]) – with whom Spencer had himself had a lengthy (though purely intellectual) association – and T.H. Huxley (1825-1895). Despite the diversity of opinions to which he was exposed, Spencer's unquestioning confidence in his own views was coupled with a stubbornness and a refusal to read authors with whom he disagreed.

In his early writings, Spencer defended a number of radical causes – particularly on land nationalization, the extent to which economics should reflect a policy of *laissez-faire*, and the place and role of women in society[1] – though he came to abandon most of these causes later in his life.

In 1851 Spencer's first book, *Social Statics, or the Conditions Essential to Human Happiness* appeared.[2] ('Social statics' – the term was borrowed from Auguste Comte – deals with the conditions of social order, and was preliminary to a study of human progress and evolution – i.e.,

'social dynamics.') In this work, Spencer presents an account of the development of human freedom and a defense of individual liberties, based on a (Lamarckian-style) evolutionary theory.

Upon the death of his uncle Thomas, in 1853, Spencer received a small inheritance which allowed him to devote himself to writing without depending on regular employment.

In 1855, Spencer published his second book, *The Principles of Psychology*. As in *Social Statics*, Spencer saw Bentham and Mill as major targets, though in the present work he focussed on criticisms of the latter's associationism. (Spencer later revised this work, and Mill came to respect some of Spencer's arguments.) *The Principles of Psychology* was much less successful than *Social Statics*, however, and about this time Spencer began to experience serious (predominantly mental) health problems that affected him for the rest of his life. This led him, as well, to seek privacy, and he increasingly avoided appearing in public. Although he found that, because of his ill health, he could write for only a few hours each day, he embarked upon a lengthy project – the nine-volume *System of Synthetic Philosophy* (1862-1893) – which provided a systematic account of his views in biology, sociology, ethics and politics. This 'synthetic philosophy' brought together a wide range of data from the various natural and social sciences and organised it according to the basic principles of Spencer's evolutionary theory.

Although his *Synthetic Philosophy* was initially available only through private subscription, Spencer was a also contributor to the leading intellectual magazines and newspapers of his day. His fame grew with his publications, and he counted among his admirers both radical thinkers and prominent scientists, including John Stuart Mill and the physicist, John Tyndall. In the 1860s and 1870s, for example, the influence of Spencer's evolutionary theory was on a par with that of Charles Darwin.

In 1883 Spencer was elected a corresponding member of the philosophical section of the French academy of moral and political sciences. His work was also particularly influential in the United States, where his book, *The Study of Sociology*, was at the centre of a controversy (1879-1880) at Yale University between a professor, William Graham Sumner, and the University's president, Noah Porter. Spencer's influence extended into the upper echelons of American society and it has been claimed that, in 1896, "three justices of the Supreme Court were avowed 'Spencerians.'[3] His reputation was at its peak in the 1870s and early 1880s, and he was nominated for the Nobel Prize for Literature in 1902. Nevertheless, Spencer declined most of the honours he was given.

Spencer's health significantly deteriorated in the last two decades of his life, and he died in relative seclusion, following a long illness, on December 8, 1903.

Within his lifetime, some one million copies of his books had been sold,[4] his work had been translated into French, German, Spanish, Italian, and Russian, and his ideas were popular in a number of other countries such

as Poland (e.g., through the work of the positivist, Władysław Kozłowski). Nevertheless, by the end of his life, his political views were no longer as popular as they had once been, and the dominant currents in liberalism allowed for a more interventionist state.

Method

Spencer's method is, broadly speaking, scientific and empirical, and it was influenced significantly by the positivism of Auguste Comte. Because of the empirical character of scientific knowledge and because of his conviction that that which is known – biological life – is in a process of evolution, Spencer held that knowledge is subject to change. Thus, Spencer writes, "In science the important thing is to modify and change one's ideas as science advances." As scientific knowledge was primarily empirical, however, that which was not 'perceivable' and could not be empirically tested could not be known. Nevertheless, Spencer was not a sceptic.

Spencer's method was also synthetic. The purpose of each science or field of investigation was to accumulate data and to derive from these phenomena the basic principles or laws or 'forces' which gave rise to them. To the extent that such principles conformed to the results of enquiries or experiments in the other sciences, one could have explanations that were of a high degree of certainty. Thus, Spencer was at pains to show how the evidence and conclusions of each of the sciences is relevant to, and materially affected by, the conclusions of the others.

Human Nature

In the first volume of *A System of Synthetic Philosophy*, entitled *First Principles* (1862), Spencer argued that all phenomena could be explained in terms of a lengthy process of evolution in things.[5] This 'principle of continuity' was that homogeneous organisms are unstable, that organisms develop from simple to more complex and heterogeneous forms, and that such evolution constituted a norm of progress. This account of evolution provided a complete and 'predetermined' structure for the kind of variation noted by Darwin – and Darwin's respect for Spencer was significant.

But while Spencer held that progress was a necessity, it was 'necessary' only overall, and not in every particular society, and there is no teleological element in his account of this process.[6] In fact, it was Spencer, and not Darwin, who coined the phrase "survival of the fittest," though Darwin came to employ the expression in later editions of the *Origin of Species*. (That this view was both ambiguous – for it was not clear whether one had in mind the 'fittest' individual or species – and far from universal was something that both figures, however, failed to realise.)

Spencer's understanding of evolution included the Lamarckian theory of the inheritance of acquired characteristics, and emphasised the direct influence of external agencies on the organism's development. He

denied (as Darwin had argued) that evolution was based on the characteristics and development of the organism itself and on a simple principle of natural selection.

Spencer held that he had evidence for this evolutionary account from the study of biology (see his *Principles of Biology*, 2 vols. [1864-7]).[7] He argued that there is a gradual specialisation in things – beginning with biological organisms – towards self sufficiency and individuation. Because human nature can be said to improve and change, then, scientific – including moral and political – views that rested on the assumption of a stable human nature[8] (such as that presupposed by many utilitarians) had to be rejected. 'Human nature,' then, was simply "the aggregate of men's instincts and sentiments" which, over time, would become adapted to social existence.[9] Spencer still recognised the importance of understanding individuals in terms of the 'whole' of which they were 'parts,' but these parts were mutually dependent, not subordinate to the organism as a whole. They had an identity and value on which the whole depended – unlike, Spencer thought, that portrayed by Hobbes.

For Spencer, then, human life was not only on a continuum with, but was also the culmination of, a lengthy process of evolution. Even though he allowed that there was a parallel development of mind and body, without reducing the former to the latter, he was opposed to dualism and his account of mind and of the functioning of the central nervous system and the brain was mechanistic.[10]

Although what characterised the development of organisms was the "tendency to individuation,"[11] this was coupled with a tendency in beings to pursue whatever would preserve their lives. When one examines human beings, this tendency was reflected in the characteristic of rational self interest. Indeed, this tendency to pursue one's individual interests is such that, in primitive societies, at least, Spencer believed that a prime motivating factor in human beings coming together was the threat of violence and war.[12]

Paradoxically, perhaps, Spencer held an 'organic' view of society. He believed that social life was an extension of the life of a natural body, and that social 'organisms' reflected the same evolutionary principles or laws as biological entities did. Beginning with the 'laws of life,' the conditions of social existence, and the recognition of life as a fundamental value, moral science can deduce what laws provide life and human happiness. The existence of such laws, then, provides a basis for moral science and for determining how individuals ought to act and what would constitute human happiness.

Religion

As a result of his view that knowledge about phenomena required empirical demonstration, Spencer held that we cannot know the nature of reality in itself and that there was, therefore, something that was fundamentally

"unknowable." (This included the complete knowledge of the nature of space, time, force, motion, and substance.)

Since, Spencer claimed, we cannot know anything non-empirical – we cannot know, specifically, whether there is a God or what its character might be. Though Spencer was a severe critic of religion and religious doctrine and practice – these being the appropriate objects of empirical investigation and assessment – his general position on religion was agnostic. Theism, he argued, cannot be adopted because there is no means to acquire knowledge of the divine, and there would be no way of testing. But while we cannot know whether religious beliefs are true, neither can we know that (fundamental) religious beliefs are false.

Ethics

As we have seen, Spencer saw human life on a continuum with, but also as the culmination of, a lengthy process of evolution and held that human society reflects the same evolutionary principles as biological organisms do in their development.[13] Society – and institutions like the economy – function without external control like the digestive system or like a lower organism (though, in this, Spencer failed to see the fundamental differences between societies of 'higher' and 'lower' levels). Thus, all natural and social development reflected 'the universality of law'. Beginning with the 'laws of life', the conditions of social existence, and the recognition of life as a fundamental value, moral science can deduce what kinds of laws promote life and produce happiness. Spencer's ethics and political philosophy, then, can be said to depend on a theory of 'natural law,' and it is in this way that evolutionary theory could provide a basis for a comprehensive political and even philosophical theory.

Given the differences in individual temperament and character, Spencer recognised that there were differences in what happiness specifically consists.[14] In general, however, 'happiness' is the surplus of pleasure over pain, and 'the good' is what contributes to the life and development of the organism, or – what is much the same – what provides this surplus of pleasure over pain and, therefore, reflects the complete adaptation of an organism to its environment. One could, though, say just as well that 'happiness' was the end result of that which human beings naturally sought.

For human beings to flourish and develop, Spencer held that there must be as few artificial restrictions as possible, and it is primarily freedom that he, *contra* Bentham, saw as promoting human happiness. While progress was an inevitable characteristic of evolution, it was something to be achieved only through the free exercise of human faculties (see, on this, Spencer's discussion in *Social Statics*).

Society, however, is (by definition, for Spencer[15]) an aggregate of individuals, and change in society could take place only after the individual members of that society had changed and developed.[16] Individuals are,

therefore, 'primary' and individual development was, Spencer acknowledged, highly egoistic, and associations with others largely instrumental and contractual.

Still, Spencer thought that human beings exhibited a natural sympathy and concern for one another – that there is a common character and there are common interests among human beings that human beings eventually come to recognise as necessary not only for general, but for individual development. (This reflects, to an extent, Spencer's organicism.) Nevertheless, Spencer held that 'altruism' and compassion beyond the family unit was a sentiment that came to exist not only recently in human beings.

Spencer also recognised that there was a natural mechanism – an 'innate moral sense' – in human beings by which they come to arrive at certain moral intuitions from which laws of conduct might be deduced.[17] This, then, reflected what one might call a 'moral sense theory.'[18] (Later in his life, Spencer described these 'principles' of moral sense and of sympathy as the 'accumulated effects of instinctual or inherited experiences.') Such a mechanism of moral feeling was, Spencer held, a manifestation of his general idea of the 'persistence of force.' (This moral sense' recognised the existence of individual rights.) As this persistence of force was a principle of nature, and not anything that could be created artificially, Spencer held that no state or government could promote moral feeling any more than it could promote the existence of physical force.[19]

Spencer's views here were rejected by Mill and by Hartley because of Spencer's apparent refusal to allow that an account of such natural 'desires' is still insufficient to provide any reason that one ought to have such preferences. And while Spencer insisted that freedom was the power to do what one desired, he also held that what one desired and willed was wholly determined by "an infinitude of previous experiences."[20]

Spencer saw this as culminating in an 'Absolute Ethics', the standard for which was the production of pure pleasure – and that the application of this standard would produce, so far as possible, the greatest amount of pleasure over pain in the long run.

There is, however, more to Spencer's ethics than this. As individuals become increasingly aware of their individuality, they also become aware of the individuality of others and, thereby, of the *law of equal freedom*. This 'first principle' is that "Every man has freedom to do all that he wills, provided he infringes not the equal freedom of any other man."[21]

Spencer's views, then, reflect a fundamentally 'egoist' ethic, but he held that 'rational egoists' would, in the pursuit of their own self interest, not conflict with one another. Still, to care for someone separate from oneself – in the sense of supporting the un- and under employed – is, therefore, not only not in one's self interest, but it is to encourage laziness and to work against evolution. In this sense, at least, social inequity was explained, if not justified, by evolutionary principles.

Political Philosophy

Despite this 'individualism,' Spencer held that life in community was important. Because the relation of parts to one another was one of mutual dependency, and because of the priority of the individual 'part' to the collective, society could not do or be anything other than the sum of its units. This is evident, not only in his first significant major contribution to political philosophy, *Social Statics*, but in his later essays – some of which appear in later editions of *The Man* versus *the State*.

As noted earlier, Spencer held an 'organic' view of society, Nevertheless, he argued that the natural growth of an organism required 'liberty' – which enabled him (philosophically) to justify individualism and to defend the existence of individual human rights. Because of his commitment to the 'law of equal freedom' and his view that law and the state would of necessity interfere with it, he insisted on an extensive policy of *laissez faire*. Spencer followed earlier liberalism in maintaining that law is a restriction of liberty and that the restriction of liberty, in itself, is evil and justified only where it is necessary to the preservation of liberty. The only function of government, then, was to be the policing and protection of individuals rights, and he maintained that education, religion, the economy, and care for the sick or indigent were not to be undertaken by the state. Thus, the industrious – those of character, but with no commitment to existing structures except those which promoted such industry (and, therefore, not religion or patriotic institutions) would thrive. Nevertheless, all industrious individuals, Spencer felt, would end up being in fundamental agreement.

Thus, Spencer rejected utilitarianism and its model of distributive justice as resting on an egalitarianism that ignored desert and, more fundamentally, biological need and efficiency. He concluded, then, that everyone had basic rights to liberty 'in virtue of their constitutions' as human beings[22], and such rights were essential to social progress. (These rights included rights to life, liberty, property, free speech, equal rights of women, universal suffrage, and the right 'to ignore the state' – though it is important to recall that Spencer reversed himself on some of these rights in his later writings.)

Law and public authority have, as their general purpose, therefore, the administration of justice (equated with freedom and the protection of rights). For Spencer, 'liberty' "is to be measured, not by the nature of the government machinery he lives under [...] but by the relative paucity of the restraints it imposes on him."[23] Thus, Spencer maintained that the arguments of the early utilitarians on the justification of law and authority and on the origin of rights were fallacious.

But Spencer also held that the utilitarian account of the law and the state was inconsistent – that it tacitly assumed the existence of claims or rights that have both moral and legal weight independently of the positive

law. These issues became the focus of Spencer's later work in political philosophy and, particularly, in *The Man* versus *the State*.

The Man versus *the State*

First published as a series of four essays in the *Contemporary Review* for 1884, *The Man* versus *the State* has come to be a classic of libertarian political thought.

In this work, Spencer develops a number of themes introduced in *Social Statics*, but adds little to the basic argument. (In the first – but not the later, 1892 – edition of *Social Statics*, one finds what one would now call libertarian-style essays, such as that on "The right to ignore the state." Presumably this change is because his later edition was coupled with *Man versus the State*, because his book on Justice (1891) had just been published, and because both of these texts covered much of the same territory.)

In *The Man* versus *the State*, Spencer contrasts early, classical liberalism with the liberalism of the nineteenth century, arguing that it was the latter, and not the former, that was a "new Toryism" – the enemy of individual progress and liberty. For Spencer, the genuine liberal seeks to repeal those laws that coerce and restrict individuals from doing as they see fit.

In this text, Spencer argues that individuals have rights, based on the 'law of life.' Rights, however, are not inherently moral, but become so by one's recognition that for them to be binding on others the rights of others must be binding on oneself – this is a consequence of Spencer's 'law of equal freedom.'

Spencer also argues against parliamentary, representative government, seeing it as exhibiting a virtual "divine right" – i.e., claiming that "the majority in an assembly has power that has no bounds." Spencer maintained that government action requires not only individual consent, but that the model for political association should be that of a "joint stock company", where the 'directors' can never act for a certain good except on the explicit wishes of its 'shareholders'. When parliaments attempt to do more than protect the rights of their citizens by, for example, 'imposing' a conception of the good – be it only on a minority – Spencer suggested that they are no different from tyrannies.

Problems and Questions to be Addressed

Spencer has been frequently accused of inconsistency, for – as noted above – one finds variations in his conclusions concerning land nationalization and reform, the rights of children and the extension of suffrage to women, and the role of government. Moreover, in recent studies of Spencer's theory of social justice, there continues to be some debate whether justice is based primarily on desert or on entitlement, whether the 'law of equal freedom' is

a moral imperative or a descriptive natural law, and whether the law of equal freedom is grounded on rights, utility, or, ultimately, on 'moral sense.'

The following selection from *The Man* versus *the State* – "The Great Political Superstition" – bears on these concerns, and one might attempt to determine what this account of government and rights would suggest about Spencer's position as a whole. To do so, it would be useful if readers were to address the following questions:

1. What role, if any, would a state of nature account have for Spencer's views?
2. What is the source of human value – i.e., the value of the individual?
3. On what basis does Spencer think do individuals (morally) legitimately submit themselves to rulers – i.e., what is the source of 'sovereignty'?
4. What does Spencer say is the proper limit of authority?
5. What kind of social arrangements or society does Spencer think that people would now consent to establish? What would the ends of such a society be?
6. What does Spencer think is the relation between individuals and their rights, and the community or government? What is the purpose of government?
7. How does Spencer's view of the individual and of society affect his political philosophy?
8. What is the role of consent in Spencer's political thought?
9. What are Spencer's reasons for rejecting Bentham's account of this relation? What, in Spencer's view, is the relation between property, custom and the law? What is Spencer's argument for holding that there is a 'code of law' prior to the positive law?
10. Spencer gives two 'positive' arguments for the existence of individual rights: an anthropological one and a 'biological' argument. What are they?
11. What does Spencer mean by 'rights'?
12. How does Spencer view 'the life of a society'? What is the purpose of government and what should it do?
13. What does this account of the relation of individuals to government say about the nature of the individual? about the nature of government?

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NOTES

[1] For a discussion of Spencer's early 'feminism' see N.L. Paxton, *George Eliot and Herbert Spencer: Feminism, Evolutionism, and the Reconstruction of Gender* (Princeton, NJ: Princeton University Press, 1991).

[2] *Social Statics* (London: Chapman, 1851) carries a preface dated December 1850. It is largely critical of Bentham, though Spencer had not (he admitted) read Bentham's works. (See *The Life and Letters of Herbert Spencer*, ed. David Duncan (London: Methuen, 1908), p. 418 and cf. p. 538.)

[3] See James G. Kennedy, *Herbert Spencer* (Boston: Twayne Publishers, 1978), p. 120.

[4] Kennedy, p. 119.

[5] Spencer also showed an early interest in phrenology, which he later seems to have abandoned under the influence of John Stuart Mill.

[6] See *The Principles of Biology*, I, pp. 531-533; 540, and cf. Kennedy, *op. cit.*, p. 79.

[7] This emphasis on the fundamental role of biology in relation to philosophy was later taken up, and rejected, by Bertrand Russell. (See Suzanne Cunningham, "Herbert Spencer, Bertrand Russell, and the Shape of Early Analytic Philosophy," *Russell*, 14 (1994): 7-29.)

[8] For Spencer's view that there were differences in human nature, see *Social Statics*, pp. 32-38.

[9] See *Social Statics*, pp. 160, 206, 252, 314. Cf. Kennedy, *op. cit.*, p. 109.

[10] Kennedy, *op.cit.*, p. 51.

[11] *Social Statics*, p. 436.

[12] Kennedy, *op. cit.*, p. 113.

[13] Spencer was concerned with providing ethnological evidence for his account but, being incapable of doing so himself, employed a number of researchers to comb available resources. (See Kennedy, *op. cit.* p. 94) Much of this data has,

however, been challenged by later writers.

[14] *Social Statics*, p. 5.

[15] See, for example, *First Principles*, Chapter 10, section 85.

[16] *The Study of Sociology*, pp. 366-367

[17] *The Principles of Ethics*, I, p. 26.

[18] *Social Statics*, pp. 23, 19.

[19] *Social Statics*, revised edition, 1892; cf. Kennedy, *op. cit*., p. 104.

[20] *The Principles of Psychology*(London: Longmans, 1855), pp. 500-502.

[21] *Social Statics*, p. 103.

[22] *Social Statics*, p. 77.

[23] *The Man* versus *the State*, pp. 15-16.

The Man *versus* the State [1884]

THE GREAT POLITICAL SUPERSTITION

THE great political superstition of the past was the divine right of kings. The great political superstition of the present is the divine right of parliaments. The oil of anointing seems unawares to have dripped from the head of the one on to the heads of the many, and given sacredness to them also and to their decrees.

However irrational we may think the earlier of these beliefs, we must admit that it was more consistent than is the latter. Whether we go back to times when the king was a God, or to times when he was a descendant of a God or to times when he was god-appointed, we see good reason for passive obedience to his will. When, as under Louis XIV., theologians like Bossuet taught that kings "are gods, and share in a manner the Divine independence," or when it was thought, as by our own Tory party in old days, that "the monarch was the delegate of heaven;" it is clear that, given the premise, the inevitable conclusion was that no bounds could be set to governmental commands. But for the modern belief such a warrant does not exist. Making no pretension to divine descent or divine appointment, a legislative body can show no supernatural justification for its claim to unlimited authority; and no natural justification has ever been attempted. Hence, belief in its unlimited authority is without that consistency which of old characterized belief in a king's unlimited authority.

It is curious how commonly men continue to hold in fact, doctrines which they have rejected in name—retaining the substance after they have abandoned the form. In Theology an illustration is supplied lay Carlyle, who, in his student days, giving up, as he thought, the creed of his fathers, rejected its shell only, keeping the contents; and was proved by his conceptions of the world, and man, and conduct, to be still among the sternest of Scotch Calvinists. Similarly, Science furnishes an instance in one who united naturalism in Geology with supernaturalism in Biology—Sir Charles Lyell. While, as the leading expositor of the uniformitarian theory in Geology, he ignored only the Mosaic cosmogony, he long defended that belief in special creations of organic types, for which no other source than the Mosaic cosmogony could be assigned; and only in the latter part of his life surrendered to the arguments of Mr. Darwin. In Politics, as above implied, we have an analogous case. The tacitly-asserted doctrine, common to Tories, Whigs and Radicals, that governmental authority is unlimited, dates back to times when the law-giver was supposed to have a warrant from God; and it survives still, though the belief that the law-giver has God's warrant has died out. "Oh, an Act of Parliament can do anything," is the reply made to a citizen who questions the legitimacy of some arbitrary State-interference; and the citizen stands paralysed. It does not occur to him

to ask the how, and the when, and the whence, of this asserted omnipotence bounded only by physical impossibilities.

Here we will take leave to question it. In default of the justification, once logically valid, that the ruler on Earth being a deputy of the ruler in Heaven, submission to him in all things is a duty, let us ask what reason there is for asserting the duty of submission in all things to a ruling power, constitutional or republican, which has no Heavenly-derived supremacy. Evidently this inquiry commits us to a criticism of past and present theories concerning political authority. To revive questions supposed to be long since settled, may be in fact, thought to need some apology; but there is a sufficient apology in the implication above made clear, that the theory commonly accepted is ill-based or unbased.

The notion of sovereignty is that which first presents itself; and a critical examination of this notion as entertained by those who do not assume the supernatural origin of sovereignty, carries us back to the arguments of Hobbes.

Let us grant Hobbes's postulate that, "during the time men live without a common power to keep them all in awe, they are in that condition which is called war … of every man against every man;"[1] though this is not true, since there are some small uncivilized societies in which, without any "common power to keep them all in awe," men maintain peace and harmony better than it is maintained in societies where such a power exists. Let us suppose him to be right, too, in assuming that the rise of a ruling man over associated men, results from their desires to preserve order among themselves; though, in fact, it habitually arises from the need for subordination to a leader in war, defensive or offensive, and has originally no necessary, and often no actual, relation to the preservation of order among the combined individuals. Once more, let us admit the indefensible assumption that to escape the evils of chronic conflicts, which must otherwise continue among them, the members of a community enter into a "pact or covenant," by which they all bind themselves to surrender their primitive freedom of action, and subordinate themselves to the will of an autocrat agreed upon:[2] accepting also, the implication that their descendants for ever are bound by the covenant which remote ancestors made for them. Let us, I say, not object to these data, but pass to the conclusions Hobbes draws. He says:—

> "For where no covenant hath preceded, there hath no right been transferred, and every man has a right to everything; and consequently, no action can be unjust. But when a covenant is made, then to break it is *unjust*: and the definition of INJUSTICE, is no other than *the not performance of covenant* …. Therefore before the names of just and unjust can have place, there must be some coercive power, to compel men equally to the performance of their covenants, by the terror of some punishment, greater than the benefit they expect by the breach of their covenant."[3]

Were people's characters in Hobbes's day really so bad as to warrant his assumption that none would perform their covenants in the absence of a coercive power and threatened penalties? In our day "the names of just and unjust can have place" quite apart from recognition of any coercive power. Among my friends I could name several whom I would implicitly trust to perform their covenants without any "terror of such punishment;" and over whom the requirements of justice would be as imperative in the absence of a coercive power as in its presence. Merely noting, however, that this unwarranted assumption vitiates Hobbes's argument for State-authority, and accepting both his premises and conclusion, we have to observe two significant implications. One is that State-authority as thus derived, is a means to an end, and has no validity save as subserving that end: if the end is not subserved, the authority, by the hypothesis, does not exist. The other is that the end for which the authority exists, as thus specified, is the enforcement of justice—the maintenance of equitable relations. The reasoning yields no warrant for other coercion over citizens than that which is required for preventing direct aggressions, and those indirect aggressions constituted by breaches of contract; to which, if we add protection against external enemies, the entire function implied by Hobbes's derivation of sovereign authority is comprehended.

Hobbes argued in the interests of absolute monarchy. His modern admirer, Austin, had for his aim to derive the authority of law from the unlimited sovereignty, of one man, or a number of men, small or large compared with the whole community. Austin was originally in the army; and it has been truly remarked that "the permanent traces left" may be seen in his *Province of Jurisprudence*. When, undeterred by the exasperating pedantries—the endless distinctions and definitions and repetitions—which served but to hide his essential doctrines, we ascertain what these are, it becomes manifest that he assimilates civil authority to military authority; taking for granted that the one, as the other, is above question in respect of both origin and range. To get justification for positive law, he takes us back to the absolute sovereignty of the power imposing it—a monarch, an aristocracy, or that larger body of men who have votes in a democracy; for such a body also, he styles the sovereign, in contrast with the remaining portion of the community which, from incapacity or other cause, remains subject. And having affirmed, or, rather, taken for granted, the unlimited authority of the body, simple or, compound, small or large, which he styles sovereign, he, of course, has no difficult in deducing the legal validity of its edicts, which he calls positive law. But the problem is simply moved a step further back and there left unsolved. The true question is—Whence the sovereignty? What is the assignable warrant for this unqualified supremacy assumed by one, or by a small number, or by a large number, over the rest? A critic might fitly say—"We will dispense with your process of deriving positive law from unlimited sovereignty: the sequence is obvious enough. But first prove your unlimited sovereignty."

To this demand there is no response. Analyze his assumption, and the doctrine of Austin proves to have no better basis than that of Hobbes. In the absence of admitted divine descent or appointment, neither single-headed ruler nor many-headed ruler can produce such credentials as the claim to unlimited sovereignty implies.

"But surely," will come in deafening chorus the reply, "there is the unquestionable right of the majority, which gives unquestionable right to the parliament it elects."

Yes, now we are coming down to the root of the matter. The divine right of parliaments means the divine right of majorities. The fundamental assumption made by legislators and people alike, is that a majority has powers which have no bounds. This is the current theory which all accept without proof as a self-evident truth. Nevertheless, criticism will, I think, show that this current theory requires a radical modification.

In an essay on "Railway Morals and Railway Policy," published in the *Edinburgh Review* for October, 1854, I had occasion to deal with the question of a majority's powers as exemplified in the conduct of public companies; and I cannot better prepare the way for conclusions presently to be drawn, than by quoting a passage from it:—

> "Under whatever circumstances, or for whatever ends, a number of men co-operate, it is held that if difference of opinion arises among them, justice requires that the will of the greater number shall be executed rather than that of the smaller number; and this rule is supposed to be uniformly applicable, be the question at issue what it may. So confirmed is this conviction, and so little have the ethics of the matter been considered, that to most this mere suggestion of a doubt will cause some astonishment. Yet it needs but a brief analysis to show that the opinion is little better than a political superstition. Instances may readily be selected which prove, by *reductio ad absurdum*, that the right of a majority is a purely conditional right, valid only within specific limits. Let us take a few. Suppose that at the general meeting of some philanthropic association, it was resolved that in addition to relieving distress the association should employ home-missionaries to preach down popery. Might the subscriptions of Catholics, who had joined the body with charitable views, be rightfully used for this end? Suppose that of the members of a book-club, the greater number, thinking that under existing circumstances rifle-practice was more important than reading, should decide to change the purpose of their union and to apply the funds in hand for the purchase of powder, ball, and targets. Would the rest be bound by this decision? Suppose that under the excitement of news from Australia, the majority of a Freehold Land Society should determine, not simply to start in a body for the gold-diggings, but to use their accumulated capital to provide outfits. Would this appropriation of property be just to the

> minority? and must these join the expedition? Scarcely anyone would venture an affirmative answer even to the first of these questions; much less to the others. And why? Because everyone must perceive that by uniting himself with others, no man can equitably be betrayed into acts utterly foreign to the purpose for which he joined them. Each of these supposed minorities would properly reply to those seeking to coerce them:—`We combined with you for a defined object; we gave money and time for the furtherance of that object; on all questions thence arising we tacitly agreed to conform to the will of the greater number; but we did not agree to conform on any other questions. If you induce us to join you by professing a certain end, and then undertake some other end of which we were not apprised, you obtain our support under false pretences; you exceed the expressed or understood compact to which we committed ourselves; and we are no longer bound by your decisions.' Clearly this is the only rational interpretation of the matter. The general principle underlying the right government of every incorporated body, is, that its members contract with one another severally to submit to the will of the majority in all matters concerning the fulfilment of the objects for which they are incorporated; but in no others. To this extent only can the contract hold. For as it is implied in the very nature of a contract, that those entering into it must know what they contract to do; and as those who unite with others for a specified object, cannot contemplate all the unspecified objects which it is hypothetically possible for the union to undertake; it follows that the contract entered into cannot extend to such unspecified objects. And if there exists no expressed or understood contract between the union and its members respecting unspecified objects, then for the majority to coerce the minority into undertaking them, is nothing, less than gross tyranny."

Naturally, if such a confusion of ideas exists in respect of the powers of a majority where the deed of incorporation tacitly limits those powers, still more must there exist such a confusion where there has been no deed of incorporation. Nevertheless the same principle holds, I again emphasize the proposition that the members of an incorporated body are bound "severally to submit to the will of the majority *in all matters concerning the fulfilment of the objects for which they are incorporated; but in no others*." And I contend that this holds of an incorporated nation as much as of an incorporated company.

"Yes, but," comes the obvious rejoinder, "as there is no deed by which the members of a nation are incorporated—as there neither is, nor ever was, a specification of purposes for which the union was formed, there exist no limits; and, consequently, the power of the majority is unlimited."

Evidently it must be admitted that the hypothesis of a social contract, either under the shape assumed by Hobbes or under the shape

assumed by Rousseau, is baseless. Nay more, it must be admitted that even had such a contract once been formed, it could not be binding on the posterity of those who formed it. Moreover, if any say that in the absence of those limitations to its powers which a deed of incorporation might imply, there is nothing to prevent a majority from imposing its will on a minority by force, assent must be given—an assent, however, joined with the comment that if the superior force of the majority is its justification, then the superior force of a despot backed by an adequate army, is also justified; the problem lapses. What we here seek is some higher warrant for the subordination of minority to majority than that arising from inability to resist physical coercion. Even Austin, anxious as he is to establish the unquestionable authority of positive law, and assuming, as he does, an absolute sovereignty of some kind, monarchic, aristocratic. constitutional, or popular, as the source of its unquestionable authority, is obliged, in the last resort, to admit a moral limit to its action over the community. While insisting, in pursuance of his rigid theory of sovereignty, that a sovereign body originating from the people "is *legally* free to abridge their political liberty, at its own pleasure or discretion," he allows that "a government may be hindered by positive morality from abridging the political liberty which it leaves or grants to its subjects."[4] Hence, we have to find, not a physical justification, but a moral justification, for the supposed absolute power of the majority.

This will at once draw forth the rejoinder—"Of course, in the absence of an any agreement, with its implied limitations, the rule of the majority is unlimited; because it is more just that the majority should have its way that the minority should have its way" A very reasonable rejoinder this seems until there comes the re-rejoinder. We may oppose to it the equally tenable proposition that in the absence of an agreement, the supremacy of a majority over a minority does not exist at all. It is co-operation of some kind, from which there arises these powers and obligations of majority and minority; and in the absence of any agreement to co-operate, such powers and obligations are also absent.

Here the argument apparently ends in a dead lock. Under the existing condition of things, no moral origin seems assignable, either for the sovereignty of the majority or for the limitation of its sovereignty. But further consideration reveals a solution of the difficulty. For if, dismissing all thought of any hypothetical agreement to co-operate heretofore made, we ask what would be the agreement into which citizens would now enter with practical unanimity, we get a sufficiently clear answer; and with it a sufficiently clear justification for the rule of the majority inside a certain sphere but not outside that sphere. Let us first observe a few of the limitations which at once become apparent.

Were all Englishmen now asked if they would agree to co-operate for the teaching of religion, and would give the majority power to fix the creed and the forms of worship, there would come a very emphatic "No" from a large part of them. If, in pursuance of a proposal to revive sumptuary

laws, the inquiry were made whether they would bind themselves to abide by the will of the majority in respect of the fashions and qualities of their clothes, nearly all of them would refuse. In like manner if (to take an actual question of the day) people were polled to ascertain whether, in respect of the beverages they drank, they would accept the decision of the greater number, certainly half, and probably more than half, would be unwilling. Similarly with respect to many other actions which most men now-a-days regard as of purely private concern. Whatever desire there might be to co-operate for carrying on, or regulating such actions, would be far from a unanimous desire. Manifestly, then, had social co-operation to be commenced by ourselves, and had its purposes to be specified before consent to co-operate could be obtained, there would be large parts of human conduct in respect of which co-operation would be declined; and in respect of which, consequently, no authority by the majority over the minority could be rightly exercised.

Turn now to the converse question—For what ends would all men agree to co-operate? None will deny that for resisting invasion the agreement would be practically unanimous. Excepting only the Quakers, who, having done highly useful work in their time, are now dying out, all would unite for defensive war (not, however, for offensive war); and they would, by so doing, tacitly bind themselves to conform to the will of the majority in respect of measures directed to that end. There would be practical unanimity, also, in the agreement to co-operate for defence against internal enemies as against external enemies. Omitting criminals, all must wish to have person and property adequately protected. Each citizen desires to preserve his life, to preserve things which conduce to maintenance and enjoyment of his life, and to preserve intact his liberties both of using these things and getting further such. It is obvious to him that he cannot do all this if he acts alone. Against foreign invaders he is powerless unless he combines with his fellows; and the business of protecting himself against domestic invaders, if he did not similarly combine, would be alike onerous, dangerous, and inefficient. In one other co-operation all are interested—use of the territory they inhabit. Did the primitive communal ownership survive, there would survive the primitive communal control of the uses to be made of land by individuals or by groups of them; and decisions of the majority would rightly prevail respecting the terms on which portions of it might be employed for raising food, for making means of communication, and for other purposes. Even at present, though the matter has been complicated by the growth of private landownership, yet, since the State is still supreme owner (every landlord being in law a tenant of the Crown) able to resume possession, or authorize compulsory purchase, at a fair price; the implication is that the will of the majority is valid respecting the modes in which, and conditions under which, parts of the surface or sub-surface, may be utilized: involving certain agreements made on behalf of the public with private persons and companies.

Details are not needful here; nor is it needful to discuss that border region lying between these two classes of cases, and to say how much is included in the last and how much is excluded with the first. For present purposes, it is sufficient to recognize the undeniable truth that there are numerous kinds of actions in respect of which men would not, if they were asked, agree with anything like unanimity to be bound by the will of the majority; while there are some kinds of actions in respect of which they would almost unanimously agree to be thus bound. Here, then, we find a definite warrant for enforcing the will of the majority within certain limits, and a definite warrant for denying the authority of its will beyond those limits.

But evidently, when analyzed, the question resolves itself into the further question—What are the relative claims of the aggregate and of its units? Are the rights of the community universally valid against the individual? or has the individual some rights which are valid against the community? The judgment given on this point underlies the entire fabric, of political convictions formed, and more especially those convictions which concern the proper sphere of government. Here, then, I propose to revive a dormant controversy, with the expectation of reaching a different conclusion from that which is fashionable.

Says Professor Jevons, in his work, *The State in Relation to Labour*,—"The first step must be to rid our minds of the idea that there are any such things in social matters as abstract rights." Of like character is the belief expressed by Mr. Matthew Arnold in his article on copyright:—"An author has no natural right to a property in his production. But then neither has he a natural right to anything whatever which he may produce or acquire."[5] So, too, I recently read in a weekly journal of high repute, that "to explain once more that there is no such thing as `natural right' would be a waste of philosophy." And the view expressed in these extracts is commonly uttered by statesmen and lawyers in a way implying that only the unthinking masses hold any other.

One might have expected that utterances to this effect would have been rendered less dogmatic by the knowledge that a whole school of legists on the Continent, maintains a belief diametrically opposed to that maintained by the English school. The idea of *Natur-recht* is the root-idea of German jurisprudence. Now whatever may be the opinion held respecting German philosophy at large, it cannot be characterised as shallow. A doctrine current among a people distinguished above all others as laborious inquirers, and certainly not to be classed with superficial thinkers, should not be dismissed as though it were nothing more than a popular delusion. This, however, by the way. Along with the proposition denied in the above quotations, there goes a counter-proposition affirmed. Let us see what it is; and what results when we go behind it and seek its warrant.

On reverting, to Bentham, we find this counter-proposition openly expressed. He tells us that government fulfils its office "by creating rights which it confers upon individuals: rights of personal security; rights of

protection for honour; rights of property;" &C.[6] Were this doctrine asserted as following from the divine right of kings, there would be nothing in it manifestly incongruous. Did it come to us from ancient Peru, where the Ynca "was the source from which everything flowed;"[7] or from Shoa (Abyssinia), where "of their persons and worldly substance he [the King] is absolute master;"[8] or from Dahome, where "all men are slaves to the king;"[9] it would be consistent enough. But Bentham, far from being an absolutist like Hobbes, wrote in the interests of popular rule. In his *Constitutional Code*[10] "he fixes the sovereignty in the whole people; arguing that it is best "to give the sovereign power to the largest possible portion of those whose greatest happiness is the proper and chosen object," because "this proportion is more apt than any other that can be proposed" for achievement of that object.

Mark, now, what happens when we put these two doctrines together. The sovereign people jointly appoint representatives, and so create a government; the government thus created, creates rights; and then, having created rights, it confers them on the separate members of the sovereign people by which it was itself created. Here is a marvellous piece of political legerdemain! Mr. Matthew Arnold, contending, in the article above quoted, that "property is the creation of law, tells us to beware of the metaphysical phantom of property in itself." Surely, among metaphysical phantoms the most shadowy is this which supposes a thing to be obtained by creating an agent, which creates the thing, and then confers the thing on its own creator!

From whatever point of view we consider it, Bentham's proposition proves to be unthinkable. Government, he says, fulfils its office "by creating rights." Two meanings may be given to the word "creating." It may be supposed to mean the production of something out of nothing; or it may be supposed to mean the giving form and structure to something which already exists. There are many who think that the production of something out of nothing cannot be conceived as effected even by omnipotence; and probably none will assert that the production of something out of nothing is within the competence of a human government. The alternative conception is that a human government creates only in the sense that it shapes something pre-existing. In that case the question arises—"What is the something pre-existing which it shapes?" Clearly the word "creating" begs the whole question—passes off an illusion on the unwary reader. Bentham was a stickler for definiteness of expression, and in his *Book of Fallacies* has a chapter on "Impostor-terms." It is curious that he should have furnished so striking an illustration of the perverted belief which an impostor-term may generate.

But now let us overlook these various impossibilities of thought, and seek the most defensible interpretation of Bentham's view.

It may be said that the totality of all powers and rights, originally exists as an undivided whole in the sovereign people; and that this undivided whole is given in trust (as Austin would say) to a ruling power, appointed by the sovereign people, for the purpose of distribution. If, as we

have seen, the proposition that rights are created is simply a figure of speech; then the only intelligible construction of Bentham's view is that a multitude of individuals, who severally wish to satisfy their desires, and have, as an aggregate, possession of all the sources of satisfaction, as well as power over all individual actions, appoint a government, which declares the ways in which, and the conditions under which, individual actions may be carried on and the satisfactions obtained. Let us observe the implications. Each man exists in two capacities. In his private capacity he is subject to the government. In his public capacity he is one of the sovereign people who appoint the government. That is to say, in his private capacity he is one of those to whom rights are given; and in his public capacity he is one of those who, through the government they appoint, give the rights. Turn this abstract statement into a concrete statement, and see what it means. Let the community consist of a million men, who, by the hypothesis, are not only joint possessors of the inhabited region, but joint possessors of all liberties of action and appropriation : the only right recognized being that of the aggregate to everything. What follows? Each person, while not owning any product of his own labour, has, as a unit in the sovereign body, a millionth part of the ownership of the products of all others' labour. This is an unavoidable implication. As the government, in Bentham's view, is but an agent; the rights it confers are rights given to it in trust by the sovereign people. If so, such rights must be possessed *en bloc* by the sovereign people before the government, in fulfilment of its trust, confers them on individuals; and, if so, each individual has a millionth portion of these rights in his public capacity, while he has no rights in his private capacity. These he gets only when all the rest of the million join to endow him with them; while he joins to endow with them every other member of the million!

Thus, in whatever way we interpret it, Bentham's proposition leaves us in a plexus of absurdities.

Even though ignoring the opposite opinion of German and French writers on jurisprudence, and even without an analysis which proves their own opinion to be untenable, Bentham's disciples might have been lead to treat less cavalierly the doctrine of natural rights. For sundry groups of social phenomena unite to prove that this doctrine is well warranted, and the doctrine they set against it unwarranted.

Tribes all over the world show us that before definite government arises, conduct is regulated by customs. The Bechuanas are controlled by "long-acknowledged customs."[11] Among the Koranna Hottentots, who only "tolerate their chiefs rather than obey them,"[12] when ancient usages are not in the way, every man seems to act as is right in his own eyes."[13] The Araucanians are guided by "nothing more than primordial usages or tacit conventions."[14] Among the Kirghizes the judgments of the elders are based on "universally-recognized customs."[15] Similarly of the Dyaks, Rajah Brooke says that "custom seems simply to have become the law; and breaking custom leads to a fine."[16] So sacred are immemorial customs with the primitive man, that he never dreams of questioning their authority; and

when government arises, its power is limited by them. In Madagascar the king's word suffices only "where there is no law, custom, or precedent."[17] Raffles tells us that in Java "the customs of the country"[18] restrain the will of the ruler. In Sumatra, too, the people do not allow their chiefs to "alter their ancient usages."[19] Nay, occasionally, as in Ashantee, "the attempt to change some customs" has caused a king's dethronement.[20] Now, among the customs which we thus find to be pre-governmental, and which subordinate governmental power when it is established, are those which recognize certain individual rights—rights to act in certain ways and possess certain things. Even where the recognition of property is least developed, there is proprietorship of weapons, tools, and personal ornaments; and, generally, the recognition goes far beyond this. Among such North-American Indians as the Snakes, who are without Government, there is private ownership of horses. By the Chippewayans, "who have no regular government," game taken in private traps "is considered as private property."[21] Kindred facts concerning huts, utensils, and other personal belongings, might be brought in evidence from accounts of the Ahts, the Comanches, the Esquimaux, and the Brazilian Indians. Among various uncivilized peoples, custom has established the claim to the crop grown on a cleared plot of ground, though not to the ground itself; and the Todas, who are wholly without political organization, make a like distinction between ownership of cattle and of land. Kolff's statement respecting "the peaceful Arafuras" well sums up the evidence. They "recognize the right of property in the fullest sense of the word, without their being any [other] authority among them than the decisions of their elders, according to the customs of their forefathers."[22] But even without seeking proofs among the uncivilized, sufficient proofs are furnished by early stages of the civilized. Bentham and his followers seem to have forgotten that our own common law is mainly an embodiment of "the customs of the realm." It did but give definite shape to that which it found existing. Thus, the fact and the fiction are exactly opposite to what they allege. The fact is that property was well recognized before law existed; the fiction is that "property is the creation of law". These writers and statement who with so much scorn undertake to instruct the ignorant herd, themselves stand in need of instruction.

Considerations of another class might alone have led them to pause. Were it true, as alleged by Bentham, that Government fulfils its office "by creating rights which it confers on individuals;" then, the implication would be, that there should be nothing approaching to uniformity in the rights conferred by different governments. In the absence of a determining cause over-ruling their decisions, the probabilities would be many to one against considerable correspondence among their decisions. But there is very great correspondence. Look where we may, we find that governments interdict the same kinds of aggressions; and, by implication, recognize the same kinds of claims. They habitually forbid homicide, theft, adultery: thus asserting that citizens may not be trespassed against in certain ways. And as society advances, minor individual claims are protected by giving remedies

for breach of contract, libel, false witness, &c. In a word, comparisons show that though codes of law differ in their details as they become elaborated, they agree in their fundamentals. What does this prove? It cannot be by chance that they thus agree. They agree because the alleged creating of rights was nothing else than giving formal sanction and better definition to those assertions of claims and recognitions of claims which naturally originate from the individual desires of men who have to live in presence of one another.

Comparative Sociology discloses another group of facts having the same implication. Along with social progress it becomes in an increasing degree the business of the State, not only to give formal sanction to men's rights, but also to defend them against aggressors. Before permanent government exists, and in many cases after it is considerably developed, the rights of each individual are asserted and maintained by himself, or by his family. Alike among savage tribes at present, among civilized peoples in the past, and even now in unsettled parts of Europe, the punishment for murder is a matter of private concern; "the scared duty of blood revenge" devolves on some one of a cluster of relatives. Similarly, compensations for aggressions on property and for injuries of other kinds, are in early states of society independently sought by each man or family. But as social organization advances, the central ruling power undertakes more and more to secure to individuals their personal safety, the safety of their possessions, and, to some extent, the enforcement of their claims established by contract. Originally concerned almost exclusive with defence of the society as a whole against other societies, or with conducting its attacks on other societies, Government has come more and more to discharge the function of defending individuals against one another. It needs but to recall the days when men habitually carried weapons, or to bear in mind the greater safety to person and property achieved by improved police-administration during our own time, or to note the facilities now given for recovering small debts, to see that the insuring to each individual the unhindered pursuit of the objects of life, within limits set by others' like pursuits, is increasingly recognized as a duty of the State. In other words, along with social progress, there goes not only a fuller recognition of these which we call natural rights, but also a better enforcement of them by Government: Government becomes more and more the servant to these essential pre-requisites for individual welfare.

An allied and still more significant change has accompanied this. In early stages, at the same time that the State failed to protect the individual against aggression, it was itself an aggressor in multitudinous ways. Those ancient societies which advanced far enough to leave records, having all been conquering societies, show us everywhere the traits of the militant *régime*. As, for the effectual organization of fighting bodies, the soldiers, absolutely obedient, must act independently only when commanded to do it; so, for the effectual organization of fighting societies, citizens must have their individualities subordinated. Private claims are overridden by public

claims; and the subject loses much of his freedom of action. One result is that the system of regimentation, pervading the society as well as the army, causes detailed regulation of conduct. The dictates of the ruler, sanctified by ascription of them to his divine ancestor, are unrestrained by any conception of individual liberty; and they specify men's actions to an unlimited extent—down to kinds of food eaten, modes of preparing them, shaping of beards, fringing of dresses, sowing of grain, &c. This omnipresent control, which the ancient Eastern nations in general exhibited, was exhibited also in large measure by the Greeks; and was carried to its greatest pitch in the most militant city, Sparta. Similarly during medieval days throughout Europe, characterized by chronic warfare with its appropriate political forms and ideas, there were scarcely any bounds to Governmental interference; agriculture, manufacturers, trades, were regulated in detail; religious beliefs and observances were imposed; and rulers said by whom alone furs might be worn, silver used, books issued, pigeons kept, &c., &c. But along with increase of industrial activities, and implied substitution of the *régime* of contract for the *régime* of status, and growth of associated sentiments, there went (until the recent reaction accompanying reversion to militant activity) a decrease of meddling with people's doings. Legislation gradually ceased to regulate the cropping of fields, or dictate the ratio of cattle to acreage, or specify modes of manufacture and materials to be used, or fix wages and prices, or interfere with dresses and games (except where there was gambling), or put bounties and penalties on imports or exports, or prescribe men's beliefs, religious or political, or prevent them from combining as they pleased, or travelling where they liked. That is to say, throughout a large range of conduct, the right of the citizen to uncontrolled action has been made good against the pretensions of the State to control him. While the ruling agency has increasingly helped him to exclude intruders from that private sphere in which he pursues the objects of life, it has itself retreated from that sphere; or, in other words—decreased its intrusions.

Not even yet have we noted all the classes of facts which tell the same story. It is told afresh in the improvements and reforms of law itself; as well as in the admissions and assertions of those who have effected them. "So early as the fifteenth century", says Professor Pollock, "we find a common-law judge declaring that, as in a case unprovided for by known rules the civilians and canonists devise a new rule according to 'the law of nature which is the ground of all laws', the Courts of Westminster can and will do the like".[23] Again, our system of Equity, introduced and developed as it was to make up for the shortcomings of Common-law, or rectify its inequities, proceeded throughout on a recognition of men's claims considered as existing apart from legal warrant. And the changes of law now from time to time made resistance, are similarly made in pursuance of current ideas concerning the requirements of justice; ideas which, instead of being derived from the law, are opposed to the law. For example, that recent Act which gives to a married woman a right of property in her own

earnings, evidently originated in the consciousness that the natural connexion between labour expended and benefit enjoyed, is one which should be maintained in all cases. The reformed law did not create the right, but recognition of the right created the reformed law.

Thus, historical evidences of five different kinds unite in teaching that, confused as are the popular notions concerning rights, and including, as they do, a great deal which should be excluded, yet they shadow forth a truth.

It remains now to consider the original source of this truth. In a previous paper I have spoken of the open secret, that there can be no social phenomena but what, if we analyze them to the bottom, bring us down to the laws of life; and that there can be no true understanding of them without reference to the laws of life. Let us, then, transfer this question of natural rights from the court of politics to the court of science—the science of life. The reader need feel no alarm: the simplest and most obvious facts will suffice. We will contemplate first the general condition to individual life; and then the general conditions to social life. We shall find that both yield the same verdict.

Animal life involves waste; waste must be met by repair; repair implies nutrition. Again, nutrition presupposes obtainment of food; food cannot be got without powers of prehension, and, usually, of locomotion; and that these powers may achieve their ends, there must be freedom to move about. If you shut up a mammal in a small space, or tie its limbs together, or take from it the food it has procured, you eventually, by persistence in one or other of these courses, cause it death. Passing a certain point, hindrance to the fulfilment of these requirements is fatal. And all this, which holds of the higher animals at large, of course holds of man.

If we adopt pessimism as a creed, and with it accept the implication that life in general being an evil should be put an end to, then there is no ethical warrant for these actions by which life is maintained: the whole question drops. But if we say that life on the whole yields more pleasure than pain; or that it is on the way to become such that it will yield more pleasure than pain; then these actions by which life is maintained are justified, and there results a warrant for the freedom to perform them. Those who hold that life is valuable, hold, by implication, that men ought not to be prevented from carrying on life-sustaining activities. In other words, if it is said to be "right" that they should carry them on, then, by permutation, we get the assertion that they "have a right" to carry them on. Clearly the conception of "natural rights" originates in recognition of the truth that if life is justifiable, there must be a justification for the performance of acts essential to its preservation; and, therefore, a justification for those liberties and claims which make such acts possible.

But being true of other creatures as of man, this is a proposition lacking ethical character. Ethical character arises only with the distinction between what the individual *may* do in carrying on his life-sustaining activities, and what he *may not* do. This distinction obviously results from

the presence of his fellows. Among those who are in close proximity, or even some distance apart, the doings of each are apt to interfere with the doings of others; and in the absence of proof that some may do what they will without limit, while others may not, mutual limitation is necessitated. The non-ethical form of the right to pursue ends, passes into the ethical form, when there is recognized the difference between acts which can be performed without transgressing the limits, and others which cannot be so performed.

This, which is the *a priori* conclusion, is the conclusion yielded *a posteriori*, when we study the doings of the uncivilized. In its vaguest form, mutual limitation of spheres of action, and the ideas and the sentiments associated with it, are seen in the relations of groups to one another. Habitually there come to be established, certain bounds to the territories within which each tribe obtains its livelihood; and these bounds, when not respected, are defended. Among the Wood-Veddahs, who have no political organization, the small clans have their respective portions of forest; and "these conventional allotments are always honourably recognized".[24] Of the ungoverned tribes of Tasmania, we are told that "their hunting grounds were all determined, and trespassers were liable to attach."[25] And, manifestly, the quarrels caused among tribes by intrusions on one another's territories, tend, in the long run, to fix bounds and to give a certain sanction to them. As with each inhabited area, so with each inhabiting group. A death in one, rightly or wrongly ascribed to somebody in another, prompts "the sacred duty of blood-revenge;" and though retaliations are thus made chronic, some restraint is put on new aggressions. Like causes worked like effects in those early stages of civilized societies, during which families or clans, rather than individuals, were the political units; and during which each family or clan had to maintain itself and its possessions against others such. These mutual restraints, which in the nature of things arise between small communities, similarly arise between individuals in each community; and the ideas and usages appropriate to the one are more or less appropriate to the other. Though within each group there is ever a tendency for the stronger to aggress on the weaker; yet, in most cases, consciousness of the evils resulting from aggressive conduct serves to restrain. Everywhere among primitive peoples, trespasses are followed by counter-trespasses. Says Turner of the Tannese, "adultery and some other crimes are kept in check by the fear of club-law".[26] Fitzroy tells us that the Patagonian, "if he does not injure or offend his neighbour, is not interfered with by others:"[27] personal vengeance being the penalty for injury. We read of the Uapés that "they have very little law of any kind; but what they have is of strict retaliation—an eye for an eye and a tooth for a tooth".[28] And that the *lex talionis* tends to establish a distinction between what each member of the community may safely do and what he may not safely do, and consequently to give sanctions to actions within a certain range but not beyond that range, is obvious. Though, says Schoolcraft of the Chippewayans, they "have no regular government, as every man is lord in his own family, they are

influenced more or less by certain principles, which conduce to their general benefit:"[29] one of the principles named being recognition of private property.

How mutual limitation of activities originates the ideas and sentiments implied by the phrase "natural rights", we are shown most distinctly by the few peaceful tribes which have either nominal governments or none at all. Beyond those facts which exemplify scrupulous regard for one another's claims among the Todas, Santals, Lepchas, Bodo, Chakmas, Jakuns, Arafuras, &c., we have the fact that the utterly uncivilized Wood-Veddahs, without any social organization at all, "think it perfectly inconceivable that any person should ever take that which does not belong to him, or strike his fellow, or say anything that is untrue".[30] Thus it becomes clear, alike from analysis of causes and observation of facts, that while the positive element in the right to carry on life-sustaining activities, originates from the laws of life, that negative element which gives ethical character to it, originates from the conditions produced by social aggregation.

So alien to the truth, indeed, is the alleged creation of rights by government, that, contrariwise, rights having been established more or less clearly before government arises, become obscured as government develops along with that militant activity which, both by the taking of slaves and the establishment of ranks, produces *status*; and the recognition of rights begins again to get definiteness only as fast as militancy ceases to be chronic and governmental power declines.

When we turn from the life of the individual to the life of the society, the same lesson is taught us.

Though mere love of companionship prompts primitive men to live in groups, yet the chief prompter is experience of the advantages to be derived from co-operation. On what condition only can co-operation arise? Evidently on condition that those who join their efforts severally gain by doing so. If, as in the simplest cases, they unite to achieve something which each by himself cannot achieve, or can achieve less readily, it must be on the tacit understanding, either that they shall share the benefit (as when game is caught by a party of them), or that if one reaps all the benefit now (as in building a hut or clearing a plot), the others shall severally reap equivalent benefits in their turns. When, instead of efforts joined in doing the same thing, different things are effected by them—when division of labour arises, with accompanying barter of products, the arrangement implies that each, in return for something which he has in superfluous quantity, gets an approximate equivalent of something which he wants. If he hands over the one and does not get the other, future proposals to exchange will meet with no response. There will be a reversion to that rudest condition in which each makes everything for himself. Hence the possibility of co-operation depends on fulfilment of contract, tacit or overt.

Now this which we see must hold of the very first step towards that industrial organization by which the life of a society is maintained, must

hold more or less fully throughout its development. Though the militant type of organization, with its system of *status* produced by chronic war, greatly obscures these relations of contracts, yet they remain partially in force. They still hold between freemen, and between the heads of those small groups which form the units of early societies; and, in a measure, they still hold within these small groups themselves; since survival of them as groups, implies such recognition of the claims of their members, even when slaves, that in return for their labours they get sufficiencies of food, clothing, and protection. And when, with diminution of warfare and growth of trade, voluntary co-operation more and more replaces compulsory co-operation, and the carrying on of social life by exchange under agreement, partially suspended for a time, gradually re-establishes itself; its re-establishment makes possible that vast elaborate industrial organization by which a great nation is sustained.

For in proportion as contracts are unhindered and the performance of them certain, the growth is great and the social life active. It is not now by one or other of two individuals who contract, that the evil effects of breach of contract are experienced. In an advanced society, they are experienced by entire classes of producers and distributors, which have arisen through division of labour; and, eventually, they are experienced by everybody. Ask on what condition it is that Birmingham devotes itself to manufacturing hardware, or part of Staffordshire to making pottery, or Lancashire to weaving cotton. Ask how the rural people who here grow wheat and there pasture cattle, find it possible to occupy themselves in their special businesses. These groups can severally thus act only if each gets from the others in exchange for its own surplus product, due shares of their surplus products. No longer directly effected by barter, this obtainment of their respective shares of one another's products is indirectly effected by money; and if we ask how each division of producers gets its due amount of the required money, the answer is—by fulfilment of contract. If Leeds makes woollens and does not, by fulfilment of contract, receive the means of obtaining from agricultural districts the needful quantity of food, it must starve, and stop producing woollens. If South Wales smelts iron and there comes no equivalent agreed upon, enabling it to get fabrics for clothing, its industry must cease. And so throughout, in general and in detail. That mutual dependence of parts which we see in social organization, as in individual organization, is possible only on condition that while each other part does the particular kind of work it has become adjusted to, it receives its proportion of those materials required for repair and growth, which all the other parts have joined to produce: such proportion being settled by bargaining. Moreover, it is by fulfilment of contract that there is effected a balancing of all the various products to the various needs—the large manufacture of knives and the small manufacture of lancets; the great growth of wheat and the little growth of mustard-seed. The check on undue production of each commodity, results from finding that, after a certain quantity, no one will agree to take any further quantity on terms that yield

an adequate money equivalent. And so there is prevented a useless expenditure of labour in producing that which society does not want.

Lastly, we have to note the still more significant fact that the condition under which only, any specialized group of workers can grow when the community needs more of its particular kind of work, is that contracts shall be free and fulfilment of them enforced. If when, from lack of material, Lancashire failed to supply the usual quantity of cotton-goods, there had been such interference with the contracts as prevented Yorkshire from asking a greater price for its woollens, which it was enabled to do by the greater demand for them, there would have been no temptation to put more capital into the woollen manufacture, no increase in the amount of machinery and number of artisans employed, and no increase of woollens: the consequence being that the whole community would have suffered from not having deficient cottons replaced by extra woollens. What serious injury may result to a nation if its members are hindered from contracting with one another, was well shown in the contrast between England and France in respect of railways. Here, though obstacles were at first raised by classes predominant in the legislature, the obstacles were not such as prevented capitalists from investing, engineers from furnishing directive skill, or contractors from undertaking works; and the high interest originally obtained on investments, the great profits made by contractors, and the large payments received by engineers, led to that drafting of money, energy, and ability, into railway-making, which rapidly developed our railway-system, to the enormous increase of our national prosperity. But when M. Thiers, then Minister of Public Works, came over to inspect, and having been taken about by Mr. Vignoles, said to him when leaving:—"I do not think railways are suited to France,"[31] there resulted, from the consequent policy of hindering free contract, a delay of "eight or ten years" in that material progress which France experienced when railways were made.

What do these facts mean? They mean that for the healthful activity and due proportioning of those industries, occupations and professions, which maintain and aid the life of a society, there must, in the first place, be few restrictions of men's liberties to make agreements with one another, and there must, in the second place, be an enforcement of the agreements which they do make. As we have seen, the checks naturally arising to each man's actions when mean become associated, are those only which result from mutual limitation; and there consequently can be no resulting check to the contracts they voluntarily make: interference with these is interference with those rights to free action which remain to each when the rights of others are fully recognized. And then, as we have seen, enforcement of their rights implies enforcement of contracts made; since breach of contract is indirect aggression. If, when a customer on one side of the counter asks a shopkeeper on the other for a shilling's worth of his goods, and, while the shopkeeper's back is turned, walks off with the goods without leaving the shilling he tacitly contracted to give, his act differs in no essential way from robbery. In each such case the individual injured is deprived of something

he possessed, without receiving the equivalent something bargained for; and is in the state of having expended his labour without getting benefit—has had an essential condition to the maintenance of life infringed.

Thus, then, it results that to recognize and enforce the rights of individuals, is at the same time to recognize and enforce the conditions to a normal social life. There is one vital requirement for both.

Before turning to those corollaries which have practical applications, let us observe how the special conclusions drawn converge to the one general conclusion originally foreshadowed—glancing at them in reversed order.

We have just found that the pre-requisite to individual life is in a double sense the pre-requisite to social life. The life of a society, in whichever of two senses conceived, depends on maintenance of individual rights. If it is nothing more than the sum of the lives of citizens, this implication is obvious. If it consists of those many unlike activities which citizens carry on in mutual dependence, still this aggregate impersonal life rises or falls according as the rights of individuals are enforced or denied.

Study of men's politico-ethical ideas and sentiments, leads to allied conclusions. Primitive peoples of various types show us that before governments exist, immemorial customs recognize private claims and justify maintenance of them. Codes of law independently evolved by different nations, agree in forbidding certain trespasses on the persons, properties, and liberties of citizens; and their correspondences imply, not an artificial source for individual rights, but a natural source. Along with social development, the formulating in law of the rights pre-established by custom, becomes more definite and elaborate. At the same time, Government undertakes to an increasing extent the business of enforcing them. While it has been becoming a better protector, Government has been becoming less aggressive—has more and more diminished its intrusions on men's spheres of private action. And, lastly, as in past times laws were avowedly modified to fit better with current ideas of equity; so now, law-reformers are guided by ideas of equity which are not derived from law but to which law has to conform.

Here, then, we have a politico-ethical theory justified alike by analysis and by history. What have we against it? A fashionable counter-theory which proves to be unjustifiable. On the one hand, while we find that individual life and social life both imply maintenance of the natural relation between efforts and benefits; we also find that this natural relation, recognized before Government existed, has been all along asserting and re-asserting itself, and obtaining better recognition in codes of law and systems of ethics. On the other hand, those who, denying natural rights, commit themselves to the assertion that rights are artificially created by law, are not only flatly contradicted by facts, but their assertion is self-destructive: the endeavour to substantiate it when challenged involves them in manifold absurdities.

Nor is this all. The re-institution of a vague popular conception in a definite form on a scientific basis, leads us to a rational view of the relation between the wills of majorities and minorities. It turns out that those co-operations in which all can voluntarily unite, and in the carrying on of which the will of the majority is rightly supreme, are co-operations for maintaining the conditions requisite to individual and social life. Defence of the society as a whole against external invaders, has for its remote end to preserve each citizen in possession of such means as he has for satisfying his desires, and in possession of such liberty as he has for getting further means. And defence of each citizen against internal invaders, from murderers down to those who inflict nuisances on their neighbours, has obviously the like end an end desired by every one save the criminal and disorderly. Hence it follows that for maintenance of this vital principle, alike of individual life and social life, subordination of minority to majority is legitimate; as implying only such a trenching on the freedom and property of each, as is requisite for the better protecting of his freedom and property. At the same time it follows that such subordination is not legitimate beyond this; since, implying as it does a greater aggression upon the individual than is requisite for protecting him, it involves a breach of the vital principle which is to be maintained.

Thus we come round again to the proposition that the assumed divine right of parliaments, and the implied divine right of majorities, are superstitions. While men have abandoned the old theory respecting the source of State authority, they have retained a belief in that unlimited extent of State-authority—which rightly accompanied the old theory, but does not rightly accompany the new one. Unrestricted power over subjects, rationally ascribed to the ruling man when he was held to be a deputy-god, is now ascribed to the ruling body, the deputy-godhood of which nobody asserts.

Opponents will, possibly, contend that discussions about the origin and limits of governmental authority are mere pedantries. "Government," they may perhaps say, "is bound to use all the means it has, or can get, for furthering the general happiness. Its aim must be utility; and it is warranted in employing whatever measures are needful for achieving useful ends. The welfare of the people is the supreme law; and legislators are not to be deterred from obeying that law by Questions, concerning the source and range of their power." Is there really an escape here? or may this opening be effectually closed?

The essential question raised is the truth of the utilitarian theory is commonly held; and the answer here to be given is that, as commonly held, it is not true. Alike by the statements of utilitarian moralists, and by the acts of politicians knowingly or unknowingly following their lead, it is implied that utility is to be directly determined by simple inspection of the immediate facts and estimation of probable results. Whereas, utilitarianism as rightly understood, implies guidance by the general conclusions which analysis of experience yields. "Good and bad results cannot be accidental, but must be necessary consequences of the constitution of things;" and it is

"the business of Moral Science to deduce, from the laws of life and the conditions of existence, what kinds of action necessarily tend to produce happiness, and what kinds to produce unhappiness."[32] Current utilitarian speculation, like current practical politics, shows inadequate consciousness of natural causation. The habitual thought is that, in the absence of some obvious impediment, things can be done this way or that way; and no question is put whether there is either agreement or conflict with the normal working of things.

The foregoing discussions have, I think, shown that the dictates of utility, and, consequently, the proper actions of governments, are not to be settled by inspection of facts on the surface, and acceptance of their *prima facie* meanings, but are to be settled by reference to, and deductions from, fundamental facts. The fundamental facts to which all rational judgments of utility must go back, are the facts that life consists in, and is maintained by, certain activities; and that among men in a society, these activities, necessarily becoming mutually limited, are to be carried on by each within the limits thence arising, and not carried on beyond those limits: the maintenance of the limits becoming, by consequence, the function of the agency which regulates society. If each, having freedom to use his powers up to the bounds fixed by the like freedom of others, obtains from his fellow-men as much for his services as they find them worth in comparison with the services of others—if contracts uniformly fulfilled bring to each the share thus determined, and he is left secure in person and possessions to satisfy his wants with the proceeds; then there is maintained the vital principle alike of individual life and of social life. Further, there is maintained the vital principle of social progress; inasmuch as, under such conditions, the individuals of most worth will prosper and multiply more than those of less worth. So that utility, not as empirically estimated but as rationally determined, enjoins this maintenance of individual rights; and, by implication, negatives any course which traverses them.

Here, then, we reach the ultimate interdict against meddling legislation. Reduced to its lowest terms, every proposal to interfere with citizens' activities further than by enforcing their mutual limitations, is a proposal to improve life by breaking through the fundamental conditions to life. When some are prevented from buying beer that others may be prevented from getting drunk—, those who make the law assume that more good than evil will result from interference with the normal relation between conduct and consequences, alike in the few ill-regulated and the many well-regulated. A government which takes fractions of the incomes of multitudinous people, for the purpose of sending to the colonies some who have not prospered here, or for building better industrial dwellings, or for making public libraries and public museums, &c., takes for granted that, not only proximately but ultimately, increased general happiness will result from transgressing the essential requirement to general happiness—the requirement that each shall enjoy all those means to happiness which his actions, carried on without aggression, have brought him. In other cases we

do not thus let the immediate blind us to the remote. When asserting the sacredness of property against private transgressors, we do not ask whether the benefit to a hungry man who takes bread from a baker's shop, is or is not greater than the injury inflicted on the baker: we consider, not the special effects, but the general effects which arise if property is insecure. But when the State exacts further amounts from citizens, or further restrains their liberties, we consider only the direct and proximate effects, and ignore the direct and distant effects. We do not see that by accumulated small infractions of them, the vital conditions to life, individual and social, come to be so imperfectly fulfilled that the life decays.

Yet the decay thus caused becomes manifest where the policy is pushed to an extreme. Any one who studies, in the writings of MM. Taine and de Tocqueville, the state of things which preceded the French Revolution, will see that that tremendous catastrophe came about from so excessive a regulation of men's actions in all their details, and such an enormous drafting away of the products of their actions to maintain the regulating organization, that life was fast becoming impracticable. The empirical utilitarianism of that day, like the empirical utilitarianism of our day, differed from rational utilitarianism in this, that in each successive case it contemplated only the effects of particular interferences on the actions of particular classes of men, and ignored the effects produced by a multiplicity of such interferences on the lives of men at large. And if we ask what then made, and what now makes, this error possible, we find it to be the political superstition that governmental power is subject to no restraints.

When that "divinity" which "doth hedge a king," and which has left a glamour around the body inheriting his power, has quite died away—when it begins to be seen clearly that, in a popularly governed nation, the government is simply a committee of management; it will also be seen that this committee of management has no intrinsic authority. The inevitable conclusion will be that its authority is given by those appointing it; and has just such bounds as they choose to impose. Along with this will go the further conclusion that the laws it passes are not in themselves sacred; but that whatever sacredness they have, it is entirely due to the ethical sanction—an ethical sanction which, as we find, is derivable from the laws of human life as carried on under social conditions. And there will come the corollary that when they have not this ethical sanction they have no sacredness, and may rightly be challenged.

The function of Liberalism in the past was that of putting a limit to the powers of kings. The function of true Liberalism in the future will be that of putting a limit to the powers of Parliaments.

NOTES

[1] T. Hobbes, *Collected Works,* vol. iii. pp. 112-13.

[2] lbid., p. 159.

[3] Hobbes, *Collected Works*, vol. iii. pp. 130-1.

[4] *The Province of Jurisprudence Determined* (second edition), p. 241.

[5] *Fortnightly Review* in 1880, vol. xxvii. p. 322.

[6] Bentham's *Works* (Bowring's edition), vol. i. p. 301.

[7] [W. H.] Prescott, *Conquest of Peru*, bk. i. ch. i.

[8] [J.] Harris, *Highlands of AEthiopia*, ii. 94.

[9] [R. F.] Burton, *Mission to Gelele, King of Dahome*, i. p. 226.

[10] Bentham's *Works*, vol. ix. p. 97.

[11] Burchell, W. J., *Travels into the Interior of Southern Africa*, vol. i. p. 544.

[12] Arbousset and Daumas, *Voyage of Exploration*, p. 27.

[13] Thompson, G., *Travels and Adventures in Southern Africa*, vol. ii. p. 30.

[14] Thompson, G. A., *Alcedo's Geographical and Historical Dictionary of America*, vol. i. p. 405.

[15] Mitchell, Alex., *Siberian Overland Route*, p. 218.

[16] Brooke, C. *Ten Years in Sardawak*, vol. i. p. 129.

[17] Ellis, *History of Madagascar*, vol. i. p. 377.

[18] Raffles, Sir T. S., *History of Java*, i. 274.

[19] Marsden, W., *History of Sumatra*, p. 217.

[20] Beecham, J., *Ashantee and the Gold Coast*, p. 90.

[21] Schoolcraft, H. R., *Expedition to the Sources of the Mississippi River*, v. 177.

[22] Earl's *Kolff's Voyage of the Domga*, p. 161.

[23] "The Methods of Jurisprudence: an Introductory Lecture at University College, London", October 31, 1882.

[24] Tennant, *Ceylon: an Account of the Island, &c.*, ii. 440.

[25] Bonwick, J. *Daily Life and Origin of the Tasmanians*, p. 83.

[26] *Polynesia*, p. 86.

[27] *Voyages of the Adventure and Beagle*, ii. 167.

[28] Wallace, A.R. *Travels on Amazon and Rio Negro*, p. 499.

[29] Schoolcraft, *Expedition to the Sources of the Mississippi*, v. 177.

[30] B.F. Hartshorne in *Fortnightly Review*, March, 1876. See also H.C. Sirr, *Ceylon and Ceylonese*, ii. 219.

[31] Address of C.B. Vignoles, Esq., F.R.S., on his election as President of the Institution of Civil Engineers, Session 1869-70, p. 53.

[32] *Data of Ethics*, §21. See also §§ 56-62.

CHAPTER IX

BERNARD BOSANQUET (1848-1923)

Biographical Information

Bernard Bosanquet was born on July 14, 1848 at Rock Hall (near Alnwick), Northumberland, England. He was the youngest of five sons of the Reverend Robert William Bosanquet and Caroline (MacDowall) Bosanquet. The Bosanquet family was well accomplished. Bernard's eldest brother, Charles, was one of the founders of the Charity Organisation Society in London. Another, Day, was an Admiral in the Royal Navy and served as Governor of South Australia, and yet another was a member of the Royal Society and a fellow of St John's College, Oxford.

Bosanquet studied at Harrow (1862-67) and at Balliol College, Oxford (1867-70) where, through his teacher, T.H. Green, he fell under the influence of idealist 'German' philosophy – particularly that of Immanuel Kant and G.W.F. Hegel. In 1870, he was elected to a Fellowship of University College, Oxford, over F.H. Bradley, and taught the history of logic and the history of moral philosophy.

Upon receipt of a small inheritance in 1881, Bosanquet was able to give up full-time teaching and left Oxford for London, where he became active in adult education and social work through such organizations as such as the London Ethical Society (founded 1886), the Charity Organisation Society, and the short-lived London School of Ethics and Social Philosophy (1897-1900). During this time he met and married (in 1895) Helen Dendy, an activist in social work and social reform, who was to be a leading figure in the Royal Commission on the Poor Laws (1905-09).

While in London, Bosanquet continued to engage in philosophical work, and most of his major publications date from this time. Some of them – such as *The Philosophical Theory of the State* and *Psychology of the Moral Self* – were developed from lectures that he gave to adult education groups.

At the age of 55, he briefly returned to professorial life, as Professor of Moral Philosophy at the University of St Andrews in Scotland (1903-08). His health, however, was not good and he soon retired to Oxshott, Surrey, although he remained active in social work and philosophy. Bosanquet was appointed Gifford Lecturer for 1911 and 1912, and his two courses of lectures – *The Principle of Individuality and Value* and *The Value and Destiny of the Individual* – serve as the most developed statement of his metaphysics. It has been said that a proper understanding of Bosanquet's philosophy requires that one recognize that his metaphysics presupposes ideas first developed in his logic, ethics, and political philosophy.

Bosanquet continued to be intellectually productive until the end of his life, publishing volumes on the philosophy of mind, logic, religion, ethics, aesthetics, and political theory. Although he participated vigorously in philosophical exchanges, he consistently sought to find common ground among philosophers of various traditions, rather than dwell on what separated them (cf. *The Meeting of Extremes in Contemporary Philosophy* [1921]). He was one of the earliest philosophers in the Anglo-American world to appreciate the work of Edmund Husserl, Benedetto Croce, Giovanni Gentile and Emile Durkheim, and the relation of his thought to that of British 'analytic' philosophers such as Ludwig Wittgenstein, G.E. Moore and Bertrand Russell is important, though still largely unexplored.

Despite the challenges to Bosanquet's work from both within and outside of philosophical circles, interest in his views continued through the early decades of the twentieth century. For his service to philosophy, he was made a Fellow of the British Academy in 1907, and was awarded honorary degrees from the universities of Glasgow (LLD 1892), Durham (DCL 1903), Birmingham (LLD 1909), and St Andrews (LLD 1911). He died in his 75th year in London on February 8, 1923.

J.H. Randall notes that Bosanquet was "the most popular and the most influential of the English idealists.[1]" Certainly, his philosophy was the most comprehensive. Bosanquet was the author of more than 20 books and some 140 articles, and the breadth of his philosophical work is obvious from the range of topics treated in his books and essays – in logic, aesthetics, epistemology, social and public policy, psychology, metaphysics, ethics and political philosophy. While many other philosophers of his time, such as F.H. Bradley, R.B. Haldane and Henry Jones, had made significant contributions to British intellectual life, in his obituary in the *Times*, Bosanquet was said to have been "the central figure of British philosophy for an entire generation."[2]

Metaphysics

Bosanquet is generally described (along with Bradley) as an 'Absolute Idealist'[3] and he was a leading figure in the idealist movement that flourished in the English-speaking world in the late nineteenth and early twentieth centuries. He can be seen (along with D.G. Ritchie, William Wallace, Henry Jones, John Watson and, in the United States, Josiah Royce) as part of the second generation of this 'movement,' initiated by T.H. Green, Edward Caird and R.L. Nettleship. Because of its opposition to the then-dominant materialism and empiricism (e.g., that of Jeremy Bentham, Herbert Spencer, and John Stuart Mill), idealism appealed to those who wished to preserve religion and aesthetic and ethical value. Though many of idealism's major representatives were political liberals and sceptics or modernists in their faith, Bertrand Russell suggests that "religion and conservatism look mainly to this school for defense against heresy and revolution."[4]

Bosanquet's philosophical work provides a response to empiricism and materialism, but also to contemporary personalistic idealism (e.g. that of Andrew Seth Pringle-Pattison, James Ward, Hastings Rashdall, W.R. Sorley, and J.M.E. McTaggart). Though the philosophy of Hegel was particularly important in his work, Bosanquet was also significantly influenced by Kant, Jean-Jacques Rousseau, his teacher Green and his colleague Bradley, and especially the classical Greek philosophy of Plato and Aristotle.

Bosanquet is called an 'idealist' because of his view that social relations and institutions are not ultimately material phenomena, but best understood as existing at the level of human consciousness. As he notes in his Introduction to his translation of the *Introduction to Hegel's Philosophy of Fine Art* [1886]) "the actual facts of this world [of morals, of art, or politics]... directly arise out of and are causally sustained by conscious intelligence."

In general, the nineteenth and early twentieth century idealists maintained the metaphysical view that reality is spiritual or mental and that only mind (or 'Mind') and its contents are real. Though they held that mind in some way 'makes' nature – T.H. Green, for example, seems to have held that nature exists in space and time and is, therefore, relational and depends on mind[5] – they denied the view that reality was *simply* a product of human minds or perceptions, that it was structured by (or simply the sum of the perceptions of) human consciousness, and that things did not exist independently of consciousness. (The two latter views are characteristic of 'subjective idealists' such as Berkeley, whereas Bosanquet and the British Idealists are closer to the 'objective idealism' of Hegel.)

The Absolute Idealists insisted that what was ultimately real was something they called 'the Absolute.' A complete account of the Absolute is, clearly, impossible; it is an all-inclusive, comprehensive and coherent unity or whole that is above all categories. This whole does not have the diversity and contradictoriness of finite things and, in general, may be described as that which is not incomplete, and which neither contradicts itself nor contains any contradiction within it. The Absolute was a self-sufficient 'individual', that is concrete and the *only* thing that is entirely 'real' or (to be more precise) 'entirely actual.' (In describing the Absolute as 'self-sufficient,' Bosanquet no doubt follows Aristotle's understanding of the term as that which is complete, and not some thing that is independent of others.[6]) It was also described as something suprapersonal, and was not a thing or being to which one might have a relation.

One of the principal characteristics of Absolute Idealism was its denial of the reality of fundamental 'dualisms' or diversity – including that of 'subject' and 'object.' It holds that we cannot have a subject without referring to objects, or objects without at least implicitly referring to some subject.

This Absolute is not, however, anything separate or over and above finite things or 'appearances,' but is, rather, the totality or full realisation of

them. For Bosanquet, it is a complete system in which all things are arranged and understood in their multiple relations to one another.

According to Absolute Idealism, this whole is immanent in each finite individual (as the whole life of an organism is in every part), and serves as a kind of 'telos.' Bosanquet argued that there was a 'nisus to coherence' in individuals that led to self-transcendence and, ultimately, the Absolute. Human consciousness is dependent upon this 'whole,' and its development as self-consciousness is a realisation of the Absolute. One should not think of the Absolute, however, as state or condition that will come to exist at some future time, but as something that is present and implied in all finite things.

The Absolute was also described as a concrete universal – a 'universal' existing only in and through its particulars. It is concrete *qua* particular and present to experience; and it is universal *qua* complete, comprehensive, wholly determinate and self-sufficient[7]. (Thus, 'human,' 'justice,' 'number,' 'triangle,' are not concrete universals but abstract; a work of art is closer to what Bosanquet has in mind by a concrete universal.) Yet, because of its self-sufficiency and completeness, Bosanquet calls the Absolute an 'individual' and the 'principle of individuality.' Thus, as they are generally understood, finite beings are 'abstractions' from a larger whole. Only the Absolute is a concrete universal in a full sense, though sometimes human persons are loosely described as concrete universals.

This Absolute is not only what is fundamentally real but, for Bosanquet, is the basis and principle of value and of truth. This has several important implications. First, since only the Absolute is real, complete, and self-sufficient, all finite things (including human persons) are only partly individual, concrete, and real. Second, since to see a thing as it really is requires seeing it in all its relations to every other thing, our knowledge of them is always incomplete. Finally, when it comes to describing the nature of 'evil,' 'error' and 'ugliness,' we have to recognise that these are not ultimately real but are simply 'one-sided' and incomplete. Yet somehow they are contained (though transmuted) in the Absolute.

It may seem that it would be problematic, therefore, to talk about the reality of finite things. Aside from the description of what finite things are, as indicated above, Bosanquet held that the identification of things as 'particular things' is a product of mind, and that nature can be divided up in many ways. Still, Absolute Idealists did not claim that 'nature' or the finite individual did not exist, and Bosanquet asserts that, in some respects, not only is nature independent of mind, but it actually determines mind (e.g., so far as mind is a product of the process of evolution). Strictly speaking, on Bosanquet's view, mind does not make natural objects, although it makes our immediate conscious world.[8] In short, mind creates terms and relations in the act of knowing, and the actual facts of this world are causally sustained by conscious intelligence. It is in part because of this relation of

mind and nature that J.M.E. McTaggart accused Bosanquet of being a materialist.

While critical of the capacities of discursive thought and of linear (i.e., syllogistic) inference, the Absolute Idealists held that the Absolute is, in principle, accessible to human consciousness. Bradley insisted that it was so through feeling but not through reason, for it is only in feeling that subject/object dualism does not arise. Bosanquet held that the Absolute was also 'accessible' to the extent that one sees how each element in a system is related to all the other elements within it.

As noted above, Absolute Idealists are quite unlike 'personalistic idealists' who emphasized the numerical and qualitative distinctness and uniqueness of each person and held that each self was ultimately independent of every other, even the Absolute, and referred to spontaneity as a proof of the independence of finite purposiveness. Given this account of persons, it is not surprising that many of the personalistic idealists (e.g., Seth Pringle-Pattison) also believed in the existence of a personal, self-conscious Deity.

Method

For Bosanquet, reason involves logic, and he speaks of the latter as having a central role in philosophy – though he understands the term 'logic' in a broader way than is now customary. Logic is "the supreme law or nature of experience, the impulse towards unity and coherence [...] by which every fragment yearns towards the whole to which it belongs, and every self to its completion in the Absolute, and of which the Absolute itself is at once an incarnation and a satisfaction." It is "the clue to reality, value and freedom."[9]

To know a thing, then, is to see it as fully developed and completely described – i.e., in its relation to all other things – and not just in relation to one's own beliefs and experiences. This account of knowledge as based on coherence suggests that the more complete a thing is, the more real it is, and that to the extent that one sees a thing in its multiple relations to others, the more one understands what it is. This emphasis on coherence is evident throughout Bosanquet's philosophy.

Bosanquet's most direct statement of his philosophical method and of his commitment to coherence theory is given in the *Three Lectures on Aesthetics* (1915): he writes that "I only know in philosophy one method, and that is to expand *all* the relevant facts, taken together, into ideas which approve themselves to thought as exhaustive and self-consistent."[10] Thus, to have a complete understanding of, and to make a complete judgement about, anything requires that we must first master the system in which the judgement is bound up "and then we shall perceive how unintelligible that part of our world... would become if we denied that judgement."[11]

One should also note that Bosanquet sees the task of philosophy as fundamentally descriptive, and not one of gathering 'new truths.'

Throughout his work Bosanquet insists that "philosophy has to understand and not to dictate"[12], and in *The Philosophical Theory of the State*, he notes that "a philosophical treatment is the study of something as a whole and for its own sake"[13]. His principal objection to empiricist theories 'of the first look,' for example, is not that they are empirical but that they do not go far enough in describing the phenomenon they claim to be dealing with.

Human Nature

Discussions of issues bearing on the nature and value of the human person appear throughout Bosanquet's work, and the topic of 'individuality' was the subject of his two volumes of Gifford Lectures. His views and conclusions, however, have been the subject of extensive criticism.

Despite what one may conclude from some caricatures of absolute idealism, Bosanquet did not deny that there were independent, functioning human beings. Human beings are, of course, corporeal. But Bosanquet says that this characteristic – specifically, one's body and one's material needs and desires – is not of ultimate importance. The extent to which the 'material' is significant is in its relation to 'mind.'[14] Thus, in his discussion of the human individual, Bosanquet focuses on 'mind' or 'spirit'.

Bosanquet's account of the 'self' or 'finite individual' has sometimes been taken to be rather dismissive of its character and importance. He writes that "the self as we know him in Space and Time... is a figure deformed and diminished"[15] and "essentially... imperfect and inconsistent with itself"[16], and he rejects the "false particularisation" of the human self as a being distinct from every other being. He also denies that finite selves could be "necessarily eternal or everlasting units"[17]. Again, Bosanquet speaks of 'selves' as "provisional subjects" and explicitly describes the "reality" of finite individuals as "adjectival" and not "substantive." Nevertheless, he portrays the self as having not merely an 'indispensable' function, but as standing at "the climax and sum and substance of evolution"[18] and as having a unique function.[19] The human individual serves as a "copula" between nature and 'the Absolute.'[20]

Bosanquet argues that the conviction of the "self-completeness" and independence of human beings blinds us "to the moral and spiritual structure that lies behind the visible scene."[21] It is for this reason that he emphasises that 'seriality' – linear, historical identity – is not the most fundamental part of our experience, and that the 'self' is better identified with its 'content' and "what we care for"[22] than with "the identity with myself as a bodily being, externally described by name and terrestrial history."[23] We must, Bosanquet argues, "make at least as much of co-existent as of continuous identity. Otherwise, we unnaturally narrow down the basis of our self."[24]

The nature and value of the individual self cannot, then, be determined independently of its relation to other selves and to what it can become. When Bosanquet speaks of the 'nature' of a thing, he understands

it as including what it is as a fully developed being. When he turns specifically to the finite self, he notes that it, too, has a "nisus towards absolute unity and self-completion"[25] and that it cannot be adequately described independently of its interconnectedness with other selves and with its environment. Atomistic views of the human person ignore the "trans-muting or expanding power of common finite mind."[26] Understanding the individual in this latter way does not lead, as Bradley suggests, to a confusion of the self with the non-self. It is, rather, a means by which one can express the nature of the individual more adequately.

From this account of the individual self, it is clear that human beings are importantly connected with the community. Each person, as it were, becomes what it is through interaction with others – "he is... determined by his relations and evoked in his creative activities."[27] Bosanquet believes that this "inclusion in a completer [sic] whole of experience is a matter of everyday experience."[28] This is an implication of his logic, where every item of knowledge is said to be part of a larger system.

But the nature of one's relationship to the community is complex. Not only is there a physical dependence of the individual on material goods which can be found only in society, but there are also intellectual and spiritual supports. Bosanquet notes that "[a]ll individuals are continually reinforced and carried on, beyond their average immediate consciousness, by... the social order."[29] It is through this order that we learn a language, acquire knowledge of moral principles,[30] come to think and to judge – not to mention learn more of the nature and content of reality. Self-realisation is possible only through the community.[31] One becomes more of a self, then, by being 'carried out' of oneself, but this is simply because what we are at our best is more than what we are at our worst. Unlike his materialist predecessors, Bentham, Mill and Spencer, then, Bosanquet insists that "we are not to think of the sensuous individual as totally prior in time to the social consciousness."[32]

The development of one's identity and the "perfection of the finite self"[33] occur through social activity – "in that distinctive act or service"[34] to the social good. While the relation to the community is fundamental, the value of the individual is preserved, for "[e]very separate mind [is] to be distinguished by uniqueness of function or service" within the community to make "a contribution to the whole, the content of which could not be precisely repeated in any other individual."[35] Indeed, because of the individual's 'service to the whole', the whole *depends* on the human individual.

Because one's "individuality" and personal identity depend on there being something greater than the finite self, finite individuality is "adjectival." Nevertheless, Bosanquet's answer to 'personalistic idealism' is not to deny the existence or value of the finite self, but to emphasise its 'intentional' substantiality – that is, its identity as implying a relation to the content that it shares with others.[36]

Individuals can benefit from the support of the community only so far as they are 'recognised' by it. Bosanquet would hold, however, that this is entirely unproblematic. As an idealist, Bosanquet holds that the human individual is a mind in a community of minds, and he says that these minds are "so related as to co-operate and to imply one another."[37] Thus, 'recognition' is a matter of simple logic.[38] In fact, Bosanquet believes that the relation among human individuals is so strong that "every mind is a mirror... of the whole community from its own peculiar point of view."[39] Consequently, one can speak of a "general recognition"[40] of individuals by one another – though not necessarily an explicit one – whereby each person is seen as a being able to participate in the realisation of a social and a common good.

In short, it is because of one's relation to others that one has his or her 'individuality'. First, the extent to which one is related to others and thereby is more 'complete', makes one more of an 'individual.'[41] Second, it is because persons are related to others that they have the basis from which to 'abstract' their individuality.[42] Finally, one becomes more of an individual only so far as one aims at the common good or 'end' – that is, at "the existence and perfection of human personality" as a whole. Bosanquet would argue that there is no contradiction among these. Individuality is possible only in a society.

Political Philosophy

Bosanquet's interest in ethics and political philosophy dates from early in his academic career – and it was something that he was encouraged to pursue by Green.[43] Nevertheless, Bosanquet's sustained efforts in these areas did not appear until some 20 years later.

In his early *Essays and Addresses* (1889) – a volume whose contents include both articles on social reform and texts of a primarily philosophical character – one finds an essay called 'The Kingdom of God on Earth' wherein Bosanquet begins to outline a moral philosophy based on Green and Bradley's notion of one's "station and its duties." In a later collection, *The Civilization of Christendom* (1893), Bosanquet criticizes the individualist account of liberty of J.S. Mill and advances an 'ideal of modern life' which he calls 'Christian Hellenism.'

Bosanquet's most substantive work in political philosophy was, however, *The Philosophical Theory of the State* (1899) which went through four editions by the time of his death. Other collections (*Aspects of the Social Problem* [1895] and *Social and International Ideals* [1917]) allow one to see more clearly certain aspects of his political thought, but it is *The Philosophical Theory of the State* that remains his central work, whose arguments he constantly reaffirmed, and which is arguably the most complete articulation of British Idealist political philosophy.

Theoretical matters were not divorced from the practical in Bosanquet's work. It is significant that he wrote frequently on social policy

and that he places an emphasis on experience and on understanding the particular circumstances of individuals. Effective social work could not be done unless one entered into the "minds, habits, and feelings" of those to be helped.

The political philosophy that Bosanquet develops is importantly related to his metaphysics and logic – particularly to such notions as the individual, the general will, 'the best life,' society, and the state – though how far it is so is widely debated. In order to provide a coherent account of notions such as society, the state, and political obligation, Bosanquet argued that one must abandon many of the assumptions found in earlier work within the liberal tradition – particularly those that reveal a commitment to 'individualism.'

Bosanquet saw authority and the state neither as based on individual consent or a social contract, nor as simply institutions depending on a sovereign who issues legally-enforceable commands, but as products of the natural development of human life, and as expressions of what he called the 'real' or general will. On Bosanquet's view, the will of the individual is "a mental system" whose parts – "ideas or groups of ideas" – are "connected in various degrees, and more or less subordinated to some dominant ideas which, as a rule, dictate the place and importance of the others"[44] (i.e., of the other ideas that one has). Thus, Bosanquet writes that, "[i]n order to obtain a full statement of what we will, what we want at any moment must at least be corrected and amended by what we want at all other moments." But the process does not stop there. He continues: "this cannot be done without also correcting and amending it so as to harmonise it with what others want, which involves an application of the same process to them."[45] In other words, if we wish to arrive at an accurate statement of what our will is, we must be concerned not only with what we wish at some particular moment, but also with all of the other wants, purposes, associations and feelings that we and others have (or might have) given all of the knowledge available. The result is one's 'real' or the 'general will.'

The general will, then, is the 'maximisation' of the individual will – that is, the understanding of one's will in light of its relations with others. There is a relation between it and the 'common good.' Bosanquet writes that "The General Will seems to be, in the last resort, the ineradicable impulse of an intelligent being to a good extending beyond itself."[46] This 'good' is nothing other than "the existence and perfection of human personality"[47] which he identifies with "the excellence of souls"[48] and the complete realisation of the individual.

The general or real will and the common good are obviously extensions or applications of the notion of the Absolute to the political sphere. (Curiously, Bosanquet does not make any significant reference to "the Absolute" in his social philosophy, and only mentions the word in the introduction to the second edition of *The Philosophical Theory of the State*.[49] Still, the relation between "the Absolute" and the 'end' described in his political works is obvious.) Bosanquet refers to the Absolute, for

example, as "the spiritual organism in which the finite being finds to some extent completeness and satisfaction."[50] And though the Absolute is not "simply the social whole or the general will"[51] or "the social spirit,"[52] these can be seen as stages towards an articulation of the Absolute.

On Bosanquet's view, the purpose of the state – and of law in general – is determined by the common good, and it is so far as the state reflects the general will and this common good, that its authority is legitimate, its action morally justifiable, and there is an obligation to obey its rules and laws. The state, then, has a teleological and a rational character. It is because of their underlying individualism and, thus, their inability to arrive at a concept of a general or real will that is more than an aggregate of individual wills, that the attempt by utilitarians and natural rights theorists to provide an explanation of the obligatory character of the law is unsatisfactory.

According to Bosanquet, the distinctive characteristic of the state is that it is the part of society that exercises force and coercion on its members, but its activity is not simply negative. The role of the state is 'positive' in that it provides the material conditions for liberty, the functioning of social institutions, and the development of individual moral character. Broadly speaking, Bosanquet holds that its function is to 'hinder hindrances' to the development of human personality. There is, therefore, no incompatibility between the liberty of the individual and the existence of the law.

The influence of Rousseau and Hegel is evident in this account. Indeed, Bosanquet saw Hegel's *Philosophy of Right* as a plausible account of the modern state as an 'organism' or whole united around a shared understanding of the good. Like Hegel, he argued that the state, and all social 'institutions,' were best understood as ethical ideas, existing at the level of consciousness.

Bosanquet held that the authority of the state is absolute, because social life requires a consistent co-ordination of the activities of individuals and institutions. Still, he did not exclude the possibility of an organized system of international law. The conditions for an effective recognition and enforcement of such a system were, he thought, absent at that time – though he held out hope that the League of Nations reflected the beginnings of the consciousness of a genuine human community and that it might provide a mechanism by which multinational action could be accomplished.

Bosanquet maintained that it is in terms of the 'common good' that an individual's 'stations' or 'functions' in society are defined, and it is the conscientious carrying out of the duties that are attached to one's 'station' that constitutes ethical behaviour. Given Bosanquet's account of human nature, it is primarily in light of one's service in the state that a person has the basis for speaking of his or her identity. Not surprisingly, Bosanquet was frequently challenged by those who claimed that his philosophical views led to a devaluation of the individual and that he was anti-democratic. Such attacks ignore, however, Bosanquet's insistence on liberty as the essence and quality of the human person and his emphasis on the moral

development of the human individual and on limiting the state from directly promoting morality (which reflects both his own reading of Kant and the influence of Green's Kantianism). Moreover, while Bosanquet did not hold that there were any *a priori* restrictions on state action, he argued that there were a number of practical conditions that did limit it. For example, while law was seen as necessary to the promotion of the common good, it could not make a person good, and social progress could often be better achieved by volunteer action. (It is just this emphasis that Bosanquet found and defended in his approach to social work of the Charity Organisation Society.)

This account of the individual and society has obvious implications for his theory of rights. Since individuals are necessarily social beings, and since the common good is the fundamental ethical principle in society, rights were neither absolute nor inalienable, but reflected the 'function' or 'positions' individuals held in the community. Moreover, for such rights to have not only moral but legal weight, Bosanquet insisted that they had to be 'recognized' by the state in law. Strictly speaking, then, there could be no rights against the state. Nevertheless, Bosanquet acknowledged that, where social institutions – including the government – were fundamentally corrupt, even if there could be no 'right' to rebellion, there could be a duty to resist.

Although Bosanquet is sometimes regarded as a conservative, recent studies have pointed out that he was an active Liberal and, later in his life, supported the Labour Party. He insisted that the state can have a positive role in the promotion of social well being, and supported worker ownership.

Some critics have argued that Bosanquet's political philosophy is vague (for it fails to distinguish adequately between society and the state), inconsistent (for it seems to shift between assigning positive and negative roles for state action) and non-empirical. Some have seen it as 'too metaphysical,' as removed from the facts of history, and ignorant of the realities of economic life (particularly, the role of large-scale enterprises in the state) and of practical politics. There are many other criticisms besides.

It is worth noting that Bosanquet's audience was as much the professional in social work or the politician, as the philosopher. He was well-informed of the political situation in Britain, on the continent, and in the United States. His interests extended to economics and social welfare, and his work in adult education and social work provided a strong empirical dimension to his work. This background gave him a base from which to reply to challenges from his critics – e.g., from philosophers, like Spencer, and from social reformers, such as Sidney and Beatrice Webb and, the founder of the Salvation Army, General William Booth. Indeed, for Adam Ulam, *The Philosophical Theory of the State* "has a comprehensiveness and an awareness of conflicting political and philosophical opinions which give it a supreme importance in modern political thought. Bosanquet is both a political theorist and a political analyst."[53]

It has also sometimes been suggested that the influences of Kant and Hegel lead to a tension in Bosanquet's political thought. Bosanquet's emphasis on the individual will, the moral development of the human person, and on limiting the state from directly promoting morality clearly reflect Kantian influences. Yet Bosanquet's commitment to a teleological view of morality, where the principle of value is the 'best life' or 'the Absolute,' would suggest that what is of most importance is the realisation of the 'end.' Again, however, it may be argued that this moral 'end' cannot be achieved if the state intervenes too often to ensure that individuals act in certain ways, and Bosanquet clearly has resources which allow a reply to his critics.

The Philosophical Theory of the State

Developed from a series of lecture courses at the London School of Ethics and Social Philosophy in 1897-98 (though parts had been presented at the London Ethical Society in 1894-95) and as part of three eight-lecture courses at Manchester College, Oxford in 1896-97,[54] the first edition of *The Philosophical Theory of the State* appeared in 1889, followed by editions in 1910, 1919, and (posthumously) 1923. It is by far the most complete statement of not only Bosanquet's political thought but of British idealist political philosophy. It employs concepts (such as 'consciousness,' 'appercipient mass,' and 'will') developed in other work, such as *The Psychology of the Moral Self* (1897), and is to be supplemented by a number of other essays, such as those on the general will (1893 and 1920) and on "The Antithesis between Individualism and Socialism Philosophically Considered" (1890), and by his books, *Social and International Ideals* (1917) and *Some Suggestions in Ethics* (1918).

In *The Philosophical Theory of the State*, Bosanquet seeks to present an alternative to then-dominant utilitarian positivism and natural law theories. He begins by articulating what is meant by a philosophical (as distinct from a sociological) theory of the state and by discussing the relation between the state and mind. He argues that individualist views fail in providing a sufficient explanation of self-government and political obligation, and turns to Rousseau and the notion of the general or 'real' will for an alternative.

In the chapter from which the following selection appears, Bosanquet holds that Rousseau's account serves to provide a coherent statement of the nature or character of the state, its function, and its limits – which he describes as 'the maintenance of rights.' Bosanquet goes on to argue that this Rousseauist solution to the question of the basis of self government was developed by Kant, Fichte, and Hegel. He also argues that Hegel's account of social institutions can serve as a means of discerning or interpreting the general will. Finally, through a reading of Hegel's *Philosophy of Right*, Bosanquet provides an analysis of 'social institutions' as ethical ideas. This, and his account of the real will, suggest that, although

it is not yet possible, there could someday be an empirical basis for a general will of all of humanity and, hence, for a global community.

In the second edition (1910), Bosanquet replies to criticisms that the account he provided was 'too intellectualist,' and 'too negative' or abstract, and in the third edition (1919), he addresses the question of how the first world war and its aftermath bear on the analysis of the state he had given.

Problems and Questions to be Addressed

In the selection in this volume, the focus of Bosanquet's concern is an analysis of the nature of rights and of punishment. It is important to recognise that this discussion arises within a general examination of the nature, source, and limits of state action. Does Bosanquet's account of rights address the objections and concerns of Bentham and Mill, without abandoning the principles and values that underlie speaking of human rights in the first place? To answer this, one must be able to reply to the following questions.

1. What is the definition of a right?
2. What is the relation of the state to the existence of rights?
3. What is the purpose of a right? What are its limits?
4. To whom or to what are rights ascribed? What is the basis for rights?
5. What is the relation between rights and duties? What is the source of duty?
6. What does it mean to speak of 'recognition' and, specifically, of the recognition of rights? Who or what recognises rights, and how is this done? What objections might one advance against such a view?
7. What is the purpose of punishment? Where does Bosanquet stand on punishment as reformatory, as a deterrent, and as retributive?
8. How can one justify punishment?
9. In what sense is punishment a right?
10. What does this account suggest about the basis of state action?

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NOTES

[1] J.H. Randall, Jr. "Idealistic Social Philosophy and Bernard Bosanquet," *Philosophy and Phenomenological Research*, XXVI (1966): 473-502. (Reprinted in *The Career of Philosophy*. 3 vols., Vol. 3 (New York, Columbia University Press, 1977), pp. 97-130.), p. 114.

[2] J.H. Muirhead (ed.), *Bernard Bosanquet and his Friends* (London: George Allen & Unwin, 1935), p. 19.

[3] For a discussion of this notion, see also Norman Kemp Smith, *Prolegomena to an Idealist Theory of Knowledge* (Oxford, 1924).

[4] Bertrand Russell, *Sceptical Essays* (London, 1928), p. 56.

[5] See his *Prolegomena to Ethics* (1883), 5th ed., ed. A.C. Bradley (Oxford: Clarendon Press, 1906), pp. 1-85

[6] *Nicomachean Ethics*, I, 7, 1097b 14.

[7] *The Principle of Individuality and Value* (London: Macmillan, 1912), p. 69.

[8] *Science and Philosophy* (London, 1927), p. 324.

[9] *Principle of Individuality and Value*, p. 23.

[10] *Three Lectures on Aesthetics* (London: Macmillan, 1915), p. 6.

[11] See also G. Watts Cunningham, "Bosanquet on Philosophic Method," *Philosophical Review*, 24 (1926): 315-327 and Marion Delia Crane, "The Method in the Metaphysics of Bernard Bosanquet," *Philosophical Review*, 29 (1920): 437-452.

[12] See *Some Suggestions in Ethics* (London: Macmillan, 1918), p. 161.

[13] *The Philosophical Theory of the State* (1899); 4th ed. (London: Macmillan, 1923), p. 1; new edition, ed. William Sweet and Gerald F. Gaus (South Bend, IN: St Augustine's Press, 2001).

[14] *Philosophical Theory of the State*, p. 27; ed. Sweet and Gaus, p. 66.

[15] See *Principle of Individuality and Value*, p. 383.

[16] *Principle of Individuality and Value*, p. 249.

[17] "Do Finite Individuals Possess a Substantive or an Adjectival Mode of Being?" *Proceedings of the Aristotelian Society*, n.s. XVIII (1917-1918), pp. 479-506. Reprinted in H. Wildon Carr, ed., *Life and Finite Individuality. Two Symposia. Edited for the Aristotelian Society with an introduction* (London: Williams and Norgate, 1918) p. 87.

[18] *Principle of Individuality and Value*, p. 158; cf. p. 338.

[19] See *Principle of Individuality and Value*, pp. 326; 337-338.

[20] *Principle of Individuality and Value*, pp. 371, 382; see *Principle of Individuality and Value*, pp. 288, 321-2, 326, 218; *The Value and Destiny of the Individual* (London: Macmillan, 1913), p. 280ff.

[21] "Do Finite Individuals Possess a Substantive or an Adjectival Mode of Being?" p. 90.

[22] *Value and Destiny of the Individual*, p. 288.

[23] *Value and Destiny of the Individual*, p. 287.

[24] "Do Finite Individuals Possess a Substantive or an Adjectival Mode of Being?" p. 96.

[25] *Value and Destiny of the Individual*, p. 4.

[26] *Principle of Individuality and Value*, p. 376.

[27] *Philosophical Theory of the State*, p. lvi; ed. Sweet and Gaus, p. 41.

[28] *Principle of Individuality and Value*, pp. 373; 374; see also p. 27.

[29] *Philosophical Theory of the State*, p. 142; ed. Sweet and Gaus, p. 158.

[30] See Bosanquet, *Psychology of The Moral Self* (London: Macmillan, 1897), pp. 87-88, 94.

[31] *Philosophical Theory of the State*, p. 6; ed. Sweet and Gaus, p. 50.

[32] *Philosophical Theory of the State*, p. 137; ed. Sweet and Gaus, p. 154.

[33] "Do Finite Individuals Possess a Substantive or an Adjectival Mode of Being?" p. 99.

[34] *Philosophical Theory of the State*, p. 170; ed. Sweet and Gaus, p. 179.

[35] *Value and Destiny of the Individual*, p. 49.

[36] cf. "Do Finite Individuals Possess a Substantive or an Adjectival Mode of Being?" pp. 84, 98; see *Principle of Individuality and Value*, p. 288.

[37] *Philosophical Theory of the State*, p. 195; ed. Sweet and Gaus, p. 199.

[38] As an illustration of how recognition works, Bosanquet provides the example of the relation between the pupils and teachers in a school (*Philosophical Theory of the State*, pp. 159-161; ed. Sweet and Gaus, pp. 170-172.

[39] *Philosophical Theory of the State*, p. 7; ed. Sweet and Gaus, p. 51; cf. 292; ed. Sweet and Gaus, p. 278.

[40] *Philosophical Theory of the State*, p. 206; ed. Sweet and Gaus, p. 208.

[41] *Principle of Individuality and Value*, p. 69.

[42] *Philosophical Theory of the State*, p. 201; ed. Sweet and Gaus, p. 203.

[43] See Green's letter to Bosanquet, dated 8 July 1876 [in Bosanquet Collection, University of Newcastle].

[44] "The Reality of the General Will," *International Journal of Ethics*, IV (1893-1894), pp. 308-21, p. 311. (This article is reprinted in *Science and Philosophy*

and Other Essays by the Late Bernard Bosanquet, ed. J.H. Muirhead and R.C. Bosanquet (London: Macmillan, 1927).

[45] *Philosophical Theory of the State*, p. 111; ed. Sweet and Gaus, p. 133.

[46] *Philosophical Theory of the State*, p. 102; ed. Sweet and Gaus, p. 127.

[47] *Philosophical Theory of the State*, p. 189; ed. Sweet and Gaus, p. 194.

[48] *Philosophical Theory of the State*, p. xxxvii; ed. Sweet and Gaus, p. 27.

[49] *Philosophical Theory of the State* (1910 ed.), p. xliv, n. 2; ed. Sweet and Gaus, p. 31, n 37.

[50] *Value and Destiny of the Individual*, p. 208.

[51] *Value and Destiny of the Individual*, p. 208.

[52] *Principle of Individuality and Value*, p. 285.

[53] See *The Philosophical Foundations of English Socialism* (Cambridge, MA: Harvard University Press, 1951), p. 50.

[54] Muirhead, *Bernard Bosanquet and his Friends*, p. 86.

The Philosophical Theory of the State (1899)

CHAPTER 8

[.]6. The idea of individual rights comes down to us from the doctrine of natural right, and has generally been discussed with reference to it. We need not now go back upon the illusions connected with the notion of natural right. It is enough if we bear in mind that we inherit from it the important idea of a positive law which is what it ought to be. A right[1], then, has both a legal and a moral reference. It is a claim which can be enforced at law, which no moral imperative can be; but it is also recognised to be a claim which ought to be capable of enforcement at law, and thus it has a moral aspect. The case in which positive enactment and the moral "ought" appear to diverge will be considered below. But a typical "right" unites the two sides. It both is, and ought to be, capable of being enforced at law.

Its peculiar position follows from what we have seen to be the end of the State, and the means at its disposal. The end of the State is moral purpose, imperative on its members. But its distinctive action is restricted to removing hindrances to the end, that is, to lending its force to overcome – both in mind and in externals essential to mind – obstacles which otherwise would obstruct the realisation of the end. The whole of the conditions thus enforced is the whole of "rights" attaching to the selves, who, standing in definite relations, constitute the community. For it is in these selves that the end of the State is real, and it is by maintaining and regulating their claims to the removal of obstructions that the State is able to promote the end for which it exists. Rights then are claims recognised by the State, *i.e.* by Society acting as ultimate authority, to the maintenance of conditions favourable to the best life. And if we ask in general for a definition and limitation of State action as such, the answer is, in a simple phrase, that State action is coincident with the maintenance of rights.

The system of rights which the State maintains may be regarded from different points of view.

First, (*a*) from the point of view of the whole community, that is, as the general result in the promotion of good life obtained by the working of a free Society, as a statesman or outside critic might regard it. Thus looked at, the system of rights may be described as "the organic whole of the outward conditions necessary to the rational life," or "that which is really necessary to the maintenance of material conditions essential to the existence and perfection of human personality."[2] This point of view is essential as a full contradiction of that uncritical conception by which rights are regarded as something with which the individual is invested in his aspect of isolation, and independently of his relation to the end. It forces us away from this false particularisation, and compels us to consider the whole State-maintained order in its connectedness as a single expression of a common good or will, in so far as such a good can find utterance in a system of

external acts and habits. And it enables us to weigh the value which belongs to the maintenance of any tolerable social order, simply because it is an order, and so far enables life to be lived, and a determinate, if limited, common good to be realised. From other points of view we are apt to neglect this characteristic, and to forget how great is the effect, for the possibilities of life throughout, of the mere fact that a social order exists. Hegel observes that a man thinks it a matter of course that he goes back to his house after nightfall in security. He does not reflect to what he owes it. Yet this very naturalness, so to speak, of living in a social order is perhaps the most important foundation which the State can furnish to the better life. "*Si monumentum quaeris, circumspice*." If we ask how it affects our will, the answer is that it forms our world. Speaking broadly, the members of a civilised community have seen nothing but order in their lives, and could not accommodate their action to anything else.

It should be mentioned as a danger of this point of view that, fascinated by the spectacle of the social fabric as a whole, we may fail to distinguish what in it is the mere maintenance of rights, and what is the growth which such maintenance can promote but cannot constitute Thus we may lose all idea of the true limits of State action.

(*b*) We may regard this complex of rights from the standpoint of the selves or persons who compose the community. It is in these selves, as we have seen, that the social good is actual, and it is to their differentiated functions,[3] which constitute their life and the end of the community, that the sub-groupings of rights, or conditions of good life, have to be adjusted each to each like suits of clothes. The rights are, from this point of view, primarily the external incidents, so far as maintained by law – the authoritative vesture as it were – of a person's position in the world of his community. And we shall do well to regard the nature of rights, as attaching to selves or persons, from this point of view of a place or position in the order determined by law. It has been argued, I do not know with what justice, that, in considering the relations of particles in space, the proper course would be to regard their positions or distances from each other as the primary fact, and to treat attributions of attractive and repulsive forces as modes of expressing the maintenance of the necessary positions rather than as descriptive of real causes which bring it about. At least, it appears to me, such a conception may well be applied to the relative ideas of right and obligation. What comes first, we may say, is the position, the place or places, function or functions, determined by the nature of the best life as displayed in a certain community, and the capacity of the individual self for a unique contribution to that best life. Such places and functions are imperative; they are the fuller self in the particular person, and make up the particular person as he passes into the fuller self. His hold on this is his true will, in other words, his apprehension of the general will. Such a way of speaking may seem unreally simplified when we look at the myriad relations of modern life and the sort of abstraction by which the individual is apt to become a rolling stone with no assignable place – indeed "gathering

no moss" – and to pass through his positions and relations as if they were stations on a railway journey. But in truth it is only simplified and not falsified. If we look with care we shall see that it, or nothing, is true of all lives.

The Position, then, is the real fact – the vocation, place or function, which is simply one reading of the person's actual self and relations in the world in which he lives. Having thoroughly grasped this primary fact, we can readily deal with the points of view which present the position or its incidents in the partial aspects of rights or obligations.

(i.) A right, we said, is a *claim* recognised by society and enforced by the State. My place or position, then, and its incidents, so far as sanctioned by the State constitute my rights, when thought of as something which I claim, or regard as powers instrumental to my purposes. A right thus regarded is not anything primary. It is a way of looking at certain conditions, which, by reason of their relation to the end of the whole as manifested in me, are imperative alike for me and for others. It is, further, the particular way of looking at these conditions which is in question when I claim them or am presumed to claim them, as powers secured to me with a view to an end which I accept as mine. I *have* the rights no less in virtue of my presumed capacity for the end, if I am in fact indifferent to the end. But, in this case, though attributed *ab extra* as rights, they tend to pass into obligations.

(ii.) If rights are an imperative "position" or function, when looked at as a group of State-secured powers claimed by a person for a certain end, obligations are the opposite aspect of such a position or group of powers. That is to say, the conditions of a “position” are regarded as obligations in as far as they are thought of as require enforcement, and therefore, primarily, from the point of view of persons not directly identified with the "position" or end to which they are instrumental. Rights are claimed, obligations are owed. And *prima-facie* rights are claimed *by* a person, and obligations are owed to a person, being his rights as regarded by those against whom they are enforceable.

Thus, the distinction of self and others, which we refused to take as the basis of society, makes itself prominent in the region of compulsion. The reason is that compulsion is confined to hindering or producing external acts, and is excluded from producing an act in its relation to a moral end, that is, the exercise of a right in its true sense; though it can enforce an act which in fact favours the possibility of acting towards a moral end – that is, an obligation. This is the same thing as saying that normally a right is what *I* claim, and the obligation relative to it is what *you* owe; as an obligation is that which can be enforced, and that is an act or omission apart from the willing of an end; and a right involves what cannot be enforced, viz., the relation of an act to an end in a person's will. But even here the distinction of self and others is hardly ultimate. The obligation on me to maintain my parents becomes almost a right[4] if I claim the task as a privilege. And many rights of my position may actually be erected into, or more commonly may

give rise to, obligations incumbent on me for the sake of my position or function. If the exercise of the franchise were made compulsory that would be a right treated also as an obligation; but it might be urged that qua obligation it was held due to the position of others, and only qua right to my own "position." But if the law interferes with my poisoning myself[5] either by drains or with alcohol, that, I presume, is the enforcement of an obligation arising out of my own position and function as a man and a citizen, which makes reasonable care for my life imperative upon me.

(*c*) It is commonly said that every right implies a duty. This has two meanings, which should be distinguished.

In the one case, (i.) for "duty" should be read "obligation," *i.e.* a demand enforceable by law. This simply means that every "position" may be regarded as involving either powers secured or conditions enforced, which are one and the same thing differently looked at. Roughly speaking, they are the same thing as differently looked at by one person and by other persons. My right to walk along the high-road involves an obligation upon all other persons not to obstruct me, and in the last resort the State will send horse, foot and artillery rather than let me be causelessly obstructed in walking along the high-road.

It is also true that every position which can be the source of obligations enforceable in favour of my rights is likewise a link with obligations enforceable on me in favour of the rights of others. By claiming a right in virtue of my position I recognise and testify to the general system of law according to which I am reciprocally under obligation to respect the rights, or rather the function and position, of others. My rights then imply obligations both in others, and perhaps in myself, correlative to these rights, and in me correlative to the rights of others. But it cannot strictly be said that the obligations are the source of the rights, or the rights of the obligations. Both are the varied external conditions of "positions" as regarded from different points of view.

But (ii.) there is a different sense in which every right implies a duty. And this, the true meaning of the phrase, is involved in what we have said of the nature of a "position." All rights, as claims which both are and ought to be enforceable by law, derive their imperative authority from their relation to an end which enters into the better life. All rights, then, are powers instrumental to making the best of human capacities, and can only be recognised or exercised upon this ground.

In this sense, the duty is the purpose with a view to which the right is secured, and not merely a corresponding obligation equally derived from a common ground; and the right and duty are not distinguished as something claimed by self and something owed to others, but the duty as an imperative purpose, and the right as a power secured because instrumental to it.

(*d*) We have treated rights throughout as claims, the enforcement of which by the State is merely the climax of their recognition by society. Why do we thus demand recognition for rights? If we deny that there can be

unrecognised rights, do we not surrender human freedom to despotism or to popular caprice?

(i.) In dealing with the general question why recognition is demanded as an essential of rights, we must remember what we took to be the nature of society and the source of obligation. We conceived a society to be a structure of intelligences so related as to co-operate with and to imply one another. We took the source of obligation to lie in the fact that the logic of the whole is operative in every part, and consequently that every part has a reality which goes beyond its average self and identifies it with the whole, making demands upon it in doing so.

Now, we are said to "recognise" anything when it comes to us with a consciousness of familiarity, as something in which we feel at home. And this is our general attitude to the demands which the logic of the whole, implied in our every act, is continuously making upon us. It is involved in the interdependence of minds which has been explained to constitute *the mind* of which the visible community is the body. A teacher's behaviour towards his pupils, for example, implies a certain special kind of interdependence between their minds. What he can do for them is conditioned by what they expect of him and are ready to do for him and *vice versa*. The relation of each to the other is a special form of "recognition." That is to say, the mind of each has a definite and positive attitude towards that of the other, which is based on, or rather, so far as it goes, simply *is*, the relation of their "positions" to each other. Thus, social positions or vocations actually have their being in the medium of recognition. They are the attitudes of minds towards one another, through which their several distinct characteristics are instrumental to a common good.

Thus, then, a right, being a power secured in order to fill a position, is simply a part of the fact that such a position is recognised as instrumental to the common good. It is impossible to argue that the position may exist, and not be recognised. For we are speaking of a relation of minds, and, in so far as minds are united into a single system by their attitudes towards each other, their “positions” and the recognition of them are one and the same thing. Their attitude, receptive, co-operative, tolerant, and the like, is so far a recognition, though not necessarily a reflective recognition. Probably this is what is intended by those who speak of imitation or other analogous principles as the ultimate social fact. They do not mean the repetition of another person's conduct, though that may enter in part into the relation of interdependence. They mean the conscious adoption[6] of an attitude towards others, embodying the relations between the "positions" which social logic assigns to each.

(ii.) But then the question of page 194[7] presses upon us – "If we deny that there can be unrecognised rights, do we not surrender human freedom to despotism or to popular caprice?"

The sting of this suggestion is taken out when we thoroughly grasp the idea that recognition is a matter of logic, working on and through experience, and not of choice or fancy. If my mind has *no* attitude to yours,

there is no interdependence and I cannot be a party to securing you rights. You are not, for me, a sharer in a capacity for a common good, which each of us inevitably respects. A dog or a tree may be an instrument to the good life, and it may therefore be right to treat it in a certain way, but it cannot be a subject of rights. If my mind *has* an attitude to yours, then there is certainly a recognition between us, and the nature of that recognition and what it involves are matters for reasoning and for the appeal to experience. It is idle for me, for instance, to communicate with you by language or to buy and sell with you, perhaps even idle to go to war with you,[8] and still to say that I recognise no capacity in you for a common good. My behaviour is then inconsistent with itself, and the question takes the form what rights are involved in the recognition of you which experience demonstrates. No person and no society is consistent with itself, and the proof and amendment of their inconsistency is always possible. And, one inconsistency being amended, the path is opened to progress by the emergence of another. If slaves come to be recognised as free but not as citizens, this of itself opens a road by which the new freeman may make good his claim that it is an inconsistency not to recognise him as a citizen.

But no right can be founded on my mere desire to do what I like.[9] The wish for this is the sting of the claim to unrecognised rights, and this wish is to be met as the fear that our view might lead to despotism was met. The matter is one of fact and logic, not of fancies and wishes. If I desire to assert an unrecognised right I must show what "position" involves it, and how that position asserts itself in the system of recognitions which is the social mind, and my point can only be established universally with regard to a certain type of position, and not merely for myself as a particular A or B. In other words, I must show that the alleged right is a requirement of the realisation of capacities for good and, further, that it does not demand a sacrifice of capacities now being realised, out of proportion to the capacities which it would enable to assert themselves. I must show, in short, that in so far as the claim in question is not secured by the State, Society is inconsistent with itself, and falls short of being what it professes to be, an organ of good life. And all my showing gives no *right*, till it has modified the law. To maintain a right against the State by force or disobedience is rebellion, and, in considering the duty of rebellion, we have to set the whole value of the existence of social order against the importance of the matter in which we think Society defective. There can hardly be a duty to rebellion in a State in which law can be altered by constitutional process.

The State-maintained system of rights, then, in its relation to the normal self and will of ordinary citizens with their varying moods of enthusiasm and indolence, may be compared to the automatic action of a human body. Automatic actions are such as we perform in walking, eating, dressing, playing the piano or riding the bicycle. They have been formed by consciousness, and are of a character subservient to its purposes, and obedient to its signals. As a rule, they demand no effort of attention, and in this way attention is economised and enabled to devote itself to problems

which demand its intenser efforts. They are relegated to automatism because they are uniform, necessary, and external – "external" in the sense explained above, that the way in which they are required makes it enough if they are done, whatever their motives, or with no motives at all.

By far the greater bulk of the system of rights is related in this way to normal consciousness. We may pay taxes, abstain from fraud and assault, use the roads and the post-office, and enjoy our general security, without knowing that we are doing or enjoying anything that demands special attention. Partly, of course, attention is being given by other consciousnesses to maintaining the securities and facilities of our life. Even so, the arrangement is automatic in so far as there is no reason for arousing the general attention in respect to it; but to a varying extent it is automatic throughout, and engrained in the system and habits of the whole people. We are all supposed to know the whole law. Not even a judge has it all in his knowledge at any one time; but the meaning is that it roughly expresses our habits, and we live according to it without great difficulty, and expect each other to do so. This automatism is not harmful, but absolutely right and necessary, so long as we relegate to it only "external" matters; *i.e.* such as are necessary to be done, motive or no motive, in some way which can be generally laid down. Thus used, it is an indispensable condition of progress. It represents the ground won and settled by our civilisation, and leaves us free to think and will such matters as have their value in and through being thought and willed rightly. If we try to relegate these to automatism, then moral and intellectual death has set in.

But if the system of rights is automatic, how can it rest on recognition? Automatic actions, we must remember, are still of a texture, so to speak, continuous with consciousness. “Recognition” expresses very fairly our habitual attitude towards them in ourselves and others. We might think, for example, of the system of habits and expectations which forms our household routine. We go through it for the most part automatically, while "recognising" the "position" of those who share it with us, and respecting the life which is its end. At points here and there in which it affects the deeper possibilities of our being, our attention becomes active, and we assert our position with enthusiasm and conscientiousness. Our attitude to the social system of rights is something like this. The whole order has our habitual recognition; we are aware of and respect more or less the imperative end on which it rests – the claim of a common good upon us all. Within the framework of this order there is room for all degrees of laxity and conscientiousness; but, in any case, it is only at certain points, which either concern our special capacity or demand readjustment in the general interest, that intense active attention is possible or desirable.

The view here taken of automatism and attention in the social whole impairs neither the unity of intelligence throughout society nor the individual's recognition of this unity as a self liable to be opposed to his usual self. As to the former point, every individual mind shows exactly the same phenomena, of a *continuum* largely automatic, and thoroughly alive

only in certain regions, connected, but not thoroughly coherent. As to the latter point, permeation of the individual by the habits of social automatism does not prevent, but rather gives material for, his tendency to abstract himself from the whole, and to frame an attitude for himself inconsistent with his true "position," against which tendency the imperative recognition of his true self has constantly to be exerted.

7. We have finally to deal with the actual application by the State of its ultimate resource for the maintenance of rights, viz., force. Superior force may be exercised upon human nature both by rewards and by punishments. In both respects its exercise by the State would fall generally within the lines of automatism; that is to say, it would be a case of the promotion of an end by means other than the influence of an idea of that end upon the will. But, owing to the subtle continuity of human nature throughout all its phases, we shall find that there is something more than this to be said, and that the idea of the end is operative in a peculiar way just where the agencies that promote it appear to be most alien and mechanical. In so far as this is the case the general theory of the negative character of State action has to be modified, as we foresaw,[10] by the theory of punishment. *Prima facie*, however, it is true that reward and punishment belong to the automatic element of social life. They arise in no direct relation of the will to the end. They are a reaction of the automatic system, instrumental to the end, against a friction or obstacle which intrudes upon it, or (in the case of rewards) upon the opposite of a friction or obstacle. There is no object in pressing a comparison into every detail; but perhaps, as social and individual automatism do really bear the same kind of relation to consciousness, it may be pointed out that reward and punishment correspond in some degree to the pleasures and pains of a high-class secondary automatism, say of riding or of reading, *i.e.* of something specially conducive to enhanced life. Such activities bring pleasure when unimpeded, and pain when sharply interrupted by a start or blunder which jars upon us. Putting this latter case in language which carries out the analogy to punishment, we might say that the formed habit of action, unconsciously or semi-consciously relevant to the end or fuller life, is obstructed by some partial state of mind, and their conflict is accompanied with recognition, pain, and vexation. “What a fool I was,” we exclaim, "to ride carelessly at that corner," or "to let that plan for a holiday interrupt me in my morning's reading." It may seem remarkable that reward plays a small and apparently decreasing part in the self-management of society by the public power. To the naive Athenian,[11] it seemed a natural instrument for the encouragement of public spirit, probably rather by a want of discrimination between motives than by a real belief in political selfishness. In European countries honours still appear to play a considerable part, but on analysis it would be found less than it seems. Partly they are recognitions of important functions, and thus conditions rather than rewards. To a great extent, again, they recognise existing facts, and are rather consequences of the respect which society feels for certain types of life (with very curious

results in regions where the general mind is inexperienced, *e.g*. in fine art) than means employed to regulate the conduct of citizens. We should think a soldier mean whose aim was a peerage, still more a poet or an artist. I hardly know that rewards adjudged by the State, as distinct from compensations, exist in the United States of America.[12] Rewards then fill no place correlative to that of punishments, and the reason seems plain. Punishment corresponds much better to the negative method which alone is open to the State for the maintenance of rights. For Punishment proclaims its negative character, and no one can suppose it laudable simply to be deterred from wrong-doing by fear of punishment. But though precisely the same principle applies to meritorious actions done with a view to reward, an illusion is almost certain to arise which will hide the principle in this case. For, if reward is largely used as an inducement to actions conducive to the best life, it is almost certain that it will be used as an inducement to actions the value and certainty of which depend on the state of will to which they are due. And then the distinction between getting them done, motive or no motive, which is the true region of State action, and their being done with a certain motive, which is necessary to give them either the highest practical or any moral value, is pretty sure to be obliterated, and the range of the moral will trenched upon in its higher portion and with a constant tendency to self-deception.[13] It is the same truth in other words when we point out that taking reward and punishment, as interferences, only to deal with exceptional cases, reward would deal with the exceptionally good. Therefore, again, reward must either make an impossible attempt to deal with all the normal as good which involves the danger of *de*-moralising the whole of normal life, or must take the line of specially promoting what is exceptionally conducive to good life; in which case confusion is certain to arise from interference with the delicate middle class of external actions analysed above.[14] And thus it is only what we should expect when we find that States having no *damnosa hereditas* of a craving for personal honours are hardly acquainted with the bestowal of rewards by the public power.

It will be sufficient, then, to complete the account of State action in maintenance of rights by some account of the nature and principles of punishment.

And we may profitably begin by recalling M. Durkheim's suggestion, which was mentioned in a former chapter.[15] Punishment, he observes, from the simplest and most actual point of view, includes in itself all those sides which theory has tended to regard as incompatible. It is, in essence, simply the reaction of a strong and determinate collective sentiment against an act which offends it. It is idle to include such a reaction entirely under the head either of reformation, or of retaliation, or of prevention. An aggression is *ipso facto* a sign of character, an injury, and a menace; and the reaction against it is equally *ipso facto* an attempt to affect character, a retaliation against an injury, and a deterrent or preventive against a menace. When we fire up at aggression it is pretty much a chance whether we say "I am going to teach him better manners," or “I am going to

serve him out," or "I am going to see that he doesn't do that again." A consideration of each of these aspects is necessary to do justice both to the theories and to the facts.

i. An obvious point of view, and the first perhaps to appear in philosophy, though strongly opposed to early law, is that the aim of punishment is to make the offender good. As test of the adequacy of this doctrine by itself, the question may be put, "If pleasures would cure the offender, ought he to be given pleasures?" The doctrine, however, does not, by any means, altogether incline to leniency. For it carries as a corollary the extirpation of the incurable, which Plato proposes in a passage of singularly modern quality, when he suggests the co-operation of judges and physicians in maintaining the moral and physical health of society.[16]

The first comment that occurs to us is, that by a mere medical treatment of the offender, including or consisting of pleasant conditions, if helpful to his cure, the interest of society seems to be disregarded. What is to become of the maintenance of rights, if aggressors have to anticipate a pleasant or lenient "cure"? It may be true that brutal punishments stimulate a criminal temper in the people rather than check it; but it is a long way from this to laying down that there is no need for terror to be associated with crime. To suppose that pleasures may simply act throughout as pains, is playing with words and throws no light on the question. If we leave words their meaning, we must say that punishment must be deterrent for others as well as reformatory for the offender, and therefore in some degree painful. It is true, however, that the offender, as a human being, and presumably capable of a common good, has, as Green puts it, "reversionary rights" of humanity, and these punishment must so far as possible respect.

But there is a deeper difficulty. If the reformation theory is to be seriously distinguished from the other theories of punishment, it has a meaning which is unjust to the offender himself. It implies that his offence is a merely natural evil, like disease, and can be cured by therapeutic treatment directed to removing its causes But this is to treat him not as a human being; to treat him as a "patient," not as an agent; to exclude him from the general recognition that makes us men. (If the therapeutic treatment includes a recognition and chastisement of the offender's bad will[17] – the form of which chastisement may, of course, be very variously modified – then there is no longer anything to distinguish the reformatory theory from other theories of punishment.) It has been lately pointed out[18] what a confusion is involved in the claim that beings, who are irresponsible and so incapable of guilt, are therefore in the strict sense innocent. Here are the true objects for a pure reformatory theory. Here that may freely be done, as to creatures incapable of rights, which is kindest for them and safest for society, from quasi-medical treatment to extirpation. There is no guilt in them to demand punishment, but there is no human will in them to have the rights of innocence. But, applied to responsible human beings, such a theory, if really kept to its distinctive contention, is an insult. It leads to the notion that the State may take hold of any man, whose life or ideas are

thought capable of improvement, and set to work to ameliorate them by forcible treatment. There is no true punishment except where one is an offender against a system of rights which he shares, and therefore against himself. And such an offender has a right to the recognition of his hostile will; it is inhuman to treat him as a wild animal or a child, whom we simply mould to our aims. Without such a recognition, to be punished is not, according to the old Scotch phrase, to be "justified."

ii. The idea of retaliation or retribution, though in history the oldest conception of punishment,[19] may be taken in theory as a protest against the conception that punishment is only a means for making a man better. Its strong point is its definite idea of the offender. The offender is a responsible person, belonging to a certain order which he recognises as entering into him and as entered into by him, and he has made actual an intention hostile to this order. He has, as Plato's Socrates insists in the *Crito*, destroyed the order so far as in him lies. ln other words, he has violated the system of rights which the State exists to maintain, and by which alone he and others are secured in the exercise of any capacity for good, this security consisting in their reciprocal respect for the system. His hostile will stands up and defies the right, in so far as his personality is asserted through a tangible deed which embodies the wrong. It is necessary, then, that the power which maintains the system of rights should not merely, if possible, undo the external harm which has been done, but should strike down the hostile will which has defied the right by doing that harm. The end or true self is in the medium of mind and will, and is contradicted and nullified so far as a hostile will is permitted to triumph.

It is obvious, however, that the means by which the hostile will can be negatived fall *prima facie* within the region of automatism. The recalcitrant element of consciousness is not susceptible to the end as an idea or it would not be recalcitrant. The end can here assert itself, agreeably to the general principle of State action, only through external action the mental effects of which cannot be precisely estimated. It might, therefore, seem that the pain produced by the reaction of the automatic system on the aberrant consciousness – the punishment – was simply a natural pain, which might act as a deterrent from aberration, but had no visible connection with the true whole or end for the mind of the offender. We shall speak below of the sense in which punishment is deterrent or preventive. But it is to be noted at this point that a high-class secondary automatism, with which all along we have compared the system of rights as engrained in the habits of a people, retains a very close connection with consciousness. We do not indeed will every step that we walk, but we only walk while we will to walk, and so with the whole system of routine automatism which is the method and organ of our daily life. At any interruption, any hindrance or failure, consciousness starts up, and the end of the whole routine comes sharply back upon us through our aberration.

So it is with punishment. Primarily, no doubt, chastisement by pain, and the appeal to fear and to submissiveness, is effective through our lower

nature, and, in as far as operative, substitutes selfish motives for the will that wills the good, and so narrows its sphere. But there is more behind. The automatic system is pulsing with the vitality of the end to which it is instrumental; and when we kick against the pricks, and it reacts upon us in pain, this pain has subtle connections throughout the whole of our being. It brings us to our senses, as we say; that is, it suggests, more or less, a consciousness of what the habitual system means, and of what we have committed in offending against it. When one stumbles and hurts his foot, he may look up and see that he is off the path. If a man is told that the way he works his factory or keeps his tenement houses is rendering him liable to fine or imprisonment, then, if he is an ordinary, careless, but respectable citizen, he will feel something of a shock, and recognise that he was getting too neglectful of the rights of other, and that, in being pulled up, he is brought back to himself. His citizen honour will be touched. He will not like to be below the average which the common conscience had embodied in law.

When we come to the actual criminal consciousness, the form which the recognition may take in fact may vary greatly; and as an extreme there may be a furious hostility against the whole recognised system of law, either involving self-outlawry through a despair of reconciliation, or arising through some sort of habitual conspiracy in which the man finds his chosen law and order as against that recognised by the State.[20] But after all, we are dealing with a question of social logic and not of empirical psychology. And it must be laid down that, in as far as any sane man fails altogether to recognise in any form the assertion of something which he normally respects in the law which punishes him (putting aside what he takes to be miscarriage of justice), he is outlawed by himself and the essentials of citizenship are not in him. Doubtless, if an uneducated man were told, in theoretical language, that in being punished for an assault he was realising his own will, he would think it cruel nonsense. But this is a mere question of language, and has really nothing to do with the essential state of his consciousness. He would understand perfectly well that he was being served as he would say anyone should be served, whom he saw acting as he had done, in a case where his own passions were not engaged. And this recognition, in whatever form it is admitted, carries the consequence which we affirm.

In short, then, compulsion through punishment and the fear of it, though primarily acting on the lower self, does tend, when the conditions of true punishment exist (*i.e.* the reaction of a system of rights violated by one who shares in it), to a recognition of the end by the person punished, and may so far be regarded as his own will, implied in the maintenance of a system to which he is a party, returning upon himself in the form of pain. And this is the theory of punishment as retributive. The test doctrine of the theory may be found in Kant's saying that, even though a society were about to be dissolved by agreement, the last murderer in prison must be executed

before it breaks up. The punishment is, so to speak, his right, of which he must not be defrauded.

There are two natural perversions of this theory. The first is to confuse the necessary retribution or reaction of the general self, through the State, with personal vengeance.[21] Even in the vulgar form, when a brutal murder evokes a general desire to have the offender served out,[22] the general or social indignation is not the same as the selfish desire for revenge. It is the offspring of a rough notion of law and humanity, and of the feeling that a striking aggression upon them demands to be strikingly put down. Such a sentiment is a part of the consciousness which maintains the system of rights, and can hardly be absent where that consciousness is strong.

The second perversion consists in the superstition that punishment should be "equivalent" to offence. In a sense, we have seen, it is *identical*; *i.e.* it is a return of the offender's act upon himself by a connection inevitable in a moral organism. But as for *equivalence* of pain inflicted, either with the pain caused by the offence or with its guilt, the state knows nothing of it and has no means of securing it. It cannot estimate either pain or moral guilt. Punishment cannot be adapted to factors which cannot be known. And further, the attempt to punish for immorality has evils of its own.[23] The graduation of punishments must depend on wholly different principles, which we will consider in speaking of punishment as preventive or deterrent.

iii. The graduation of punishments must be almost entirely determined by experience of their operation as deterrents. It is to be borne in mind, indeed, (i.) that the "reversionary rights " of humanity in the offender are not to be needlessly sacrificed, and (ii.) that the true essence of punishment, as punishment, the negation of the offender's anti-social will, is in some way to be secured. But these conditions are included in the preventive or deterrent theory of punishment, if completely understood; if, that is to say, it is made clear precisely what it is that is to be prevented.

If we speak of punishment, then, as having for its aim to be deterrent or preventive, we must not understand this to mean that a majority, or any persons in power, may rightly prevent, by the threat of penalties, any acts that seem to them to be inconvenient.

That which is to be prevented by punishment is a violation of the State-maintained system of rights by a person who is a party to that system, and therefore the above-mentioned conditions, implied in a true understanding of the reformatory and retributive aspects of punishment, are also involved in it as deterrent. But, this being admitted, we may add to them the distinctive principle on which a deterrent theory insists. If a lighter punishment deter as effectively as a heavier, it is wrong to impose the heavier. For the precise aim of State action is the maintenance of rights; and if rights are effectively maintained without the heavier punishment, the aim of the State does not justify its imposition. It is well known that success in the maintenance of rights depends not only on the severity of punishments,

but also on the true adjustment of the rights themselves to human ends, and on that certainty of detecting crime which is a result of efficient government. And it must always be considered, in dealing with a relative failure of the deterrent power of punishment in regard to certain offences, whether a better adjustment of rights or a greater certainty of detection will not meet the end more effectively than increased severity of punishment. We have seen that the equivalence of punishment and offence is really a meaningless superstition. And there is no principle on which punishment can be rationally graduated, except its deterrent power as learned by experience. This view corresponds to the true limits of State action as determined by the means at its disposal compared with the end which is its justification, and is therefore, when grasped in its full meaning as not denying the nature of punishment, the true theory of it.

We saw, in speaking of punishment as retributive, in what sense it can and cannot rest upon a judgment imputing moral guilt. Of degrees of moral guilt as manifested in the particular acts of individuals, the State, like all of us, is necessarily ignorant. But this is not to say that punishment is wholly divorced from a just moral sentiment. Undoubtedly it implies and rests upon a disapproval of that hostile attitude to the system of rights which is implied in the realised intention constituting the violation of right. Though in practice the distinction between civil and criminal law in England carries out no thoroughly logical demarcation, yet it is true on the whole to say with Hegel that, in the matter of a civil action, there is no violation of right as such, but only a question in whom a certain right resides; while in a matter of criminal law there is involved an infraction of right as such, which by implication is a denial of the whole sphere of law and order. This infraction the general conscience disapproves, and its disapproval is embodied in a forcible dealing with the offender, however that dealing may be graduated by other considerations.

I may touch here on an interesting point of detail, following Green. If punishment is essentially graduated according to its deterrent power, and not according to moral guilt, how does it come to pass that "extenuating circumstances" are allowed to influence sentences? That they do so really, if not nominally, even in England, there can be no doubt. Is it not that they indicate a less degree of wickedness in the offender than the offence in question would normally presuppose? It would seem that judges themselves are sometimes under this impression. But it may well be that they act under a right instinct and assign a wrong reason. For it is impossible to get over the fact that moral iniquity is something which cannot be really estimated. The true reason for allowing circumstances which change the character of the act to influence the sentence is that in changing its character, they may take it out of the class of offences to which it *prima facie* belongs, and from which men need to be deterred by a recognised amount of severity. If a man is starving and steals a turnip, his offence, being so exceptionally conditioned, does not threaten the general right of property, and does not need to be associated with any high degree of terror in order to protect that

right. A man who steals under no extraordinary pressure of need does what might become a common practice if not associated with as much terror as is found by experience to deter men from theft.

It may be said, in some exceptional emergency, "But many men are now starving; ought not the theft of food, on the principle of prevention, to be now punished with extreme severity, as otherwise it is likely to become common?" Or in general, ought not severity to increase with temptation or provocation, as a greater deterrent is needed to counterbalance this? The case in which the temptation or provocation is exceptional has just been dealt with. But if abnormal temptation or provocation becomes common, as in a famine, or in some excited condition of public feeling, then it must be remembered that not one right only, but the system of rights as such, is what the State has to maintain. If starvation is common, some readjustment of rights, or at least some temporary protection of the right to live, is the remedy indicated, and not, or not solely, increased severity in dealing with theft.[24] If provocation becomes common, then the rights of those provoked must be remembered, and the provocation itself perhaps made punishable, like the singing of faction songs in Ireland. Punishment is to protect rights, not to encourage wrongs.

Thus, we have seen the true nature and aims of punishment as following from the aim of the State in maintaining the system of rights instrumental to the fullest life. The three main aspects of punishment which we have considered are really inseparable, and each, if properly explained, expands so as to include the others.[25]

We may, in conclusion, sum up the whole theory of State action in the formula which we inherit from Rousseau – that Sovereignty is the exercise of the General Will.

First. All State action is General in its bearing and justification, even if particular, or rather concrete, in its details. It is embodied in a *system* of rights, and there is no element of it which is not determined by a bearing upon a public interest. The verification of this truth, throughout, for example, our English system of public and private Acts of Parliament, would run parallel to the logical theory of the Universal Judgment as it passes into Judgments whose subjects are proper names. But the immediate point is that no rights are absolute, or detached from the whole, but all have their warrant in the aim of the whole, which at the same time implies their adjustment and regulation according to general principles. This generality of law is practically an immense protection to individuals against arbitrary interference. It makes every regulation strike a class and not a single person.

And, secondly. All State action is at bottom the exercise of a Will; the real Will, or the Will as logically implied in intelligences as such, and more or less recognised as imperative upon them. And therefore, though in the form of force it acts through automatism, that is, not directly as conscious Will, but through a system which gives rise to acts by influences apparently alien, yet the root and source of the whole structure is of the nature of Will, and its end, like that of organic automatism, is to clear the

road for true volition; it is "forcing men to be free." And in so far as by misdirection of the automatic[26] process it encroaches on the region of living Will – the region where the good realises itself directly by its own force as a motive – it is "sawing off the branch on which it sits," and superseding the aim by the instrument.

NOTES

[1] This is a right in the fullest sense. The nature of a merely legal or merely moral right will be illustrated below.

[2] [K.C.F.] Krause and [Georg] Henrici, cit. by [T.H.] Green, [Lectures on the] *Principles of Political Obligation* [London: Longmans, Green, and Co., 1917, section 11, footnote 1], p. 35. Cp. "The system of right is the realm of realised freedom, the world of the mind produced by the mind as a second nature" (Hegel, *Grundlinien der Philosophie des Rechts*, sect. 4). [In his note Green actually cites Herman Ulrici's discussion of Krause and Henrici's two definitions of "Recht" or "jus naturæ." Ulrici, *Gott und der Mensch*, vol. II, *Grundzüge der Praktischen Philosophie, Naturrecht, Ethik und Aesthetik* (Leipzig: Y. O. Weigel, 1873–74), p. 219. See also Hegel, The Philosophy of Right, trans. T.M. Knox (Oxford: Clarendon Press, 1942), p. 30 (sect. 4).

[3] I do not say merely social functions, *i.e.*, functions dealing directly with "others" as such.

[4] I do not know that I can compel my parents to be maintained by me, and therefore it is not my legal right to maintain them; but at least the obligation, if I claim it, ceases to depend on force. An East End Londoner will say, "He had a right to maintain his father," meaning that he was bound to do so; and Jeanie Deans says, "I have no right to have stories told about my family without my consent," representing her own claim as a negative obligation on herself as well as on others. She represents the thought, "I have a right that you should not tell stories," etc., in a form which puts it as a case of the thought, "You have no right to tell stories," disregarding the distinction between herself and others as accidental.

[5] The law used to interfere with bad sanitation only as a "nuisance," *i.e.* as an annoyance to "others." It now interferes with any state of things dangerous to life as such, which probably means that a change of theory has unconsciously set in. Legislation for dangerous trades almost proves the point, though here it is possible to urge that the employer is put under obligation for the sake of his workers, and not the workers for their own sake. But the distinction is hardly real.

[6] To call this imitation is something like calling fine art imitation. Really, in both cases, we find a re-arrangement and modification of material, incident to a new expression. The process, if we must name it, is "relative suggestion" rather than imitation.

[7] [This should read "page 195" (of *The Philosophical Theory of the State*, 4th ed. [London: Macmillan, 1923]); see p. 443 above in this text.]

[8] As distinct from hunting. We do not go to war with lions and tigers.

[9] [T.H.] Green, [Lectures on the] *Principles of Political Obligation* [London: Longmans, Green, and Co., 1917, section 144], p. 149.

[10] [PTS 4th ed.] p. 183 ff. [see also *'The Philosophical Theory of the State' and Related Essays*, ed. William Sweet and Gerald F. Gaus (South Bend, IN: St Augustine's Press, 2001), p. 189].

[11] "Speech of Pericles," Thucyd., ii. 46: "Where there are the greatest rewards of merit, there will be the best men to do the work of the State." Contrast Plato's principle that there can be no sound government while public service is done with a view to reward.

[12] The precise theory of the grants in money made to soldiers or sailors, for distinguished service, is not easy to state. But it seems clear that they are not intended to act as motives. They are essentially a recognition after the act, not all inducement held out before it.

[13] It is perhaps permissible to observe in general, what is very well known to all who have much experience of what is called philanthropy, that the tendency to distinguish it by public honours is exceedingly dangerous to its quality, which depends entirely on that energy and purity of intelligence which can only accompany the deepest and highest motives. Mere vulgar self-seeking is not the danger (though it does occur) so much as obfuscation of intelligence through a mixture of aims and ideas.

[14] [PTS 4th ed.,] p. 183; ed. Sweet and Gaus, pp. 190-91.

[15] [PTS 4th ed.,] p. 35; ed. Sweet and Gaus, p. 72.

[16] *Republic*, 409, 410.

[17] Plato's reformatory theory seems to involve this. And the author of *Erewhon*, to the best of my recollection, only half adheres to his principle that disease is to be punished, and wickedness medically treated. For his "treatment" of wickedness is plainly punitive, and thus he altogether abandons the idea of medical cure which his antithesis suggests.

[18] Mr. [F.H.] Bradley, ["Some Remarks on Punishment"] in the *International Journal of Ethics*, April, 1894 [Vol. 4, pp. 269-284; reprinted in *Collected Essays*, Oxford: Clarendon Press, 1969, pp. 149-164 [Ed.]]

[19] We saw that, even in its earliest forms, it cannot really be taken to exclude the other aspects.

[20] See the account of the Mafia in Marion Crawford's *Corleone*. Accepting this as described, it simply is the social will in which the population of a certain region find their substitute for the State.

[21] It may be noted that Durkheim, relying chiefly on early religious sentiment, denies Maine's view that criminal law arises out of private feud.

[22] Green, *Principles of Political Obligation*, p. 184.

[23] See [PTS 4th ed.], p. 61; ed. Sweet and Gaus, p. 94.

[24] Though for the sake of all parties, and to avoid temptation, a strong policing of threatened districts may be desirable in such circumstances.

[25] See further the essay "On the Growing Repugnance to Punishment," in *Some Suggestions in Ethics*, Macmillan, 1918.

[26] It must not be forgotten that the State is, by its nature, under a constant temptation to throw its weight on the side of the automatic process. A most striking example is its adoption of the automatic water-carriage system in drainage, with far-reaching economic consequences. See Poore's *Rural Hygiene* and *The Dwelling House*.

CHAPTER X

JACQUES MARITAIN (1882-1973)

Biographical Information

Jacques Maritain was born on November 18, 1882 in Paris.[1] The son of Paul Maritain, a prominent lawyer, and Geneviève Favre, daughter of the French statesman, Jules Favre, Jacques Maritain studied at the Lycée Henri IV (1898-99) and at the Sorbonne, where he prepared a *licence* in philosophy (1900-01) and in the natural sciences (1901-02). He was initially attracted to the philosophy of Spinoza. Largely at the suggestion of his friend, the poet (and, later, religious thinker) Charles Péguy, he attended lectures by Henri Bergson at the Collège de France (1903-04) and was briefly influenced by Bergson's work.

In 1901, Maritain met Raïssa Oumansoff, a fellow student at the Sorbonne and the daughter of Russian Jewish immigrants. Both were struck by the spiritual aridity of French intellectual life and made a vow to commit suicide within a year should they not find some answer to the apparent meaninglessness of life. Bergson's challenges to the then-dominant positivism sufficed to lead them to give up their thoughts of suicide, and Jacques and Raïssa married in 1904. Soon thereafter, through the influence of the writer Léon Bloy, both Maritains sought baptism in the Roman Catholic Church (1906).

Maritain received his *agrégation* in philosophy in 1905 and, late in 1906, Jacques and Raïssa left for Heidelberg, where Jacques continued his studies in the natural sciences. They returned to France in the summer of 1908, and it was at this time that the Maritains explicitly abandoned *bergsonisme* and Jacques began an intensive study of the writings of Thomas Aquinas.

In 1912 Maritain became professor of philosophy at the Lycée Stanislaus, though he undertook to give lectures at the Institut Catholique de Paris. He was named Assistant Professor at the Institut Catholique in 1914, he became full Professor in 1921 and, in 1928, was appointed to the Chair of Logic and Cosmology, which he held until 1939.

In his early philosophical work (e.g., "La science moderne et la raison," 1910, and *La philosophie bergsonienne*, 1913), Maritain sought to defend Thomistic philosophy from its Bergsonian and secular opponents. Following brief service in the First World War, Maritain returned to teaching and research. The focus of his philosophical work continued to be the defense of Catholicism and Catholic thought (e.g., *Antimoderne* [1922], *Trois réformateurs - Luther, Descartes, Rousseau* [1925]). Maritain also wrote an introductory philosophical text (*Elements de philosophie* [2 volumes, 1921-23]), and his interests expanded to include aesthetics (e.g., *Art et scholastique*, 1921; 2nd ed 1927).

By the late 1920s, Maritain's attention began to turn to social issues. Although he had some contact with the Catholic social action movement, *Action Française*, he abandoned it in 1926 when it was condemned by the Catholic Church for its nationalistic and anti-democratic tendencies. Still, encouraged by his friendships with the Russian philosopher Nicholas Berdiaev (beginning in 1924) and Emmanuel Mounier (from 1928), Maritain began to develop the principles of a liberal Christian humanism and defense of human rights.

Maritain's philosophical work during this time was eclectic, with the publication of books on Thomas Aquinas (1930), on religion and culture (1930), on Christian philosophy (1933), on Descartes (1932), on the philosophy of science and epistemology (*Distinguer pour unir ou les degrés du savoir*, 1932; 8th ed., 1963) and, perhaps most importantly, on political philosophy. Beginning in 1936, he produced a number of texts, including *Humanisme intégral* (1936), *De la justice politique* (1940), *Les droits de l'homme et la loi naturelle* (1942), *Christianisme et démocratie* (1943), *Principes d'une politique humaniste* (1944), *La personne et le bien commun* (1947), *Man and the State* (written in 1949, but published in 1951), and the posthumously published *La loi naturelle ou loi non-écrite* (lectures delivered in August 1950).

Maritain's ideas were especially influential in Latin America and, largely as a result of the 'liberal' character of his political philosophy, he increasingly came under attack from both the left and the right, in France and abroad. Lectures in Latin America in 1936 led to him being named as a corresponding member of the Brazilian Academy of Letters, but also to being the object of a campaign of vilification.

By the early 1930s Maritain was an established figure in Catholic thought. He was already a frequent visitor to North America and, since 1932, had come annually to St Michael’s College in Toronto (Canada) to give courses of lectures. With the outbreak of war at the end of 1939, Maritain decided not to return to France. Following his lectures in Toronto at the beginning of 1940, he moved to the United States, teaching at Princeton (1941-42) and Columbia (1941-44).

Maritain remained in the United States during the war, where he was active in the war effort, recording broadcasts destined for occupied France and contributing to the ‘Voice of America.’ He also continued to lecture and publish on a wide range of subjects, not only in political philosophy, but in aesthetics (e.g., *Art and Poetry*, 1943), philosophy of education, and metaphysics (*De Bergson à St Thomas d'Aquin*, 1944). Following the liberation of France in the summer of 1944, he was named French ambassador to the Vatican, serving until 1948, but was also involved in discussions leading up to the drafting the United Nations Universal Declaration of Human Rights (1948).

In the spring of 1948, Maritain returned to Princeton as Professor Emeritus, though he frequently returned to France to give short courses in philosophy, notably at ‘L'Eau vive,’ in the town of Soisy, near Paris. During

this time, in addition to his work in political philosophy (cf. above, as well as *Le philosophe dans la cité*, 1960), Maritain published on aesthetics (*Creative Intuition in Art and Poetry*, 1953), religion (*Approches de Dieu*, 1953), moral philosophy (*Neuf leçons sur les notions premières de la philosophie morale*, 1951; *La philosophie morale*, 1960), and the philosophy of history (*On the Philosophy of History*, 1957).

In 1960, Maritain and his wife returned to France. Following Raïssa's death later that year, Maritain moved to Toulouse, where he decided to live with a religious order, the Little Brothers of Jesus. During this time he wrote a number of books, the best-known of which was *Le paysan de la Garonne* (*The Peasant of the Garonne*), a work sharply critical of post-Vatican Council reforms, published in 1967. In 1970, he petitioned to join the order, and died in Toulouse on April 28, 1973. He is buried alongside Raïssa in Kolbsheim (Alsace), France.

Method

Maritain's understanding of method follows that found in Aristotle and Aquinas. His views here are somewhat unusual, primarily because he rejected the 'modern' view of the priority of epistemology over metaphysics. This epistemology has implications not only for his method, but for his approach to philosophy as a whole.

To begin with, Maritain argues that there are different 'orders' of knowledge, that each 'order' is determined by the kind of object known and, thus, that the method appropriate to each cannot be the same. Because knowledge in the natural sciences, in the pure sciences, and in (speculative) philosophy differ from one another, the method that should be used in each is different as well.

In general, strict scientific knowledge requires demonstrative proof – i.e., arguments where conclusions are true and where they can be known with certainty. Principally, there are two kinds of scientific or demonstrative proof – *demonstratio quia* and *demonstratio propter quid*. *Demonstratio quia* ['demonstration that'] is used to show *that* a thing is so. In such demonstrations, the premises are known to be true through sense perception or induction, and thus one can come to know something about the 'effect' without knowing much about the cause. It is, roughly, an *a posteriori* argument but, although it has a deductive syllogistic form, given the criteria for scientific demonstration noted above, not strictly scientific. *Demonstratio propter quid*, on the other hand, is used to show *why* a thing is so. In a *propter quid* demonstration, the premises must be true, immediate, and better known than, and prior to, the conclusion. Since such demonstration tells us the 'intrinsic reason' or the cause of a thing, one is said to know it 'through' the cause. Because it starts from premises that are certain and, again, has a deductive form, such arguments are 'most scientific', though they are also very unlike the arguments of the empirical sciences.

Most sciences employ, at best, *demonstratio quia*. It should be noted, however, that, given this account of proof, philosophy (especially metaphysics) can plausibly have *propter quid* arguments. Maritain holds that, since that which is higher in intelligibility, immateriality and potential is most real, the study of these things – namely, metaphysics – is higher and even more certain than the empirical sciences and mathematics. In other words, metaphysics can have demonstrative, 'scientific' knowledge, in the sense described above.

On Maritain's view, knowledge of sensible nature (e.g., involving experimental science) is largely inductive; physico-mathematical objects, which stand at a higher level of abstraction than the preceding (and which are the objects of the deductive sciences), involve a 'synthetic' deductive method, whereby one goes from the more general to the less general. Philosophy, however, uses both inductive and deductive methods, but because its object – trying to discover the essences of things and their causes – is of a different 'order,' these methods are inductive and deductive in an analogical sense. This is particularly true for metaphysics, although its object is different from that of other areas of philosophical study – it is concerned with purely intelligible being.

This position on method has clear implications both for Maritain's political thought and for the analysis of human nature that is implied in it. On his view, much of philosophy and political thought is rooted in and concerned with human experience and the analysis of phenomena. In order to understand human nature and, thereby, to know the natural moral law that governs human beings, one must know things about nature as a whole and, specifically, what human inclinations are; this information is something that is in principle public and accessible to all rational beings. Maritain holds that there are essences and causes relevant to an understanding of human nature which the empirical sciences – so far as they are restricted to the observable and measurable – cannot reach.

Human Nature

Maritain follows the Thomistic view of the human person as a substantial unity of a rational soul and a body, but he places an important emphasis on the social dimension of human personality. The relevance of this is clear when one examines Maritain's discussion of the human being as an individual and as a person.

Maritain, following Aquinas, associates the human individual with the material; it is 'matter' which individuates beings who are members of the same species. As *individuals*, human beings are related to one another through a common, social order of which they are parts. Human beings, however, are also *persons* – that is, beings who subsist spiritually, and who constitute a relatively independent 'whole.' Specifically, on Maritain's view, the person is a 'whole', is an object of dignity, "must be treated as an end," is capable of intellectual activity and freedom, and has a transcendent destiny.

Still, while distinct, one's character as an individual and one's character as a person are both ways of looking at the same being, albeit from different perspectives. It is in virtue of their individuality that human beings have obligations to the social order, but it is in virtue of their personality that they cannot be subordinated to that order. In both the material and the spiritual orders, human beings participate in a 'common good,' but the 'end' of the person – and the human being as a whole – is not a material one (e.g., life in society). It is, rather, the beatific vision, "achieved in the union of grace and charity with God."[2]

Political Philosophy

Maritain's moral and political philosophy lies within the Aristotelian-Thomistic natural law tradition. Maritain held, however, that Aristotelian ethics, by itself, was inadequate because it lacked an account of humanity's ultimate end. The Thomistic view – that there is a law in human nature that is derivative of (though knowable separately from) a divine or eternal law and that humanity's 'end' goes beyond anything attainable in this life – was, Maritain thought, a significant advance on what Aristotle had provided.

Following Aquinas, Maritain maintained that there is a natural law that is 'unwritten' but immanent in nature. Specifically, given that nature has a teleological character, one can know what a thing 'should' do by examining its 'end' and the 'normality of its functioning.' Maritain therefore defines 'natural law' as "an order or a disposition that the human reason may discover and according to which the human will must act to accord itself with the necessary ends of the human being."[3] This law "prescribes our most fundamental duties"[4] and is "coextensive" with morality.

There is a single natural law governing all beings possessing a human nature. The first principles of this law are known connaturally – not rationally or through concepts – by an activity that Maritain, following Aquinas, called *synderesis*. Thus, natural law is 'natural' because it not only reflects human nature, but is known naturally. Maritain acknowledges, however, that knowledge of the natural law varies throughout humanity and according to individuals' capacities and abilities, and he notes the phenomenon of growth in an individual's or a collectivity's moral awareness. This allows him to reply to the challenge that there cannot be any universal, natural law because no such law is known or respected universally. This recognition of the historical element in human consciousness of the natural law did not, however, prevent Maritain from holding that this law is objective, universal, and binding.

A key notion in Maritain's moral philosophy is that of human freedom. He says that the 'end' of humanity is to be free. By 'freedom,' however, he does not mean license or pure rational autonomy, but the realisation of the human person in accord with his or her nature – specifically, the achievement of moral and spiritual perfection. Maritain's moral philosophy, then, cannot be considered independently of his analysis

of human nature. His emphasis on the value of the human person has been described as a form of personalism, which he saw as a *via media* between individualism and socialism.

Maritain's political philosophy and his philosophy of law are clearly based on his moral philosophy. The position that he defended was described by him in one of his earliest political works as 'integral Christian Humanism' – 'integral,' because it considers the human being (i.e., an entity that has both material and spiritual dimensions) as a unified whole and because it sees human beings in society as participants in a shared, common good. The object of Maritain's political philosophy was to outline the conditions necessary to making the individual more fully human in all respects. His integral humanism, then, seeks to bring the different dimensions of the human person together, without ignoring or diminishing their value. While one's private good as an individual is subordinate to the (temporal) common good of the community, as a person with a supernatural end, one's 'spiritual good' is superior to society – and all political communities should recognize this. The state, then, should take account of each person's spiritual worth and provide the means to foster one's growth as a person. (Because the state must therefore recognise differences of religious conscience, Maritain sees it as fundamentally pluralistic.)

Maritain rejects, therefore, not only fascism and communism, but all secular humanisms. For Maritain, the best political order is one which recognizes the sovereignty of God. He objects that ideologies, such as fascism and communism, are not only dehumanizing but secular religions. A theocentric humanism, Maritain would argue, has its philosophical foundation in the recognition of the nature of the human person as a spiritual and material being – a being that has a relation to God – and morality and social and political institutions must therefore reflect this.

Maritain envisages a political society under the rule of law, and he distinguishes four types of law: the eternal, the natural, the "common law of civilisation" (*droit des gens* or *jus gentium*), and the positive (*droit positif*).

The natural law is "universal and invariable" and deals with "the rights and duties which follow [necessarily] from the first principle"[5] of law – that good is to be done and evil avoided. Nevertheless, while the natural law is "self-evident" and consistent with and confirmed by experience – something which many critics have challenged – Maritain holds that it is not founded on human nature. It is 'written into' human nature by God, and is rooted in divine reason and in a transcendent order (i.e., in the eternal law). At times, Maritain appears to hold that natural law acquires its obligatory character only because of its relation to the eternal law; he writes that "natural law is law only because it is participation in Eternal Law."[6] (Some have concluded, then, that such a theory must be ultimately theological.)

The "common law of civilization" (*droit des gens* or *ius gentium*) is an extension of the natural law to the circumstances of life in society, and thus it is concerned with human beings as social beings (e.g., as members of families or as citizens). The "positive law" is the system of rules and

regulations involved in assuring general order within a particular society. It varies according to the stage of social or economic development present within that community and according to the specific interests of individuals within it. Neither the positive law nor the *ius gentium* is, however, deducible from the natural law alone; neither is known connaturally and, therefore, is not part of the natural law. Nevertheless, it is in virtue of their relation to natural law that they "have the force of law and impose themselves on conscience."[7] When a positive law conflicts with the natural law, it is, strictly speaking, not a law. Thus, Maritain clearly rejects legal positivism.

The term 'natural law' and its relations both to 'eternal law' and to 'positive law' have been the focus of much controversy. Maritain's account of natural law both presupposes a metaphysical view of the nature of human beings and a realistic epistemology, and this has led to claims that it has a number of tensions or inconsistencies internal to it. Some of the principal criticisms of this account are i) that it is inconsistent because it sets forth a naturalistic theory of what is good and bad and yet claims that only a supernatural sanction will serve to explain moral obligation, ii) that connatural knowledge not only is inadequate for what we normally count as knowledge, but is also incapable of establishing that something is a natural moral law, iii) that the first principle of moral law – 'do good and avoid evil' – is vacuous, and iv) that Maritain glosses over the fact/value distinction.

For Maritain, natural law and natural rights theory favour a democratic and liberal view of the state, and he argued for a political society that is personalist, pluralist, and Christian-inspired. He held that the authority to rule derives from the people, for people have a natural right to govern themselves. This nevertheless is consistent with a commitment to Christianity because, Maritain thought, the ideals of democracy are themselves inspired by a belief in God's rule, and that the authority of individuals over themselves is ultimately rooted in their relation is God.[8] While Maritain was a defender of American democracy, he was, however, not interested in combining his attachment to Christianity with capitalism.

The ideal of freedom or liberty to be found in the state is close to that which is now generally called 'positive freedom.' As a polity that attempts to provide the conditions for the realisation of the human person as an individual who is, as well, a member of atemporal community, the state recognises that the use of goods by individuals must serve the good of all[9], and that individuals can be required to serve the community. Moreover, in such a polity, political leaders would be more than just spokespersons for the people[10], and Maritain recognises that they can represent the 'hidden will' of the people. Their aim – which is also the aim of the state as a whole – is, however, always the common good. Further, since minorities may reflect this 'hidden will' as well, Maritain recognised the important role to be played by dissenting minorities.

In an ideal polity, society as a whole would reflect Christian values – not because these values are part of a privileged religion or faith, but simply because these are necessary to the well-being of the temporal

community. It is, perhaps, evident that there can be a plurality of states with different values, and so Maritain supported the ideal of a world federation of political communities. While the realisation of such an ideal was something that lay in a distant future, Maritain nevertheless thought that such a federation was possible, providing that individual states retained a fair degree of autonomy and that persons could be found from each state who would voluntarily distance themselves from the particular interests of their home country.

The Rights of Man and the Natural Law, Lectures on Natural Law, and *Man and the State*

While Maritain's political philosophy is presented in a number of texts, three books in particular are particularly useful for understanding his account of natural law and human rights.

Published in 1942, in the midst of a war that Maritain recognised was one in which the very nature of civilisation was at stake, *Les droits de l'homme et la loi naturelle* [*The Rights of Man and the Natural Law*] addresses the relation of the person to society and the rights of the human person. Maritain saw that winning the war was only half a victory; it would also be necessary to 'win' the peace that would follow – to deal with the material, economic, technological and political changes that had taken place because of the war. In the first part of this volume, Maritain outlines his views on the nature of the human person, the importance of human freedom, as well as some aspects of his personalist philosophy. The second part is largely devoted to an analysis of the basis of human rights and to an enumeration and justification of a wide range of such rights. The list of rights that he provides extends significantly beyond that found in many liberal theories, and includes the rights of workers as well as those of the human and the civic person.

Based a course given at Princeton University in the academic year 1949-1950, the *Loi naturelle ou loi non-écrite* [*Lectures on Natural Law*] contains the ten lectures presented in the summer of 1950 at l'Eau Vive, at Soisy, near Paris. Drawing on a transcription of the lectures, taken by professional stenographers under the direction of Charles Journet, it was never completely reviewed or revised by Maritain, and it was not published – and then, initially in an Italian translation – until more than ten years after his death. (The first two of these lectures were used by Maritain, however, as the basis for later articles on natural law.) This volume contains the most extensive account that Maritain gave of his natural law theory, a theory that, as noted above, forms the basis for his account of natural rights. These lectures, together with his *Neuf leçons sur les notions premières de la philosophie morale* (1950), complements his historical study of the field, *La philosophie morale* (1960), and constitutes Maritain's most complete statement of the central problems of moral philosophy.

Man and the State (1951) is based on a series of lectures given, first, in English in December 1949, though in some cases these lectures draw on earlier work.[11] The volume covers a wide range of questions in politics. Beginning with an analysis of the relation between 'the people' and the state, Maritain discusses the nature of sovereignty, the means of control of the state, human rights, democracy, the relations between church and state, and the necessity of world government. In Chapter IV, Maritain argues that natural law theory entails an account of human rights. Since the natural end of each person is to achieve moral and spiritual perfection, it is necessary to have the means to do so, i.e., to have rights that, since they serve to realise his or her nature, are called 'natural.' This respects the Aristotelian-Thomistic principle of justice, that we should distribute to each 'what is truly one's own.' Maritain replies to the criticism that, since they are not universally recognised, there are no such rights, by reminding his readers that, just as the natural law comes to be recognised gradually and over time, so also there is a gradual recognition of rights. Indeed, Maritain held that certain basic natural rights can be recognised by all, without there having to be agreement on their foundation. As an illustration of this, he pointed to the general agreement on those rights found in the 1948 United Nations Declaration of Human Rights.

Maritain held that natural rights are "fundamental and inalienable, [and] antecedent in nature and superior to society."[12] Still, they should not be understood as 'antecedent' in a temporal sense and do not form the basis of the state or of the civil law. Rights are grounded in the natural law, and specifically in relation to the common good. It is this good, and not individual rights, that is the basis of the state, and it is because of this that Maritain held that there can be a hierarchical ordering of these rights.[13]

Problems and Questions to be Addressed

Maritain is strongly critical of 'modern' (i.e., post-Cartesian) philosophy – in particular, the rationalist, empiricist, and idealist movements – and its analysis of knowledge and of the human subject. Yet it is in just this era that liberalism and human rights arose and flourished.

One might ask, then, whether Maritain is correct in holding that liberalism and human rights can be based on the 'pre-modern' or 'anti-modern' analysis of the person and of natural law that he suggests. Is a genuine liberalism and a discourse of human rights possible without the 'modern' foundation? Is a political theory that is based on, or reflects, a religious view of the person and society compatible with a genuinely liberal view?

To help reflect on these matters, it may be useful to keep the following questions in mind:

1. How is the natural law 'natural'? What does Maritain say is the basis of the obligatory force of natural law? Does this help to explain why he

holds that natural rights are 'prior to' society?
2. Why is it important to have a philosophical justification of human rights? What are (or could be) Maritain's objections to modern natural rights theories?
3. How does Maritain see the relation of natural right to natural law?
4. Maritain speaks of different types of law and of different human rights. What is the connection, if any, between the two?
5. Maritain suggests that individuals can (and did) agree on a list of human rights, even though they may come from "violently opposed ideologies." Is it possible to have agreement on a solution to a practical problem without having agreement on the principles one uses to arrive at that solution?
6. How different is Maritain's understanding of the person and society (and, by extension, his 'liberalism') from that found in his predecessors?
7. What does it mean to describe a right as 'inalienable'? Can some inalienable rights be restricted? If so, are they really rights and are they really inalienable?
8. What does it mean to have a 'virtual juridical order'? Explain why such an order is relevant to the issue of self-defence.
9. How does Maritain explain and defend the right to (private) property?
10. Maritain enumerates a lengthy list of rights – rights of the human person, rights of the civic person, rights of the social person, and rights of the working person. Are these all equally *natural* rights? Are these rights equally binding? What, if anything, do these rights depend upon for their recognition and enforcement?

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NOTES

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[2] *The Person and the Common Good* (*La personne et le bien commun*), trans. John J. Fitzgerald (New York: Charles Scribner's Sons, 1947), p. 85.

[3] *La loi naturelle ou loi non écrite: texte inédit*, établi par Georges Brazzola. (Fribourg, Suisse: Éditions universitaires, 1986), p. 21; see *Man and the State* (Chicago: University of Chicago Press, 1951), p. 86.

[4] *Man and the State*, p. 95.

[5] *Man and the State*, pp. 97-98.

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[7] *Les droits de l'homme et la loi naturelle* (New York: Éditions de la Maison française, 1942), pp. 90-1

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[9] *Integral Humanism* (*Humanisme intégral*), trans. Joseph W. Evans (New York: Charles Scribner's Sons, 1968), p. 184.

[10] *Man and the State*, p. 140.

[11] The dependence on earlier work is particularly obvious in his discussion of human rights. Pages 79 to 90 of *Les droits de l'homme et la loi naturelle* is clearly the basis for – and is frequently almost identical to – pages 81-100 of Chapter IV of *Man and the State*.

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Lectures on Natural Law (1950)[1]

LECTURE 1: THE NATURAL LAW

NATURAL LAW

I would like, from a purely philosophical point of view, to suggest a general idea of what the natural law is.

Reason is not a ruler, an iron or wooden yardstick that you use to measure cloth or canvas. It is also not a kind of divinity, submitted to no ruler or measure outside itself, a self-sufficient absolute, a goddess – [for example,] the goddess Reason of the French Revolution – who would know only herself, and be filled up with perfection and bliss by that self-knowledge (this is the idealist conception of reason taken to its extreme). Reason is a cognitive power open to the infinity of being, measured and regulated by the objects of knowledge which are but the intelligible aspects of things independent of our minds. Thus, the very measure which measures our acts, the very pattern to which they are to be conformable, is itself measured, must itself conform to something. In order to be in a position to exercise this task [of measuring], reason must turn itself towards reality, towards that which things are, especially what man is, since we are morally good to the extent that we act *as we are*. Before it can measure my free act, reason must first look at something *other* than myself and my own singular subjectivity, and even towards something *above* my own singular subjectivity – first, since the thing in question has to measure my reason which has itself to measure my action, and second, since this thing must not be a simple *fact* telling my reason *what exists*, but must conform to a requirement of nature or of the human species, telling my reason what *ought to be*. This supra-factual order, grounded on extramental being, which [in turn] measures human reason, which measures human acts – this order is the Natural Law.

This notion is not only a philosophical notion. It has received the approval of Saint Paul in the famous text of the Epistle to the Romans (Rom II. 14): "For when the Gentiles, which have not the law of Moses, *do by nature* the things contained in the law, these, having not the law, are a law unto themselves." And the Glossa as cited by Saint Thomas reads: "Though they have not the written law, they have nevertheless the *natural law*, by reason of which everybody understands and is aware of what is good and what is evil."[2]

It is regrettable that we cannot find another word [for this notion]. During the rationalist era, jurists and philosophers misused the notion of natural law to quite a degree, either for conservative or for revolutionary purposes; they put it forward in so oversimplified and so arbitrary a manner, that it is difficult to use it now without arousing distrust and suspicion in

many of our contemporaries. And yet, as the American, Max Laserson has written,

> The doctrines of natural law must not be confused with natural law itself. The doctrines of natural law, like any other political and legal theories, may propound various arguments or theories in order to substantiate or justify natural law, but the overthrow of these theories cannot signify the overthrow of natural law itself, just as the overthrow of some theory or philosophy of law does not lead to the overthrow of law itself.
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> The victory of judicial positivism in the nineteenth century over the doctrine of natural law did not signify the death of natural law itself, but only the victory of the conservative historical school over the revolutionary rationalistic school, a victory called for by the general historical conditions in the first half of the nineteenth century. The best proof of this is the fact that at the end of that century the so-called 'renaissance of natural law' was proclaimed.[3]

What we might note is that, from the seventeenth century on, people had begun to think of Nature with a capital N and Reason with a capital R, as [if they were] abstract divinities sitting in a Platonic heaven. As a result, the conformity of a [human] act to reason meant that that act was copied from a ready-made, pre-existing pattern which infallible Reason had been instructed to lay down by infallible Nature, and which, consequently, should be immutably and universally recognized in all parts of the earth and at all moments in time. Thus Pascal himself believed that justice among men should of itself have the same universal application as Euclid's propositions (it is what one may call the 'geometrisation' of intelligence). If the human race knew justice, "the brilliance of true equity," he says, "would have subdued all nations."[4] There we have a wholly abstract and unreal conception of justice.

A little more than a century later, Condorcet will write something that seems to be true, but is sophistical – that a good law should be good for everyone, for every man in every circumstance, and in every place; he is speaking here of the positive law, not the natural law. On this understanding, every human act becomes a reproduction of the natural law – "a good law should be good for everyone, just as a true proposition is true for everyone." Thus, the natural law underwent an artificial systematization and rationalist recasting from the time of Grotius and from the advent of a geometrising reason which appeared in so striking a manner in the seventeenth century. And so, through a fatal mistake, natural law – which is above things~~,~~ and which precedes all formulation, and is even known to human reason *not* in terms of conceptual and rational knowledge – natural law was thus conceived after the pattern of a *written* code, allegedly wrapped up in the heart, but written, composed by nature and applicable to all – , of which any just law, whatever it be, should be a transcription, and

which would fix *a priori* the norms of human behaviour through ordinances supposedly prescribed by Nature and Reason, but in reality formulated entirely arbitrarily and artificially. And so, by the end of this evolutionary process, in Germany, it was said that, at every [booksellers'] fair from 1780, eight or more new systems of natural law made their appearance at the Leipzig bookshops every year, and Jean-Paul Richter could write: "Every fair and every war brings forth a new natural law."[5] Such a law was formulated, analysed in a different way by each philosopher according to his tastes and his interests.

In reality, the authentic idea of natural law is an inheritance of Greek and Christian thought. This idea has its origin, not in Grotius – who, although he is considered to be the father of 'natural law theory,' in truth began by deforming it – but, long before him, in Francisco de Vitoria and Suarez; and further back still, in Saint Thomas Aquinas, who is the only one among these great authors to have understood the issue of the natural law and made it into a wholly consistent doctrine. Following him, we see a process of degeneration caused by the misunderstanding of certain elements of the concept of natural law, which led, through rationalism, to an artificial rationalisation of which I spoke of above.

I think that Saint Thomas understood these things in an insightful way, but used a vocabulary that had much to be desired (scholasticism being more interested in thought than in language). It is necessary to make an effort to uncover his thought, [residing] under the imperfection of language, because his terminology in the *Commentary on the Sentences* is not the same as in the *Summa theologiae*. Moreover, he had a profound respect for tradition – as much for the juridical tradition as for the tradition of philosophers and theologians – and he felt himself obliged to apply or to justify the formulations hallowed by the jurists. But if, by scrutinizing with care a vocabulary and formulations that are sometimes terribly mixed up, we can arrive at bringing out its true meaning, and we will see that he has grasped the essence of the natural law in a way that is incomparably superior to all the other scholastic philosophers.

In order to discover the true origin of the idea of natural law, we have to go back to Saint Augustine, to the Church Fathers, to Saint Paul, and even further back to Cicero, to the Stoics, to the great moralists of antiquity and its great poets, particularly to Sophocles. Antigone may be considered the heroine of natural law; she was aware of the fact that, in transgressing the human law and being crushed by it, she was obeying a higher commandment – that she was obeying laws (as she puts it) that were unwritten, and that had their origin neither today nor yesterday, but which live always and forever, and no one knows from where they have come.[6]

If we want to go deeper into the analysis of natural law, we must distinguish two elements in it: an ontological element and a gnoseological element.

THE FIRST ELEMENT IN NATURAL LAW: THE ONTOLOGICAL ELEMENT

We will take for granted that there is a human nature, and that this human nature is the same in all men. We will also take it for granted that man is a being endowed with intelligence, and who, as such, acts with an understanding of what he is doing, and therefore with the power to determine for himself the ends which he pursues. On the other hand, possessed of a nature or an ontological structure which is a locus of intelligible necessities, man possesses ends which necessarily correspond to his essential constitution and which are the same for all. All pianos [whatever their particular type and in whatever spot they may be] have as their end the production of musical sounds. If they do not produce these sounds, they must be tuned or discarded as worthless. But since man is endowed with intelligence and determines his ends for himself, it is up to him to put himself in tune with the ends necessarily demanded by his nature. This means that there is, in virtue of human nature, an order or a disposition which human reason can discover and according to which the human will must act in order to put itself in tune with the essential and necessary ends of the human being. The unwritten law, or natural law, considered in its ontological aspect, is nothing more than that – that order or disposition that human reason has to discover.

The example that I just used – taken from the world of human workmanship – was purposely crude and provocative to modern thought: yet did not Plato himself have recourse to the idea of any work of human art whatever – the idea of Bed, the idea of Table – in order to make clear his theory of eternal Ideas? What I mean is that every being has its own natural law, just as it has its own essence. I have used the example of something produced by human industry because this kind of example is easier to grasp (though at the same time it is more vexing); everything produced by human industry has its own natural law, that is, has a *normal* way of *functioning* – the proper way in which, by reason of its specific construction, it demands to be put into action [and that says how it *"should"* be used]. Confronted with any supposedly unknown *gadget*, be it a corkscrew or a top or an atomic bomb, children as much as scientists, in their eagerness to discover how to use it, look for the law specific to that object, without ever questioning the existence of that inner law.

The same applies to natural objects. Any kind of thing existing in nature – a plant, a dog, a horse – has its own natural law, that is, the normality of its functioning, the proper way in which, by reason of its specific structure and specific ends, it should achieve fulness of being either in its growth or in its behaviour. [Washington Carver, when he was a child and nursed sick flowers in his garden back to health, had an obscure knowledge, both by intelligence and congeniality, of that vegetative law of flowers.] Horse-breeders have an experiential knowledge, both through the intellect and through connaturality, of the natural law of horses, a natural

law with respect to which a horse's behaviour makes of it a *good horse* or a *vicious horse* in the herd. But horses do not possess free will; their natural law is but a part of the immense network of essential tendencies and regulations involved in the movement of the cosmos. Whatever horse flouts that equine law has only to obey the universal order of nature on which the deficiencies of its individual nature depend. If horses were free, there would be an ethical or moral way of conforming to the specific natural law of horses. But a horsy morality is a dream, because horses are not free.

The natural law of all beings existing in nature is the proper way in which, by reason of their specific nature and specific ends, they *should* achieve the fulness of their specific being in their behaviour. These words themselves – they should or they ought – have only a metaphysical meaning (as when we say that a good or a normal eye "should" or "ought" to be able to read letters on a blackboard from a given distance). The same words, "should" or "ought," start to have a moral meaning, that is, to imply moral obligation, when we pass the threshold into the world of free agents. In a sense, the natural law may be found in all beings. For man, the natural law is a moral law because man obeys or disobeys it freely, not through necessity, and because human behaviour pertains to a particular, privileged order which is irreducible to the general order of the cosmos and tends to a final end superior to the immanent common good of the universe.

The first basic element to be recognized in natural law is, then, the *ontological* element; I mean the *normality of functioning* which is grounded in the essence of that being: man. Natural law in general [as we have just seen] is the ideal formula of development of a given being. It might be compared to an algebraical equation according to which a curve extends itself in space [, yet, with man, the curve has to conform freely to the equation]. Let us say, then, that in its ontological aspect, natural law is an *ideal order* relating to human actions, a divide between the suitable and the unsuitable, between what is appropriate and what is inappropriate to the ends of human nature or essence. This is an ideal order or divide which rests on human nature or essence and the unchangeable necessities rooted in it.

Let me make a short parenthetical remark. I do not mean that the proper regulation for each possible human situation is contained in the human essence, as Leibniz believed that every event in the life of Caesar was contained beforehand in the idea of Caesar. Human situations are something existential. Neither they nor their appropriate regulations are contained in the essence of man. But I would say that they raise questions about that essence. Any given situation – for instance, the situation of Cain with regard to Abel – implies a relation to the essence of man, and the possible murder of the one by the other is incompatible with the general ends and innermost dynamic structure of that rational essence. [It is rejected by it.] Hence the prohibition of murder is grounded on the essence of man and required by it, and the precept "thou shalt not kill" is a precept of natural law, because it is a primordial end of human nature that the respect

or the preservation of being, in that existent who is a person, and a universe unto himself [; and because man insofar as he is man has a right to live[7]].

Suppose a completely new case or situation, for instance, what we now call *genocide* (which is not as new as the word). In line with what I have just said, the behaviour of "putting to death a race or a human community as such" is something that will strike the human essence as incompatible with its general ends and its inner dynamic structure: one will just see that genocide is prohibited. [The condemnation of genocide by the General Assembly of United Nations[8] has sanctioned the prohibition of the crime in question by natural law—] This does not mean that that prohibition was part of the essence of man, as a metaphysical feature eternally inscribed in it, nor that it was a notion recognized from the beginning by the conscience of humanity.

Another example is that of the participation of workers in the management of an enterprise, co-management. The Holy Father[9] said that this co-management was not an absolute natural right. Cardinal Frings defended it as a natural right which arose in certain given circumstances in the historical development of human societies. In any case, it was not a matter inscribed from the beginning in the human essence; it would have had no meaning for cave men. But a new situation has occurred as a result of the historical and cultural evolution of humanity, at a particular moment in the development of industrial civilization, [that this aspiration in the sharing of the responsibilities in the working world took form], as having a certain relation to human essence and its ends and, in this situation, it became possible to see if its realization were conformable (or not) to these ends and [up to what point] it is or is not authorized by the natural law. The Holy Father stated that it was not an absolute right of the worker, without, for all that, having wished to condemn co-management as such. In any case, it is an example of those new situations resulting from historical development, situations in which a certain type of behaviour is revealed in relation to its propriety or its unsuitability to human essence and, consequently, [to] a new prescription of the natural law.

To sum up, let us say that natural law is something both *ontological* and *ideal.* It is something *ideal*, because it is grounded in the human essence, in its unchangeable structure and the intelligible necessities it involves. On the other hand, natural law is something *ontological*, because the human essence is an ontological reality, which moreover does not exist separately, but in every human being, so that by the same token natural law dwells as an ideal order in the very being of every existing man.

In that first consideration, or with regard to the basic *ontological* element it implies, natural law is coextensive with the whole field of natural moral regulations, the whole field of natural morality. Whatever we can or might say about rights and duties, about virtues, or about the moral obligations of human beings, only expresses the 'normality of functioning' of which we have spoken. And so, not only the primary and fundamental regulations, but the slightest, the subtlest regulations of natural ethics – even

the natural obligations or rights of which we perhaps have now no idea, and of which men will become aware in a distant future – are in keeping with natural law, ontologically considered.

An angel who knew the human essence in his angelic manner and in all the possible existential situations of man, would know natural law in the infinity of its extension. But we do not know it in this way, though the Eighteenth Century theoreticians believed they did. […]

THE SECOND ELEMENT IN NATURAL LAW: THE GNOSEOLOGICAL ELEMENT

The second basic element contained in the natural law – I mean, the natural law *as known*, and thus as measuring in actual fact human practical reason, which is itself the measure of human acts – is not the ontological element (i.e., the normality of its functionning), but the gnoseological element.

The natural law is not a law written by men. Men know it with greater or less difficulty, and in different degrees, running the risk of error here as elsewhere. The only practical knowledge all men have naturally and infallibly in common, as a self-evident principle, intellectually perceived in virtue of the concepts involved, is that we must do good and avoid evil. This is rather the preamble and the principle of natural law; it is not the law itself. Natural law is the collection of things to do and not to do which follow from therein a *necessary* fashion. That every sort of error and deviation is possible in the determination of these things merely proves that our sight is weak, our nature unrefined, and that innumerable accidents can corrupt our judgment. Montaigne remarked that, among certain peoples, incest and thievery were considered virtuous acts. Pascal was scandalized by this. All this proves nothing against natural law, any more than a mistake in addition proves anything against arithmetic.

By the very fact that the natural law is an unwritten law, man's knowledge of it has increased gradually as man's moral conscience has developed. The latter was at first in a twilight state.[10] Ethnology has taught us within what structures of tribal life and in the midst of what magic this knowledge of the natural law was awakened, how it was primitively formed. This shows simply that the knowledge men have had of the unwritten law has passed through more diverse forms and stages than some philosophers or theologians have believed. At the same time, we become aware of the fact that the knowledge which our own moral conscience has of this law is doubtless still imperfect, and very likely it will continue to expand and to become more refined as long as humanity exists. Only when the Gospel has penetrated to the very depth of human substance will natural law appear in its full bloom and perfection.

[So the law and the knowledge of the law are two different things.] Yet, on the other hand, the law has force of law only when it is promulgated. It is only insofar as it is known and expressed in assertions of

practical reason that natural law has force of law. The gnoseological element is therefore fundamental in natural law.

It is important to recognize that human reason does not discover the regulations of natural law in an abstract and theoretical manner, as a series of geometrical theorems. Moreover, it does not discover them through the conceptual exercise of the intellect, or by way of rational knowledge. I think that the teaching of Saint Thomas here should be understood in a much deeper and more precise way than it usually is. When he says that human reason discovers the regulations of natural law through the guidance of the *inclinations* of human nature, he means that the very mode or manner in which human reason knows natural law is not rational knowledge, but that which we call *knowledge through inclination.*

Saint Thomas largely developed this notion of knowledge by inclination, but elsewhere — in the *Summa theologiae* (II-II, 45, 2). Knowledge by inclination or by connaturality is a kind of knowledge that is not a clear knowledge, like that obtained through concepts and conceptual judgments. It is an obscure, unsystematic, vital knowledge, by an instinctive mode or sympathy, and in which the intellect, in order to make its judgments, consults the inner leanings of the subject — the experience that he has of himself – and listens to the melody produced by the vibration of deep-rooted tendencies made present in one's subjectivity. All this leads to a judgment – not to a judgment based on concepts, but to a judgement which expresses simply the conformity of reason to tendencies to which it is inclined. […]

This matter is […] complicated because, when it is brought to the attention of the philosopher (which is a second-hand knowledge, a reflective knowledge of the natural law), he is in a position to justify these proper principles in a rational and logical way as conclusions of first principles; from this comes the temptation for those somewhat superficial commentators on these texts of St Thomas to forget that it is a matter of a comparison, and to think that the proper precepts of the natural law are really deduced logically or rationally from common principles, just in the way that this happens in speculative knowledge. Thus the notion of knowledge by inclination is entirely lost; there is nothing more than a rational process imitating – we know not how – the inclinations of nature. It remains only for the philosopher to know *a priori* what are the fundamental inclinations of human nature in order to be able to deduce the precepts of the natural law – but nothing is more difficult to know.

The knowledge of the natural law is a knowledge, not through concepts, but by inclination, by connaturality, by sympathy. When one has understood this fact, and when, moreover, one has understood that Saint Thomas' views on the matter indeed call for an historical approach and a philosophical development of the ethics that the Middle Ages were not equipped to carry into effect, then one is able to have a completely comprehensive concept of natural law. And one understands that the human knowledge of natural law has been progressively shaped and moulded by

the inclinations of human nature, starting from the most basic ones. We should not expect philosophy to offer us an *a priori* picture of those genuine inclinations [which are rooted in man's being as vitally permeated with the preconscious life of the mind, and] which either developed or were released gradually as humanity advanced. What makes them known is the very history of human consciousness. Those inclinations were really genuine which, throughout the immensity of the human past, have led reason in becoming aware, little by little, of the regulations that have been most definitely and most generally recognized by the human race, starting with the most ancient social communities. For the knowledge of the primordial aspects of natural law first expressed itself in the types of social precepts rather than in personal judgments. This knowledge has developed from inside, within the double protecting tissue of human inclinations, on the one hand, and within human society, on the other.

With regard to the second aspect, the gnoseological element which natural law implies in order to have force of law, we can say that the natural law – that is, the natural law *naturally known,* or, more exactly, the natural law *the knowledge of which is embodied in the most general and most ancient heritage of humanity* – covers only the field of ethical regulations of which men have become aware by virtue of knowledge through inclination, and which are the basic or first *principles* of moral life – progressively recognized from the most common principles to the more and more specific ones. This is to put together two perspectives which, at first glance, appear contradictory: the first perspective sees the natural law as coextensive with human nature, so that every ethical regulation whatsoever that might be discovered may be found to be in agreement with this 'normality of the functioning of human nature'; the other perspective does not deal with the entire set of moral regulations, but only with the very first principles (because it no longer focuses on the ontological element, but on the gnoseological element, and because it deals only with those regulations that are known by inclination). […]

All these remarks may help us to understand why, [on the one hand,] a careful examination of the data of ethnology would show that what we may call the fundamental *dynamic schemes* of natural law – if they are understood in their authentic primitive sense – are still undetermined. "Thou shalt not kill" is a formula already well defined, but if – on the other hand – one says "taking the life of a man is not the same as taking the life of any animal whatsoever," one employs a formulation that is much more indeterminate. If one says "the family group must be established according to a certain framework," or even "sexual relations ought to occur only [within certain limitations]," or "we are obliged to turn ourselves towards the reality of the Invisible," or even, "we are bound to live together under certain rules and prohibitions" (all these schemas are again given in too conceptual and too precise a form, which misrepresents them), one has then what I call the fundamental dynamic schemas of the natural law. These dynamic schemas in this indeterminate form – open to all sorts of

developments – are the object of a much more universal knowledge – [known] everywhere and at all times – that it would not appear to a superficial examination. And ethnology – far from disproving it – tends to confirm it.

We also see why, on the other hand, an immense amount of variability is to be found in the particular rules, customs, and living standards in which, among all peoples of the earth, human reason has expressed its knowledge even of the most fundamental, the most basic principles of natural law. That spontaneous knowledge does not bear on moral regulations conceptually discovered and rationally deduced, but on moral regulations known by inclination – and, in the very distant past, on general underlying forms or frameworks, on *dynamic schemes* of moral regulations, such as can be obtained by the first, "primitive" expressions of knowledge through inclination. And in such underlying frameworks or dynamic schemes, a wide range of more or less defective contents can occur, – not to mention, on the other hand, of the warped, deviated, or perverted inclinations which can mingle with authentic and basic ones.

We can understand at the same time why the natural law essentially involves a dynamic development, and why moral conscience (or, in other words, the knowledge of the natural law), has progressed from the age of the cave-man in a twofold manner. In the first place, as regards the way in which human reason has become aware in a less and less crepuscular, rough, and confused manner, of the primordial regulations of natural law. (It is at the same time, in becoming less and less obscure, in becoming more and more precise, to the point of reaching sufficient clarity, and taking root in in the human community where it has developed, that this awareness of the natural law has progressed. For it takes place and perfects itself by way of inclination, and its conceptual elaborations only explain it.) In the second place, there is always progress in the knowledge of the natural law with regard to the extension and the penetration of moral consciousness, bearing [as regards the way in which it has become aware], always by way of knowledge through inclination – on subsequent, higher regulations. These are no longer the only fundamental regulations but, as civilization gradually develops, the more perfect and more refined subsequent regulations of this same natural law (such as that of the joint management by workers of industries) are thus known. [And such knowledge is still progressing, it will progress as long as human history endures. That progress of moral conscience is indeed the most unquestionable instance of progress in humanity.]

I have said that the natural law is an unwritten law: it is an unwritten law in the deepest sense of that word, because our knowledge of it is not the work of a free conceptualization, but results from judgements *related* to the essential inclinations of being, or of living nature, or of reason, which are at work in us, and because it develops in proportion to the degree of moral experience or self-reflection or social experience, of which man is capable in various epochs. Thus it is that, in ancient and mediaeval

times, attention was paid, in natural law, to the *obligations* of man more than to his *rights.* It was the proper task of the eighteenth century to bring out clearly human rights as equally required by the natural law. That discovery was essentially due – if one separates it from all the errors which lived parasitically on it – to a progress in moral and social experience, through which the root inclinations of human nature, as regards the rights of the human person, found themselves free, with, as a result, an awareness, developed *through inclination*, of these same rights. But this discovery, through the liberation of inclinations, of a very valuable moral truth, did not suffice. Some philosophized about it and, in rationalizing about it, fell victim to a number of philosophical and theological errors. This great project relative to the rights of the human being was achieved at the cost of an ideological derailment in the theoretical or philosophical field of human reason. Attention even shifted from the obligations and duties of man to speak only of his rights, although a genuine and comprehensive view would pay attention *both* to the obligations and the rights involved in the requirements of natural law.

I have insisted above on the fact that the natural law is not a written law, not only because it is distinct from the written law, but [because] it calls for a written or positive law. And so, what is [now] to be considered is no longer the essence of man, but the particularities of human groups which need regulations, no longer directly subordinate to the inclinations of this essence, but to reason itself formulating the particular laws appropriate to such and such a social group in certain given circumstances. [Natural] law has to be determined, particularized through the initiative and authority of human reason. Here it is a matter of the positive law in the broadest sense, encompassing not only law in the full and strict sense of the term, but also the customary laws, the rules spontaneously put into effect by the consciousness of familial and social communities, traditions., etc. – all rules that do not yet have a strictly juridical character.

LECTURE 2: THE ETERNAL LAW AND ITS ANALOGATES

NATURAL LAW AND THE ETERNAL LAW

This concept of eternal law is not solely a theological concept. In the *Summa theologiae*, Saint Thomas insisted on the existence of the eternal law on the basis of theological arguments, but it is a philosophical truth as well, and one which the philosopher with his means alone can reach and establish. God exists. He is the first cause of being, activating all beings. It is by his intellect and will that he acts: from which we have the notion of Providence. The entire community of the universe is governed by the divine reason. Hence there is in God, as in one who governs the entirety of created beings, this very reality which is the judgment and command of the practical reason applied to the governing of a unified community: in other words, this very reality which we call *law*. The eternal law is one with the eternal

wisdom of God and the divine essence itself. This eternal law is defined by Saint Thomas: the supreme reason existing in God, the order of divine wisdom insofar as this wisdom directs all the actions and movements of things.[11]

It is evident that it is to this eternal law that we must have recourse if we are looking for the first foundation of natural law. Because every law is a work of reason, and at the source of natural law there must be reason: not human reason but subsistent Reason, the Intelligence which is one with the First Truth itself; there we have the eternal law. (We may continue in noting that the natural law of which we have spoken is a participation in the eternal law.) Saint Thomas explains in article 2 of question 91 that

> Law is a measure and a rule, and hence is found in him who rules, and also in that which is measured and ruled, for a thing is ruled and measured insofar as it participates in the measure and rule existing in the one who rules. Now, since all things are ruled and measured by the Eternal Law, we must conclude that they participate in this Law insofar as they derive from it the inclinations through which they tend naturally toward their proper operations and ends.

(This is a notion of the natural law considered both in its ontological aspect and in its entire extension [and all the things to which it applies].)

Let us turn now from this still very general notion to one that focuses on rational nature in particular. We should note that, among all creatures, the rational creature is subject to divine providence in a particular way – a "more excellent way," Saint Thomas says – inasmuch as it has a share in providential government, since it itself provides for its own good and that of other beings. "Thus the rational creature by its very rationality participates in the eternal reason, and because of this participation this creature has a natural inclination to the actions and ends proper to it"[12] – inclinations of knowledge, rational and intellectual inclinations. Here we find a number of notions confused together. We have those inclinations which proceed from human nature *qua* human, inclinations rooted in reason and according to which human reason judges what is good and what is bad. The principal feature of article 2 of question 91 is the following: in this creature, there is a participation in the eternal law according to which it possesses a natural inclination in the way of acting and towards the end which are suited to it. "It is this participation in the Eternal Law enjoyed by the rational creature [such as it exists] which is called the Natural Law." All beings participate in the eternal law: in this sense, there is a natural law for all beings. But when it concerns the rational creature, we have a [specific] concept of the natural law. [...] "Thus it is clear that the natural law is nothing other than a participation of the eternal law in the rational creature." [...]

When it is a matter of speculative reason, one may consider that its cognitive value is known to us before God is known. Otherwise it would not be necessary to prove the existence of God. However, in the ontological order, it is God who grounds the speculative value of our cognitive faculties. If we do not know about God we will end by doubting our reason. Similarly [with practical reason]: the authority of reason, as the form of morality, and the value of the regulations of natural law are known to us, or may be known to us, before God is known. But they are *ontologically* grounded on divine wisdom, on eternal reason, so that, finally, if we are unaware of God, we will end by repudiating this authority of reason [as well as of Natural Law – [i.e.,] "Why should I obey it?"].

We must go further. We must recognize that the natural law, and the authority of reason as the form and measure of human acts, are not simply rooted in God or guaranteed by God (as, in general, every active faculty or power of creatures is) but – and this seems to me to be very important – the divine reason alone is the author of natural law, and natural law emanates from it. [It alone causes that Law to exist, and it alone causes it to be known, insofar as it is the cause of human nature and of its essential inclinations.] It is not merely a matter of saying that the divine reason guarantees the value and the exercise of our own reason (which was the prevailing view after Saint Thomas [and generally held in the sixteenth and seventeenth centuries)] – that God guarantees the exercise and value of our reason as though it were our reason which instituted Natural Law, or which at least deciphered it in nature and made it known by its own effort and authority. Let us say rather that here the divine reason is *the only reason* to be considered. The law, in effect, is essentially an ordinance of reason (*ordinatio rationis*), so that without an ordering reason there is no law.[…]

The formal means by which we advance in our knowledge of the regulations of natural law is not the conceptual work of reason, but rather those inclinations to which the practical intellect conforms in judging what is good and what is bad. Through the channel of natural inclinations the divine reason imprints its light upon human reason. This is why the notion of knowledge through inclination is basic for understanding the natural law, for it puts or brushes aside any intervention of human reason as a creative factor in natural law.

THE ANALOGICITY OF THE NOTION OF LAW

The concept of law is an analogous concept. In the [*Summa theolgiae*], Saint Thomas gives a general definition of it: “A certain ordinance of reason for the common good, promulgated by him who has the care of the community,”[13] This definition of St Thomas is made only in terms of intelligence and reason, not will; will does not enter into the definition (I do not need to have the will to kill in order to kill); ‘will’ is there only in a conjoined way, because there is no *imperium* [power] without the presence of the will. What defines law is reason, intelligence, because there is an

order – the will as such does not make order – it is reason which makes order, which is itself order. It is an ordination of reason for the common good that law presupposes. The community: it is the subject of the law so long as the good of this community is the end of the law; it is promulgated by he who has care for the community because, without this, there would be no authority for making the law, it is only so far as he is vicar of the community, charged with power for the common good, that he has an authority coming from God which permits him to make a law or to establish an order that is capable of being imposed on others.

It should be noted, concerning the natural law, that the very word "law" risks being misunderstood because the most obvious and the most immediate notion that we have of law is that of written law or positive law: consequently, if we overlook the analogical character of the notion of law, we run the risk of conceiving the natural law and every species of law after the pattern of the type of law best known to us, the written law. […]

NATURAL RIGHT

... We should make some comments concerning the natural law. One finds oneself forced into inextricable difficulties because one has started talking in an equivalent way of natural right and natural law (*lex naturalis*), particularly concerning that which flows from it so directly to the point that it appears to belong to them, I mean – because fortunately there is another term – the law of nations. But let us first see what is the relation between law and right.

When it is a matter of positive law (written law), then the relation between law and right is very simple – it is a relation of identity. Positive right and positive law are the same thing; they are synonyms, because the notion of right, or of juridical order, signifies a code of laws suited to a certain type of common life which men are not only obliged to obey in conscience, but can be constrained to obey by the coercive power of society. We are confronted, therefore, with the notion of *debitum legale*, of what is legally due or legally just, the neglect of which is punishable by the external sanctions established by law. Given this meaning of the word "right," one sees that positive right and positive law are the same thing: positive right and positive law emanate from social authority and are sanctioned by the constraints of society. We have here the order of legality or the juridical order – which supposes the moral order, but which adds something to it, namely, this possibility of constraint by society.

[...] The Natural Law – which is unwritten, which concerns man as man, and a community which is neither the body politic nor the civilized community but simply the community of the human species – and which obliges us in conscience without entailing any social constraint or coercion – the Natural Law is promulgated in our reason as knowing (insofar as it knows through inclination), not as legislating; and it concerns the moral order, not the juridical order. We have here – and we have only – the notion

of *debitum morale*, of that which is morally due by virtue of right reason, or by virtue of the Natural Law, but not by virtue of a juridical constraint. How, then, under these conditions, can we speak of natural *right*? Is there not a simple contradiction in terms here, and would it not be preferable to rid oneself of such an expression? This is a temptation for the philosopher, this would be the most convenient thing to do. Nevertheless, I do not believe that we must yield to it. In considering things more closely, we see that, in spite of everything, we do have a solid basis for speaking of *natural right*, not only in the sense that this or that precept of Natural Law may become an object of a prescription of the positive law, but – in a considerably more profound and general sense – it is necessary to say that each man bears within himself the *judicial authority* of humanity. (It is not a question here of the civilized community, as in the case of the law of nations, but of the human species.) This is true in an analogical but nonetheless very real sense. Each member of the human species bears within him in a certain manner the judicial authority of humanity, and consequently, the right of imposing constraint which derives from this authority.

How can we philosophically justify the right of self defense? How can we say that a man has the right to kill another man when he is attacked by the latter, or that I have the right of putting to death a man who before my eyes throws himself upon a child in order to kill it? Is this a simple biological reflex? If so, there could be no question of a right. No, here we are faced with a properly *judicial* act. This is why this act is moral, by virtue of a judicial authority which transcends my own, and which goes back to the author of nature and of humanity. Without possessing the function of a judge in society – and outside of the order of constituted tribunals to which punishment normally belongs – but simply as a member of the human species, I exercise in such a case a judicial authority which is inherent virtually in the species and one which, in any man whatsoever, may take action under such exceptional circumstances. And this is not only the case in the examples I have just given. But each time that we give advice, that we guide another man, or try to order circumstances so as to help him avoid a misstep in his moral life, we exercise in a certain measure and to a certain degree an authority which is in us from the author of human reason. Each time that States, in the absence of an international judicial power, have recourse to sanctions such as war or just reprisals against the aggression of another State, or against the barbarous actions it employs, it is the judicial authority inherent in the human species which comes into play. These acts of political power would have neither meaning nor moral justification if it were merely a question of defensive reflexes; they have human meaning and moral value only if the States in question decide upon such acts in the name of the judiciary authority of which they are the organs so long as there does not yet still exist a supranational political society capable of putting the judgments of its tribunals into effect.

By reason of the fundamental notion which I have just expressed, we may thus say, in an analogical but real sense, that there is a natural *juridical order* contained within the natural law and within the natural order of morality, but in a simply *virtual* manner. And in this sense the expression *natural right* is valid, but, once again, in an altogether analogical sense.

We have here the notion of a *virtual juridical order* which always remains virtual, and which never presents itself as a juridical order in positive law and in the judiciary authority of human society, for we cannot conceive of the idea of a tribunal which would be charged with applying the natural law. As soon as a precept of the natural law is expressed in written law, it becomes a precept of written law and, by this token, it is part of positive right, of the positive juridical order. But the *natural right* itself, insofar as it is natural *right*, remains *virtual*, enveloped in the *natural law*, and it is actualized only in exceptional cases, for example, as we have seen, when a man or a State finds it necessary to exercise the judicial authority of which the human species as such is depositary and which is derived from its author, from the divine Reason and subsistent Justice.

Thus, natural right is not required as a completion which it should receive, to be formulated in positive law and in the juridical order in the full and formal sense of the word. It remains enveloped in the Natural Law.

We have already noted that one of the main errors of the rationalist philosophy that developed in the eighteenth century was to regard the positive law as a mere transcription, as a reproduction or copy of the natural law which is supposed to prescribe, in the name of nature, all that which the positive laws prescribe in the name of society. This was, however, to overlook an immense sphere of human realities which depended upon the variable conditions of social life and the free initiatives of human reason that the natural law leaves undetermined. We know that the natural law is concerned with the rights and the duties which depend in a necessary way upon the first principle "do good, avoid evil"

THE LAW OF NATIONS [*DROIT DES GENS*]

With the *jus gentium* (*droit des gens;* the law of nations), […] we enter a domain in which the notion of right (*jus*) takes on no longer a merely virtual but a formal and actual meaning. For the philosopher or jurist, there is no notion more fraught with difficulties than that of the law of nations. The different theories which have been advanced since the sixteenth century have succeeded in obscuring the concept rather than clarifying it. It is difficult to define the law of nations, because it is intermediary between the Natural Law and the positive law – although Saint Thomas does connect it rather with the positive law. Thought on the subject would profit greatly if, as a result of the [systematic] elucidation to which we now proceed, we were able to determine clearly and exactly in what the law of nations consists.

Let us say, then, that in its most profound sense, as far as we are able to extract it from the thought of Saint Thomas, the law of nations (I would prefer to say the common law of civilization) differs from the natural law in the manner in which it is *known*, or in relation to the second essential component, the *gnoseological* component of the natural law. It is on the preceding that it necessary to insist, on the manner in which the law in question is known. The law of nations is known, not through inclination, but through the conceptual exercise of reason. This is the specific difference distinguishing the law of nations from the natural law. The natural law is known through inclination, the law of nations is known through the conceptual exercise of the human reason (considered not in such and such an individual, but in our shared civilized humanity). In this sense, it pertains to the positive law, and for this reason Saint Thomas connects it with the positive law: since wherever human reason operates as *author*, we are in the general domain of the positive law. In this case, the human reason does not operate as the author of the *existence of the law* (which is the case with positive law in the strict sense), but it does operate as the author of the *knowledge of the law*. In consequence, with the law of nations, we already have a juridical order, no longer virtual (as in the case of natural right), but formal, although not necessarily written in a code. As to the manner in which the regulations of the law in question are known, they are known through the rational, logical, conceptual exercise of the common reason, starting from more profound and more primary principles which are the principles of the natural law.

Now it is necessary to make a distinction concerning the content of the law of nations.

In the first place, the law of nations may include regulations pertaining also to the natural law (since the principle of distinction is not the content of the law, but the manner in which the knowledge of the law takes place). Hence, certain regulations which are based upon human nature, and which are connected necessarily with the first principle, "Do good, and avoid evil," may be known on the one hand through inclination (in which sense they belong to natural law), and on the other hand through the conceptual exercise of reason (in which sense they belong to the law of nations).

(Consider this example: "We must obey the laws of the social group." This prescription may be a rational conclusion, established through the logical exercise of reason; the common sense of humanity can deduce it from a more primitive principle: "Men should live in society;": thus, we are in the presence of a precept of the law of nations. Now this same regulation, "Obey the laws of the group," is also a norm known not by way of conceptual demonstration, but through inclination, by conformity with the radical tendency which urges men to live in society: in which case it is a principle of the natural law. Hence the same thing may belong to the natural law (if it is known through inclination, and if the divine Reason is the only operative principle causing it to be known as well as to exist) and to the law

of nations (if it is known by human reason which, intervening between the divine Reason, the cause of nature, and the knowledge of the precept, acts on its own account, and introduces an element of positive law.)

In the second place – this is the most general and most interesting case – the content of the law of nations may concern things which, although universally obligatory (since they are deduced from a principle of the natural law, and although necessarily connected with the first principle: "Do good and avoid evil"), go beyond the natural law because they are not, on the other hand, known through inclination, but are known only as the result of the conceptual exercise of reason, of a deduction (made not by jurists or philosophers, but by the common reason of humanity). Here are some examples: "Do not condemn anyone without hearing him." (I do not think that this rule is [first] known through inclination; it is known only as a conclusion logically deduced from what is due in justice to an accused man. In such a case we have a precept of the law of nations which is not, on the other hand, a precept of the natural law.) Similarly, the precept, "Treat prisoners of war humanely," is known only through a logical operation made by human reason starting from a first principle of the natural law.

The law of nations or the common law of civilization has to do with duties which are necessarily bound up with the first principle: "Do good and avoid evil." But in cases like those I have just mentioned, this necessity is seen and established by human reason. And precisely because the regulations [dealing with social life] are *in themselves* the work of human reason, we have been gradually led to regard the law of nations as pertaining more to the social domain and especially to the international domain. But it is absurd to reduce the law of nations to the laws of international morality. According to what we have seen, every norm of conduct which is universally valid, but which is known to common consciousness because necessarily deduced by human reason, is a part of the law of nations [*droit des gens*].

[...] [T]he law of nations differs from the natural law so far as it is *known by the conceptual use of reason*, while the natural law is *known* to reason *through inclination* or by connaturality. Thus a precept which is like (quasi) a conclusion derived from a principle of the natural law, but which in fact is known through inclination and not by rational deduction, belongs to the natural law. In this sense 'Don't kill' is properly a precept of the natural law. But this same precept, if it is considered as a principle deduced by reason, is given by Saint Thomas as an example of the law of nations, because then it is not only *quasi*, but truly a deduced conclusion, accomplished by the logical dynamism of human reason, and in this way it belongs to the law of nations. […]

The law of nations belongs at the same time to the moral order and to the juridical order; it presupposes a *debitum morale*, a moral obligation appealing to conscience, prior to any legal obligation (*debitum legale*). At the same time the law of nations is a formal juridical order, although not necessarily a written one. Hence it differs at once from natural right,

because it is not simply virtually contained in the order of natural morality, and from positive right, because it is not necessarily promulgated by social authority and applied by the judicial authority. It may be formulated juridically; in fact, it seeks to be, but is not necessarily so formulated. Before it is, at some future time, formulated in the code of some supranational world society whose tribunals would be required to enforce it, the law of nations is first of all formulated in the common consciousness by human reason as legislative – I mean to say, as making the law known through its own conceptual means. In a word, it is based upon the natural order of morality, but it emanates necessarily from this order as the first formal juridical order.

THE POSITIVE LAW

We come finally to the positive law. The positive law – whether it be a question of customary right or written right – the positive law in force in any particular social group has to do with the rights and duties which are bound up in a *contingent*, not a necessary, manner with the first principle of the practical intellect: "Do good and avoid evil." And it has as its author not the divine reason but human reason. In accordance with certain rules of conduct, established by the reason and will of men when they set up the laws or form the customs of a particular social group, certain things will be good and permissible and certain things bad and not permissible – but it is the human reason which establishes this. Human reason intervenes here as a creative factor, not only in that which concerns the knowledge of the law – as in the case of the law of nations – but in that which concerns the very existence of the law. It has the astounding power of positing that certain things will henceforth be good and others bad. Thus, for example, a police ordinance has decreed that it will henceforth be right for motorists to stop at a red light and to go when the light is green. There is no kind of natural structure which requires this; it depends solely upon the human reason. But once this regulation has been promulgated, it is truly evil not to stop at a red light. There is thus a moral good and a moral evil which depend upon human reason because it takes into consideration the particular requirements of the common good in such given circumstances, – in conformity, however, with the principles of the natural law, as for example: "Do not harm your fellow man." But the natural law itself does not prescribe the rules in question; it leaves them to the ultimate determination and initiative of human reason. The natural law itself requires that what it leaves undetermined be ultimately determined by human reason, either concerning necessary matters (the *jus gentium*) or concerning contingent matters (the positive law).

Here is a particularly interesting example. If we consider concrete human realities, we note in particular that the question of the rights of man straddle the three spheres: certain rights refer uniquely to the natural law, others to the natural law and the law of nations, but some concern the three

orders that we have just distinguished. This is particularly noteworthy in the case of property. The right to property in material goods belongs to the natural law to the extent that humanity in its entirety has naturally a title to possess for its common use material goods; such is the natural law, that is the right, the power of humanity as a whole over terrestrial goods for the common usage of the good of humanity – this is the basis of all that concerns property. Now this same right proceeds from the law of nations as we have defined it, to the extent that human reason arrives at the necessary – not the contingent – conclusion that, by reason of the purposes of the common good, the material goods in question must be possessed privately. There is no inclination of nature that says that, but it is reason that establishes it, in a necessary way. When one affirms that the private character of property comes under the jurisdiction of the law of nations and not of the natural law, this means that the first part – "the right of humanity to terrestrial goods in general" (it is the ordination of divine reason itself) – leads to a necessary conclusion deduced by reason from a principle of the natural law; it is required by conditions naturally required for the proper accomplishment of human work (to the extent that it will be taken up in an authentically human manner) in order to ensure the liberty of the human person vis-à-vis the community. Finally, the particular modalities of this same right, which varies according to the form of the society and the state of development of its economy, leads us – concerning this same object "property of material goods" – to the positive law. According to Saint Thomas, the basis or fundamental right which is dependent upon the natural law and which concerns the human species and its moral power over terrestrial goods, may reappear in certain exceptional conditions: if a man, who is totally deprived of that which is necessary to his subsistence or to that of his family, makes off with a thing that is absolutely necessary to his life, he is not a thief; he is only exercising the first right belonging to human nature over material goods. To steal is to take that which does not belong to oneself, but from the fact of the extreme poverty in which he finds himself, the thing in question belongs to him insofar as he is a member of the human species, and, in taking it, he does not commit theft. [...]

RIGHT AND LAW

Let us compare the notion of law and the notion of right in the different cases that we have considered. Right implies a *debitum legale* (I-II, q. 90, a. 4), a legal obligation and a promulgation by the social authority in the strict sense of this term.

The first analogate of the notion of 'right,' both in itself and for us, is positive right.

The second analogate, where there is already some deficiency concerning the full significance its the meaning, is the common right of civilized humanity, the law of nations.

The third analogate, even more deficient, and which is scarcely 'right', which entails a virtual juridical sense, is natural right.

Thus the notion of right seems to us to be strictly analogical. As for the notion of law, the order of its realisation is the reverse. Law is, indeed, an ordination of reason, promulagted by he who has care for the community and who looks after the good of all. This notion being taken in its most general sense, appropriately analogical, we will have:

The first analogate in itself, but not for us, is the eternal law (one may not, on the other hand, speak of eternal right).

The second analogate to a lesser degree is the natural law.

The third analogate of the law is the law of nations, the law of civilized life.

The fourth analogate is the positive law. The order here is precisely reversed: the first analogate in the case of right is positive right, and the last analogate in the case of law is the positive law.

Finally, we may determine the kind and the degrees of obligation which are borne out in these various cases: with the natural law, we have a *debitum morale*, an obligation *par excellence*, and a legal obligation that is only virtual. In the case of the law of nations, the moral obligation is accompanied by a legal obligation (*debitum legale*) which appears as possible or even as required. In fact, human reason intervenes here above all as legislative, and the law of nations is not necessarily required to be promulgated by the political authority or to be written in a code, though it may be. As a final point, in positive law, we have legal obligation *par excellence*, but also a moral obligation (although Kant had claimed the opposite). If we understand that human law obliges in virtue of the natural law, one cannot fail to see that it implies, as a consequence, a moral obligation which comes from the fact that the human law is a prolongation of natural law, so that the legislator, in instituting positive laws, imposes obligations on conscience. The moral obligation follows from the law when it is just – if it is not just, it is not law. However, even with regard to an unjust law, it may have a moral obligation in a secondary way, taking into account the harm that resistance to this law may cause to the social body and the inconveniences that may result from this for the common good. This also relates to what I have just said: the positive law obliges by virtue of the natural law which is a participation in the eternal law. It is inconceivable that an unjust law should oblige by virtue of the natural law, thus by virtue of a supreme regulation which goes back to the eternal law and to God. It is absolutely essential to a philosophy such as that of Saint Thomas to see an unjust law as not obligatory. It is the counterpart of this truth that a just law binds in conscience because it binds by virtue of the natural law. If we forget the one, we forget the other.

NOTES

[1] From *Lectures on Natural Law* [*Loi naturelle ou loi non écrite*, Texte inédit, établi par Georges Brazolla (Fribourg, Suisse: Editions Universitaires, 1986)], trans. and ed. William Sweet.

[2] *Summa theologiae*, I-II 91, 2, sed contra.

[3] Max M. Laserson, "Positive and 'Natural' Law and their Correlation," in *Interpretations of Modern Legal Philosophies: Essays in Honor of Roscoe Pound* [ed. Paul Sayre] (New York: Oxford University Press. 1947), [pp. 434-49].

[4] *Pensées*, II, *Oeuvres* ("Grands écrivains de France," [Paris: Hachette, 1921], Vol. XIII, No. 294), 215.

[5] Rommen, op. cit., p. 106.

[6] ["Nor did I deem / Your ordinance of so much binding force, / As that a mortal man could overbear / The unchangeable unwritten code of Heaven; / This is not of today and yesterday, / But lives forever, having origin / Whence no man knows: whose sanctions I were loath / In Heaven's sight to provoke, fearing the will / Of any man." (Sophocles, Antigone, ii. 452-60, [From: *The Dramas of Sophocles rendered in English Verse, Dramatic and Lyric*, by Sir George Young (Cambridge: Deighton, Bell and Co.; London: G. Bell and Sons, 1888).])]

[7] [See *Man and the State*, p. 88.]

[8] December 11, 1948.

[9] [It is around 1950 that an interest in the question of co-management arose. The "Catholic Day" declaration, which claimed the name of natural right for it, happened at the end of August 1949. Pius XII was led to clarify the social thought of the Church on this matter, in his *Discourse to the Participants of the International Congress of Social Studies*, on June 3, 1950. His intervention preceded by just a little the indication that Maritain makes of it, by way of example, in this lecture. – Note from Georges Brazolla, *Loi naturelle ou loi non écrite*, texte inédit]

[10] Cf. Raissa Maritain, *Histoire d'Abraham ou les premiers âges de la conscience morale* (Paris: Desclée de Brouwer. 1947).

[11] [*ST* I-II, 93, 1.]

[12] [*ST* I-II, 91, 2, resp.]

[13] *ST* I-II, 90, 4.

Man and the State (1951)

CHAPTER IV

II. THE PHILOSOPHICAL ISSUE DEALS WITH THE RATIONAL FOUNDATION OF HUMAN RIGHTS

... [T]he XVIIIth Century conception of the Rights of man presupposed, no doubt, the long history of the idea of natural law evolved in ancient and mediaeval times; but it had its immediate origins in the artificial systematization and rationalist recasting to which this idea had been subjected since Grotius and more generally since the advent of a geometrising reason. [...]The rights of the human person were to be based on the claim that man is subject to no law other than that of his own will and freedom. "A person," Kant wrote, "is subject to no other laws than those which he (either alone or jointly with others) gives to himself."[1] In other words, man must "obey only himself," as Jean-Jacques Rousseau put it,[2] because every measure or regulation springing from the world of nature (and finally from creative wisdom) would destroy at one and the same time his autonomy and his supreme dignity.

This philosophy built no solid foundations for the rights of the human person, because nothing can be founded on illusion: it compromised and squandered these rights, because it led men to conceive them as rights in themselves divine, hence infinite, escaping every objective measure, denying every limitation imposed upon the claims of the ego, and ultimately expressing the absolute independence of the human subject and a so-called absolute right – which supposedly pertains to everything in the human subject by the mere fact that it is in him – to unfold one's cherished possibilities at the expense of all other beings. When men thus instructed clashed on all sides with the impossible, they came to believe in the bankruptcy of the rights of the human person. Some have turned against these rights with an enslaver's fury; some have continued to invoke them, while in their inmost conscience they are weighed down by a temptation to scepticism which is one of the most alarming symptoms of the crisis of our civilization.

IV. HUMAN RIGHTS AND NATURAL LAW

[...] The same natural law which lays down our most fundamental duties, and by virtue of which every law is binding, is the very law which assigns to us our fundamental rights.[3] It is because we are enmeshed in the universal order, in the laws and regulations of the cosmos and of the immense family of created natures (and finally in the order of creative wisdom), and it is because we have at the same time the privilege of sharing in spiritual nature,

that we possess rights vis-à-vis other men and all the assemblage of creatures.[4] [...]

At this point we see that a positivistic philosophy recognizing Fact alone – as well as either an idealistic or a materialistic philosophy of absolute Immanence – is powerless to establish the existence of rights which are naturally possessed by the human being, prior and superior to written legislation and to agreements between governments, rights which the civil society does not have to *grant* but to *recognize* and sanction as universally valid, and which no social necessity can authorize us even momentarily to abolish or disregard. Logically, the concept of such rights can seem only a superstition to these philosophies. It is only valid and rationally tenable if each existing individual has a nature or essence which is the locus of intelligible necessities and necessary truths, that is to say, if the realm of Nature taken as a constellation of facts and events envelops and reveals a realm of Nature taken as a universe of Essences transcending the fact and the event. In other words there is no right unless a certain order – which can be violated in fact – is inviolably required by *what things are* in their intelligible type or their essence, or by what the nature of man is, and is cut out for: an order by virtue of which certain things like life, work, freedom are due to the human person, an existent who is endowed with a spiritual soul and free will. Such an order, which is not a factual datum in things, but demands to be realized by them, and which imposes itself upon our minds to the point of binding us in conscience, exists in things in a certain way, I mean as a requirement of their essence. But that very fact, the fact that things participate in an ideal order which transcends their existence and requires to govern it, would not be possible if the foundation of this ideal order, like the foundation of essences themselves and eternal truths, did not exist in a separate Spirit, in an Absolute which is superior to the world, in what perennial philosophy calls the Eternal Law.

For a philosophy which recognizes Fact alone, the notion of Value, – I mean Value objectively true in itself – is not conceivable. How, then, can one claim rights if one does not believe in values? If the affirmation of the intrinsic value and dignity of man is nonsense, the affirmation of the natural rights of man is nonsense also.

V. ABOUT HUMAN RIGHTS IN GENERAL

[a. The different kinds of law and human rights]

[... T]here are imperceptible transitions (at least from the point of view of historical experience) between Natural Law, the Law of Nations, and Positive Law. There is a dynamism which impels the unwritten law to flower forth in human law, and to render the latter ever more perfect and just in the very field of its contingent determinations. It is in accordance with this dynamism that the rights of the human person take political and social form in the community.

Man's right to existence, to personal freedom, and to the pursuit of the perfection of moral life, belongs, strictly speaking, to natural law.

The right to the private ownership of material goods[5] pertains to natural law, insofar as mankind is naturally entitled to possess for its own common use the material goods of nature; it pertains to the law of Nations, or *jus gentium*, in so far as reason necessarily concludes that for the sake of the common good those material goods must be privately owned, as a result of the conditions naturally required for their management and for human work (I mean human work performed in a genuinely human manner, ensuring the freedom of the human person in the face of the community). And the particular modalities of the right to private ownership, which vary according to the form of a society and the state of the development of its economy, are determined by positive law.

The freedom of nations to live unburdened by the yoke of want or distress ("freedom from want") and the freedom for them to live unburdened by the yoke of fear or terror ("freedom from fear"), as President Roosevelt defined them in his Four Points[6], correspond to requirements of the law of Nations which are to be fulfilled by positive law and by a possible economic and political organization of the civilized world.

The right of suffrage granted to each one of us for the election of the officials of the State arises from positive law, determining the way in which the natural right of the people to self-government has to apply in a democratic society.

[b. The alienability of human rights]

[... N]atural human rights [...] are inalienable since they are grounded on the very nature of man, which of course no man can lose. This does not mean that they reject by nature any limitation, or that they are the infinite rights of God. Just as every law, – notably the natural law, on which they are grounded, – aims at the common good, so human rights have an intrinsic relation to the common good. Some of them, like the right to existence or to the pursuit of happiness, are of such a nature that the common good would be jeopardized if the body politic could restrict in any measure the possession that men naturally have of them. Let us say that they are absolutely inalienable. Others, like the right of association or of free speech, are of such a nature that the common good would be jeopardized if the body politic could not restrict in some measure (all the less as societies are more capable of and based upon common freedom) the possession that men naturally have of them. Let us say that they are inalienable only substantially.

* * *

Yet, even absolutely inalienable rights are liable to limitation, if not as to their possession, at least as to their exercise. So my third point will deal

with the distinction between the *possession* and the *exercise* of a right. Even for the absolutely inalienable rights, we must distinguish between possession and exercise – the latter being subject to conditions and limitations dictated in each case by justice. If a criminal can be justly condemned to die. it is because by his crime he has deprived himself, let us not say of the right to live, but of the possibility of justly asserting this right: he has morally cut himself off from the human community, precisely as regards the use of this fundamental and "inalienable" right which the punishment inflicted upon him prevents him from exercising.

The right to receive the heritage of human culture through education is also a fundamental, absolutely inalienable right: the exercise of it is subject to a given society's concrete possibilities; and it can be contrary to justice to claim the use of this right for each and all *hic et nunc* if that can only be realized by ruining the social body, as in the case of the slave society of ancient Rome or the feudal society of the Middle Ages – though of course this claim to education for all remained legitimate, as something to be fulfilled in time. In such cases what remains is to endeavor to change the social state involved. We see from this example – and I note this parenthetically – that the basis for the secret stimulus which incessantly fosters the transformation of societies lies in the fact that man possesses inalienable rights but is deprived of the possibility of justly claiming the *exercise* of certain of these rights because of the inhuman element that remains in the social structure of each period.

This distinction between the possession and the exercise of a right is, in my opinion, of serious importance. I have just indicated how it enables us to explain the limitations that can be justly imposed upon the assertion of certain rights under certain circumstances, either by the guilt of some delinquent or criminal individual, or by social structures whose vice or primitiveness prevents the claim, legitimate in itself, from being immediately fulfilled without encroaching upon major rights.

I should like to add that this distinction also enables us to understand that it is fitting at times, as history advances, to forego the exercise of certain rights which we nevertheless continue to possess. These considerations apply to many problems concerning either the modalities of private property in a society that is in the process of economic transformation, or the limitations on the so-called "sovereignty" of States in an international community that is in the process of being organized.

VI. HUMAN RIGHTS IN PARTICULAR

Coming finally to the problems dealing with the enumeration of human rights taken in particular, I shall first recall to our minds what I have previously stated: namely the fact that in natural law there is immutability as regards things, or the law itself ontologically considered, but progress and relativity as regards human awareness of it. We have especially a tendency to inflate and make absolute, limitless, unrestricted in every

respect, the rights of which we are aware, thus blinding ourselves to any other right which would counterbalance them. Thus in human history no "new'' right, I mean no right of which common consciousness was becoming newly aware, has been recognized in actual fact without having had to struggle against and overcome the bitter opposition of some "old rights." That was the story of the right to a just wage and similar rights in the face of the right to free mutual agreement and the right to private ownership. The fight of the latter to claim for itself a privilege of divine, limitless absolutism was the unhappy epic of the XIXth Century. (Another unhappy epic was to follow, in which on the contrary the very principle of private ownership was under fire, and every other personal freedom with it.) Well! In 1850, when the law against fugitive slaves was enforced, was not any help given to a fugitive slave held by the conscience of many people to be a criminal attempt against the right to ownership?

Conversely "new" rights often wage war against the "old" ones, and cause them to be unfairly disregarded. At the time of the French Revolution, for instance, a law promulgated in 1791 prohibited as "an attack on freedom and on the Declaration of the Rights of Man" any attempt by workers to associate in trade unions and join forces in refusing to work except for a given wage. This was considered an indirect return to the old system of corporations.

As concerns the problems of the present time, it is obvious that human reason has now become aware not only of the rights of man as a human and a civic person, but also of his rights as a social person engaged in the process of production and consumption, especially of his rights as a working person.

Generally speaking, a new age of civilization will be called upon to recognize and define the rights of the human being in his social, economic, and cultural functions – producers' and consumers' rights, technicians' rights, rights of those who devote themselves to labor of the mind, rights of everyone to share in the educational and cultural heritage of civilized life. But the most urgent problems are concerned on the one hand with the rights of that primordial society which is family society, and which is prior to the political state; on the other hand with the rights of the human being as he is engaged in the function of labor.[7]

I am alluding to rights such as the right to work and freely to choose one's work. – The right freely to form vocational groups or unions. – The right of the worker to be considered socially as an adult, and to have, some way or other, a share and active participation in the responsibilities of economic life. – The right of economic groups (unions and working communities) and other social groups to freedom and autonomy. – The right to a just wage, that is, sufficient to secure the family's living. – The right to relief, unemployment insurance, sick benefits, and social security. – The right to have a part, free of charge, depending on the possibilities of the social body, in the elementary goods, both material and spiritual, of civilization.

What is involved in all this is first of all the dignity of work, the feeling for the rights of the human person in the worker, the rights in the name of which the worker stands before his employer in a relationship of justice and as an adult person, not as a child or as a servant. There is here an essential datum which far surpasses every problem of merely economic and social technique, for it is a *moral* datum, affecting man in his spiritual depths.

I am convinced that the antagonism between the "old" and the "new" rights of man – I mean the social rights to which I just alluded, especially those which relate to social justice and aim both at the efficacy of the social group and at the freedom from want and economic bondage of the working person – I am convinced that that antagonism, which many contemporary writers take pleasure in magnifying, is by no means insuperable. These two categories of rights seem irreconcilable only because of the clash between the two opposed ideologies and political systems which appeal to them, and of which they are independent in actual reality. Too much stress cannot be placed on the fact that the recognition of a particular category of rights is not the privilege of one school of thought at the expense of the others; it is no more necessary to be a follower of Rousseau to recognize the rights of the individual than it is to be a Marxist to recognize the economic and social rights. As a matter of fact, the universal Declaration of the Rights of Man adopted and proclaimed by the United Nations on December 10, 1948, makes room for the "old" and the "new" rights together.[8]

If each of the human rights were by its nature absolutely unconditional and exclusive of any limitation, like a divine attribute, obviously any conflict between them would be irreconcilable. But who does not know in reality that these rights, being human, are, like everything human, subject to conditioning and limitation, at least, as we have seen, as far as their exercise is concerned? That the various rights ascribed to the human being limit each other, particularly that the economic and social rights, the rights of man as a person involved in the life of the community, cannot be given room in human history without restricting, to some extent, the freedoms and rights of man as an individual person, is only normal. What creates irreducible differences and antagonisms among men is the determination of the degree of such restriction, and more generally the determination of the scale of values that governs the exercise and the concrete organization of these various rights. Here we are confronted with the clash between incompatible political philosophies. Because here we are no longer dealing with the simple recognition of the diverse categories of human rights, but with the principle of dynamic unification in accordance with which they are carried into effect; we are dealing with the tonality, the specific key, by virtue of which different music is played on this same keyboard, either in harmony or in discord with human dignity.

We can imagine [...] that the advocates of a liberal-individualistic, a communistic, or a personalist[9] type of society will lay down on paper

similar, perhaps identical, lists of the rights of man. They will not, however, play that instrument in the same way. Everything depends upon the supreme value in accordance with which all these rights will be ordered and will mutually limit each other. It is by virtue of the hierarchy of values to which we thus subscribe that we determine the way in which the rights of man, economic and social as well as individual, should, in our eyes, pass into the realm of existence. Those whom, for want of a better name, I just called the advocates of a liberal-individualistic type of society, see the mark of human dignity first and foremost in the power of each person to appropriate individually the goods of nature in order to do freely whatever he wants; the advocates of a communistic type of society see the mark of human dignity first and foremost in the power to submit these same goods to the collective command of the social body in order to "free" human labor (by subduing it to the economic community) and to gain the control of history; the advocates of a personalistic type of society see the mark of human dignity first and foremost in the power to make these same goods of nature serve the common conquest of intrinsically human, moral, and spiritual goods and of man's freedom of autonomy. Those three groups inevitably will accuse each other of ignoring certain essential rights of the human being. It remains to be seen who makes a faithful image and who a distorted image of man. As far as I am concerned, I know where I stand: with the third of the three schools of thought I just mentioned.

NOTES

[1] *Introduction to the Metaphysics of Morals,* IV, 24. [Akademie ed., 223] [See Immanuel Kant, *The Metaphysics of Morals*, tr. Mary Gregor (Cambridge: Cambridge University Press, 1991) p. 50.]

[2] ["'The problem is to find a form of association which will defend and protect with the whole common force the person and goods of each associate, and in which each, while uniting himself with all, may still obey himself alone, and remain as free as before.' This is the fundamental problem of which the Social Contract provides the solution." Jean-Jacques Rousseau, *The Social Contract*, Book I. Ch. 6 (tr. G. D. H. Cole, London: J.M. Dent, 1913). Ed.]

[3] Cf. Edward S. Dore, associate justice of New York Supreme Court, "Human Rights and Natural Law," *New York Law Journal,* 1946; [Harold R.] McKinnon, "The Higher Law [: Reaction has Permeated our Legal Thinking]," *American Bar Association Journal,* [Vol. 33]: [February] 1947 [pp. 106-9; 202-4]; Laserson, *op. cit.;* Lord [Robert Alderson] Wright, chairman of the United Nations War Crimes Commission, "Natural Law and International Law," [*Interpretations of Modern Legal Philosophies*:] *Essays in Honor of Roscoe Pound,* op. cit., pp. 794-807*;* Godfrey P. Schmidt, "An Approach to the Natural Law" [*Fordham Law Review*, Vol. XIX, No. 1, March 1950, pp 1-42.]

The concept of Natural Law played, as is well known, a basic part in the thought of the Founding Fathers. In insisting (cf. Cornelia Geer Le Boutillier, *American Democracy and Natural Law* [New York: Columbia

University Press, 1950], chap. iii) that they were men of government rather than metaphysicians and that they used the concept for practical rather than philosophical purpose, in a more or less vague, even in a "utilitarianist," sense (as if any concern for the common good and the implementing of the ends of human life were to be labeled utilitarianism), one makes only more manifest the impossibility of tearing Natural Law away from the moral tenets upon which this country was founded.

In his vigorous and stimulating book, *Courts on Trial* (Princeton, NJ: Princeton University Press, 1949), Judge Jerome Frank also views Natural Law more in a practical than in a metaphysical perspective. This very fact gives a particularly significant experiential value to his judgment, when he writes: "No decent non-Catholic can fail to accept the few basic Natural Law principles or precepts as representing, at the present time and for any reasonably foreseeable future, essential parts of the foundation of civilization" (pp. 364-5).

Be it finally noted that when it comes to the application of basic requirements of justice in cases where positive law's provisions are lacking to a certain extent, a recourse to the principles of Natural Law is unavoidable, thus creating a precedent and new judicial rules. That is what happened, in a remarkable manner, with the epoch-making Nazi war crimes trial in Nuremberg.

[4] [In Maritain's papers, conserved at Kolbsheim, there is a manuscript of an essay entitled "Natural Law and the Rights of Man: a philosophical discussion." There is no indication of whether this essay was ever published. The text is undated, though it was almost certainly delivered at the College of St Thomas, in Saint Paul, Minnesota, in 1950. The essay is virtually identical to *Man and the State*, Chapter IV, though some of the material is rearranged and the essay adds a small amount of new material. Maritain provides the following important definition of 'right'– a definition which does not appear in his other works:

> What does the notion of right mean? A right is a requirement that emanates from a self with regard to something which is understood as *his* due, and of which the other moral agents are obliged in conscience not to deprive him. The normality of functioning of the creature endowed with intellect and free will implies the fact that this creature has duties and obligations; it also implies the fact that this creature possesses rights, by virtue of his very nature – because he is a self with whom the other selves are confronted, and whom they are not free to deprive of what is due him. And the normality of functioning of the rational creature is an expression of the order of divine wisdom.]

[5] Cf. my work, *Freedom in the Modern World* (New York: Charles Scribner's Sons, 1936), Appendix I.

[6] ["(1) Freedom of speech and expression everywhere in the world. (2) Freedom of every person to worship God in his own way everywhere in the world. (3) Freedom from want which, translated into world terms, means economic understanding which will secure to every nation a healthy peace-time life for its inhabitants everywhere in the world. (4) Freedom from fear which, translated

into world terms, means a world-wide reduction of armaments to such a point and in such a thorough fashion that no nation will be in a position to commit an act of aggression against any neighbor anywhere." (These "four essential human freedoms" were articulated by President Franklin D. Roosevelt in his Annual Message to the United States Congress, on January 6, 1941.)]

[7] Cf. our book, *The Rights of Man and Natural Law* (New York: Charles Scribner's Sons, 1943); Georges Gurvitch, *La Déclaration des droits sociaux* (New York: Maison Française. 1944) [English translation: *The Bill of Social Rights* (New York: International Universities Press, 1946)].

[8] Even after the first World War, the Declarations of Rights attached to the new constitutions which then appeared on the European scene recognized the importance of social rights. Cf. Boris Mirkine-Guetzevitch, *Les nouvelles tendances du droit constitutionnel* (Paris: Giard, 1931), chap. iii.

[9] Cf. our books, *Freedom in the Modern World,* pp. 46 ff., and *True Humanism* (New York: Charles Scribner's Sons, 1938), pp. 127 ff. [Cf. the later, improved, translation, *Integral Humanism*, tr. Joseph Evans (New York: Scribners, 1968), pp. 133 ff.]

Documents

1

Déclaration des droits de l'homme et du citoyen

Adoptée par l'Assemblée constituante du 20 au 26 août 1789,
acceptée par le roi le 5 octobre 1789

Les représentants du peuple français, constitués *en Assemblée nationale*, considérant que l'ignorance, l'oubli ou le mépris des droits de l'homme sont les seules causes des malheurs publics et de la corruption des gouvernements, ont résolu d'exposer, dans une Déclaration solennelle, les droits naturels, inaliénables et sacrés de l'homme, afin que cette Déclaration, constamment présente à tous les membres du corps social, leur rappelle sans cesse leurs droits et leurs devoirs; afin que les actes du pouvoir législatif, et ceux du pouvoir exécutif pouvant à chaque instant être comparés avec le but de toute institution politique, en soient plus respectés; afin que les réclamations des citoyens, fondées désormais sur des principes simples et incontestables, tournent toujours au maintien de la Constitution et au bonheur de tous.

En conséquence, l'*Assemblée nationale* reconnaît et déclare, en présence et sous les auspices de l'Être suprême, les droits suivants de l'homme et du citoyen:

Article premier - Les hommes naissent et demeurent libres et égaux en droits. Les distinctions sociales ne peuvent être fondées que sur l'utilité commune.

Article II - Le but de toute association politique est la conservation des droits naturels et imprescriptibles de l'homme. Ces droits sont la liberté, la propriété, la sûreté, et la résistance à l'oppression.

Article III - Le principe de toute souveraineté réside essentiellement dans la nation. Nul corps, nul individu ne peut exercer d'autorité qui n'en émane expressément.

Article IV - La liberté consiste à faire tout ce qui ne nuit pas à autrui: ainsi l'exercice des droits naturels de chaque homme n'a de bornes que celles qui assurent aux autres membres de la société la jouissance de ces mêmes droits. Ces bornes ne peuvent être déterminées que par la loi.

Article V - La loi n'a le droit de défendre que les actions nuisibles à la société. Tout ce qui n'est pas défendu par la loi ne peut être empêché, et nul ne peut être contraint à faire ce qu'elle n'ordonne pas.

Article VI - La loi est l'expression de la volonté générale. Tous les citoyens ont droit de concourir personnellement, ou par leurs représentants, à sa formation. Elle doit être la même pour tous, soit qu'elle protège, soit qu'elle punisse. Tous les citoyens, étant égaux à ses yeux, sont également admissibles à toutes dignités, places et emplois publics, selon leurs capacités et sans autre distinction que celle de leurs vertus et de leurs talents.

Article VII - Nul homme ne peut être accusé, arrêté ni détenu que dans les cas déterminés par la loi, et selon les formes qu'elle a prescrites. Ceux qui sollicitent, expédient, exécutent ou font exécuter des ordres arbitraires, doivent être punis; mais tout citoyen appelé ou saisi en vertu de la loi doit obéir à l'instant; il se rend coupable par la résistance.

Article VIII - La loi ne doit établir que des peines strictement et évidemment nécessaires, et nul ne peut être puni qu'en vertu d'une loi établie et promulguée antérieurement au délit et légalement appliquée.

Article IX - Tout homme étant présumé innocent jusqu'à ce qu'il ait été déclaré coupable, s'il est jugé indispensable de l'arrêter, toute rigueur qui ne sera pas nécessaire pour s'assurer de sa personne doit être sévèrement réprimée par la loi.

Article X - Nul ne doit être inquiété pour ses opinions, même religieuses, pourvu que leur manifestation ne trouble pas l'ordre public établi par la loi.

Article XI - La libre communication des pensées et des opinions est un des droits les plus précieux de l'homme: tout citoyen peut donc parler, écrire, imprimer librement, sauf à répondre de l'abus de cette liberté, dans les cas déterminés par la loi.

Article XII - La garantie des droits de l'homme et du citoyen nécessite une force publique: cette force est donc instituée pour l'avantage de tous et non pour l'utilité particulière de ceux auxquels elle est confiée.

Article XIII - Pour l'entretien de la force publique et pour les dépenses d'administration, une contribution commune est indispensable. Elle doit être également répartie entre tous les citoyens, en raison de leurs facultés.

Article XIV - Chaque citoyen a le droit, par lui-même ou par ses représentants, de constater la nécessité de la contribution publique, de la consentir librement, d'en suivre l'emploi et d'en déterminer la quotité, l'assiette, le recouvrement et la durée.

Article XV - La société a le droit de demander compte à tout agent public de son administration.

Article XVI - Toute société dans laquelle la garantie des droits n'est pas assurée, ni la séparation des pouvoirs déterminée, n'a pas de Constitution.

Article XVII - La propriété étant un droit inviolable et sacré, nul ne peut en être privé, si ce n'est lorsque la nécessité publique, légalement constatée, l'exige évidemment, et sous la condition d'une juste et préalable indemnité.

Declaration of the Rights of Man and of the Citizen August 26, 1789

The Representatives of the French People, formed into a National Assembly, considering ignorance, the lapse of memory or contempt of the rights of man to be the sole causes of public misfortunes and the corruption of Governments, have resolved to set forth, in a solemn Declaration, the natural, inalienable and sacred rights of man, to the end that this Declaration, constantly present to all members of the body politic, may remind them unceasingly of their rights and their duties; to the end that the acts of the legislative power and those of the executive power, since they may be at every moment [continually] compared with the aim of every political institution, may thereby be the more respected; to the end that the demands of the citizens, founded henceforth on simple and incontestable principles, may always be directed toward the maintenance of the Constitution and the happiness of all.

Consequently, the National Assembly recognizes and declares, in presence and under the auspices of the Supreme Being, the following rights of the man and the citizen.

Article the 1st Men are born and remain free and equal in rights. The social distinctions can be founded only on the common utility.

Article 2 The goal of any political association is the conservation of the natural and imprescriptible rights of the man. These rights are {personal} freedom [liberty], the {ownership of} property, {personal} safety and resistance [the ability to resist] to oppression.

Article 3 The principle of any sovereignty lies primarily in the nation as a whole. No body nor individual can exert authority which does not emanate from the nation expressly.

Article 4 Freedom consists in being able to do all that does not harm others. Thus, the exercise of the natural rights of each man has limits only to the extent of those which ensure that the other members of society obtain the

pleasure of these same rights. Such limitations can be determined only by the law.

Article 5 The law has the right to proscribe the actions harmful of society. All that is not forbidden by the law cannot be prevented, and no one can be constrained to do what the law does not specifically order.

Article 6 The law is the overt expression of the general will. All the citizens have the right to contribute {to the legislative process} personally, or by their representatives, to the formation of law. The law must be the same one for all, either that it protects, or that it punishes. All the citizens, being equal in its eyes, are also acceptable by all dignitaries, in all places and in all measure of public employment, according to their capacity and without other distinction than that of their virtues and their talents.

Article 7 No man can be indicted, be arrested or detained {in custody} except under those circumstances determined by the law, and according to its forms which are prescribed. Those which solicit, dispatch, carry out or make others carry out arbitrary commands must be punished; but, any citizen summoned or seized under the terms of the law must obey immediately: he makes himself guilty by resistance.

Article 8 The law should establish only such strict penalties as are obviously necessary; and, no person can be punished except under the terms of a law established and promulgated before the offence, and which is legally applicable.

Article 9 Every man is supposed innocent until having been declared guilty; {but,} if it be considered essential to arrest, any action, which is not necessary to secure the person, must be severely repressed at law.

Article 10 No person should fear for expressing opinions, even religious ones, provided that the manifestation of their opinion [advocacy] does not disturb the established law and order.

Article 11 The free communication of thought and the opinion is one of the most invaluable rights of the man: any citizen can thus speak, write, print freely, except that he must answer for his abuse this freedom in such cases determined by the law.

Article 12 The guarantee of human rights and of the citizen requires a police force: this force is thus instituted for the advantage of all, and not just for the particular utility of those {officials} to which it is entrusted.

Article 13 For the maintenance of the police force, and for the expenditure of administration, a common contribution [tax] is essential: it must be also

distributed between all the citizens, respective of their faculties {to pay such taxes}.

Article 14 All citizens have the right to vote, by themselves or through their representatives, for the need for the public contribution, to agree to it voluntarily, to allow implementation of it, and to determine its appropriation, the {amount of} assessment, its collection and its duration.

Article 15 Society [the Public] has the right to require an account by any public agent of their administration.

Article 16 Any society in which the guarantee of {human} rights is not assured, nor the separation of powers set forth, has no {legal} constitution.

Article 17 Property {rights} being inviolable and sacred, one cannot lose the private use of property, if there is no public necessity, legally noted, required obviously, and under the condition of a just reimbursement as a predicate {to the taking}.

United States Constitutional Documents

THE DECLARATION OF INDEPENDENCE

In Congress, July 4, 1776,
THE UNANIMOUS DECLARATION OF THE THIRTEEN UNITED STATES OF AMERICA

When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the Powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness.

That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed.

That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness. Prudence, indeed, will dictate that Governments long established should not be changed for light and transient causes; and accordingly all experience hath shown, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same Object, evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security.

Such has been the patient sufferance of these Colonies; and such is now the necessity which constrains them to alter their former Systems of Government. The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute Tyranny over these States. To prove this, let Facts be submitted to a candid world.

He has refused his Assent to Laws, the most wholesome and necessary for the public good.

He has forbidden his Governors to pass Laws of immediate and pressing importance, unless suspended in their operation till his Assent should be obtained; and when so suspended, he has utterly neglected to attend to them.

He has refused to pass other Laws for the accommodation of large districts of people, unless those people would relinquish the right of Representation in the Legislature, a right inestimable to them and formidable to tyrants only.

He has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their public Records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved Representative Houses repeatedly, for opposing with manly firmness his invasions on the rights of the people.

He has refused for a long time, after such dissolutions, to cause others to be elected; whereby the Legislative powers, incapable of Annihilation, have returned to the People at large for their exercise; the State remaining in the mean time exposed to all the dangers of invasion from without, and convulsions within.

He has endeavoured to prevent the population of these States; for that purpose obstructing the Laws of Naturalization of Foreigners; refusing to pass others to encourage their migrations hither, and raising the conditions of new Appropriations of Lands.

He has obstructed the Administration of Justice, by refusing his Assent to Laws for establishing Judiciary powers.

He has made Judges dependent on his Will alone, for the tenure of their offices, and the amount and payment of their salaries.

He has erected a multitude of New Offices, and sent hither swarms of Officers to harass our People, and eat out their substance.

He has kept among us, in times of peace, Standing Armies without the Consent of our legislatures.

He has affected to render the Military independent of and superior to the Civil power.

He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws; giving his Assent to their Acts of pretended Legislation:

For quartering large bodies of armed troops among us:

For protecting them, by a mock Trial, from Punishment for any Murders which they should commit on the Inhabitants of these States:

For cutting off our Trade with all parts of the world:

For imposing Taxes on us without our Consent:

For depriving us in many cases, of the benefits of Trial by Jury:

For transporting us beyond Seas to be tried for pretended offences:

For abolishing the free System of English Laws in a neighbouring Province, establishing therein an Arbitrary government, and enlarging its Boundaries so as to render it at once an example and fit instrument for introducing the same absolute rule into these Colonies:

For taking away our Charters, abolishing our most valuable Laws, and altering fundamentally the Forms of our Governments:

For suspending our own Legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever.

He has abdicated Government here, by declaring us out of his Protection and waging War against us.

He has plundered our seas, ravaged our Coasts, burnt our towns, and destroyed the Lives of our people.

He is at this time transporting large armies of foreign mercenaries to compleat the works of death, desolation and tyranny, already begun with circumstances of Cruelty & perfidy scarcely paralleled in the most barbarous ages, and totally unworthy the Head of a civilized nation.

He has constrained our fellow Citizens taken Captive on the high Seas to bear Arms against their Country, to become the executioners of their friends and Brethren, or to fall themselves by their Hands.

He has excited domestic insurrections amongst us, and has endeavoured to bring on the inhabitants of our frontiers, the merciless Indian Savages, whose known rule of warfare, is an undistinguished destruction of all ages, sexes and conditions.

In every stage of these Oppressions We have Petitioned for Redress in the most humble terms: Our repeated Petitions have been answered only by repeated injury. A Prince, whose character is thus marked by every act which may define a Tyrant, is unfit to be the ruler of a free people.

Nor have We been wanting in attention to our British brethren. We have warned them from time to time of attempts by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them by the ties of our common kindred to disavow these usurpations, which would inevitably interrupt our connections and correspondence. They too have been deaf to the voice of justice and of consanguinity. We must, therefore, acquiesce in the necessity, which denounces our Separation, and hold them, as we hold the rest of mankind, Enemies in War, in Peace Friends.

We, therefore, the Representatives of the United States of America, in General Congress, Assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the Name, and by Authority of the good People of these Colonies, solemnly publish and declare, That these United Colonies are, and of Right ought to be Free and Independent States; that they are Absolved from all Allegiance to the British Crown, and that all political connection between them and the State of Great Britain, is and ought to be totally dissolved; and that as Free and Independent States, they have full Power to levy War, conclude Peace, contract Alliances, establish Commerce, and to do all other Acts and Things which Independent States may of right do. And for the support of this Declaration, with a firm reliance on the Protection of Divine Providence, we mutually pledge to each other our Lives, our Fortunes and our sacred Honor.

JOHN HANCOCK, President

AMENDMENTS I to X TO THE CONSTITUTION OF THE UNITED STATES
[The Bill of Rights]

Amendment I (1791)
Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Amendment II (1791)
A well regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed.

Amendment III (1791)
No soldier shall, in time of peace be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

Amendment IV (1791)
The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment V (1791)
No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment VI (1791)
In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Amendment VII (1791)
In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any court of the United States, than according to the rules of the common law.

Amendment VIII (1791)
Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment IX (1791)
The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Amendment X (1791)
The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

Universal Declaration of Human Rights (1948)

On December 10, 1948 the General Assembly of the United Nations adopted and proclaimed the Universal Declaration of Human Rights the full text of which appears in the following pages. Following this historic act the Assembly called upon all Member countries to publicize the text of the Declaration and "to cause it to be disseminated, displayed, read and expounded principally in schools and other educational institutions, without distinction based on the political status of countries or territories."

PREAMBLE

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom, Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

Now, Therefore, THE GENERAL ASSEMBLY proclaims

THIS UNIVERSAL DECLARATION OF HUMAN RIGHTS as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

Article 1.
All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2.
Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 3.
Everyone has the right to life, liberty and security of person.

Article 4.
No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 5.
No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 6.
Everyone has the right to recognition everywhere as a person before the law.

Article 7.
All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8.
Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 9.
No one shall be subjected to arbitrary arrest, detention or exile.

Article 10.
Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11.
(1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.
(2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 12.
No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation Everyone has the right to the protection of the law against such interference or attacks.

Article 13.
(1) Everyone has the right to freedom of movement and residence within the borders of each state.
(2) Everyone has the right to leave any country, including his own, and to return to his country.

Article 14.
(1) Everyone has the right to seek and to enjoy in other countries asylum from persecution.
(2) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

Article 15.
(1) Everyone has the right to a nationality.
(2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Article 16.
(1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.
(2) Marriage shall be entered into only with the free and full consent of the intending spouses.

(3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 17.
(1) Everyone has the right to own property alone as well as in association with others.
(2) No one shall be arbitrarily deprived of his property.

Article 18.
Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 19.
Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20.
(1) Everyone has the right to freedom of peaceful assembly and association.
(2) No one may be compelled to belong to an association.

Article 21.
(1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
(2) Everyone has the right of equal access to public service in his country.
(3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Article 22.
Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Article 23.
(1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
(2) Everyone, without any discrimination, has the right to equal pay for equal work.

(3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
(4) Everyone has the right to form and to join trade unions for the protection of his interests.

Article 24.
Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25.
(1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
(2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Article 26.
(1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages Elementary education shall be compulsory Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.
(2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.
(3) Parents have a prior right to choose the kind of education that shall be given to their children.

Article 27.
(1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.
(2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Article 28.
Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

Article 29.
(1) Everyone has duties to the community in which alone the free and full development of his personality is possible.
(2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.
(3) These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

Article 30.
Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

ACKNOWLEDGEMENTS

The texts in this volume are primarily drawn from material in the public domain.

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