Justice: What's the Right Thing to Do?

By
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(Reading Material)

Glossary

The Queen vs Dudley and Stephens (1884) (The Lifeboat Case)

A brief overview of the case: *Suppose you find yourself in a situation in which killing an innocent person is the only way to prevent many innocent people from dying. What's the right thing to do? This question arose in The Queen v. Dudley and Stephens (1884), a famous English law case involving four men stranded in a lifeboat without food or water. How should we judge the action of Dudley and Stephens? Was it morally justified or morally wrong?*

The Queen v. Dudley and Stephens
14 Queens Bench Division 273 (1884)
Criminal Law–Murder–Killing and eating Flesh of Human Body under Pressure of Hunger–"Necessity"–Special Verdict–Certiorari–Offence on High Seas–Jurisdiction of High Court.

A man who, in order to escape death from hunger, kills another for the purpose of eating his flesh, is guilty of murder; although at the time of the act he is in such circumstances that he believes and has reasonable ground for believing that it affords the only chance of preserving his life.

At the trial of an indictment for murder it appeared, upon a special verdict, that the prisoners D. and S., seamen, and the deceased, a boy between seventeen and eighteen, were cast away in a storm on the high seas, and compelled to put into an open boat; that the boat was drifting on the ocean, and was probably more than 1000 miles from land; that on the eighteenth day, when they had been seven days without food and five without water, D. proposed to S. that lots should be cast who should be put to death to save the rest, and that they afterwards thought it would be better to kill the boy that their lives should be saved; that on the twentieth day D., with the assent of S., killed the boy, and both D. and S. fed on his flesh for four days; that at the time of the act there was no sail in sight nor any reasonable prospect of relief; that under these circumstances there appeared to the prisoners every probability that unless they then or very soon fed upon the boy, or one of themselves, they would die of starvation:

Held, that upon these facts, there was no proof of any such necessity as could justify the prisoners in killing the boy, and that they were guilty of murder.

INDICTMENT for the murder of Richard Parker on the high seas within the jurisdiction of the Admiralty:
At the trial before Huddleston, B., at the Devon and Cornwall Winter Assizes, November 7, 1884, the jury, at the suggestion of the learned judge, found the facts of the case in a special verdict which stated "that on July 5, 1884, the prisoners, Thomas Dudley and Edward Stephens, with one Brooks, all able-bodied English seamen, and the deceased also an English boy, between seventeen and eighteen years of age, the crew of an English yacht, a registered English vessel, were cast away in a storm on the high seas 1600 miles from the Cape of Good Hope, and were compelled to put into an open boat belonging to the said yacht. That in this boat they had no supply of water and no supply of food, except two 1 lb. tins of turnips, and for three days they had nothing else to subsist upon. That on the fourth day they caught a small [p. 274] turtle, upon which they subsisted for a few days, and this was the only food they had up to the twentieth day when the act now in question was committed. That on the twelfth day the turtle were entirely consumed, and for the next eight days they had nothing to eat. That they had no fresh water, except such rain as they from time to time caught in their oilskin capes. That the boat was drifting on the ocean, and was probably more than 1000 miles away from land. That on the eighteenth day, when they had been seven days without food and five without water, the prisoners spoke to Brooks as to what should be done if no succour came, and suggested that some one should be sacrificed to save the rest, but Brooks dissented, and the boy, to whom they were understood to refer, was not consulted. That on the 24th of July, the day before the act now in question, the prisoner Dudley proposed to Stephens and Brooks that lots should be cast who should be put to death to save the rest, but Brooks refused consent, and it was not put to the boy, and in point of fact there was no drawing of lots. That on that day the prisoners spoke of their having families, and suggested it would be better to kill the boy that their lives should be saved, and Dudley proposed that if there was no vessel in sight by the morrow morning the boy should be killed. That next day, the 25th of July, no vessel appearing, Dudley told Brooks that he had better go and have a sleep, and made signs to Stephens and Brooks that the boy had better be killed. The prisoner Stephens agreed to the act, but Brooks dissented from it. That the boy was then lying at the bottom of the boat quite helpless, and extremely weakened by famine and by drinking sea water, and unable to make any resistance, nor did he ever assent to his being killed. The prisoner Dudley offered a prayer asking forgiveness for them all if either of them should be tempted to commit a rash act, and that their souls might be saved. That Dudley, with the assent of Stephens, went to the boy, and telling him that his time was come, put a knife into his throat and killed him then and there; that the three men fed upon the body and blood of the boy for four days; that on the fourth day after the act had been committed the boat was picked up by a passing vessel, and the prisoners were rescued, still alive, but in the lowest state of prostration. That they were carried to the [p. 275] port of Falmouth, and committed for trial at Exeter. That if the men had not fed upon the body of the boy they would probably not have survived to be so picked up and rescued, but would within the four days have died of famine. That the boy, being in a much weaker condition, was likely to have died before them. That at the time of the act in question there was no sail in sight, nor any reasonable prospect of relief. That under these circumstances there appeared to the prisoners every probability that unless they then fed or very soon fed upon the boy or one of themselves they would die of starvation. That there was no appreciable chance of saving life except by killing some one for the others to eat. That assuming any necessity to kill anybody, there was no greater necessity for killing the boy than any of the other three men. But whether upon the whole matter by the jurors found the killing of Richard Parker by Dudley and Stephens be felony and murder the jurors are ignorant, and pray the advice of the Court thereupon, and if upon the whole matter the Court shall be of opinion that the killing of Richard Parker be felony and murder, then the jurors say that Dudley and Stephens were each guilty of felony and murder as alleged in the indictment."

The learned judge then adjourned the assizes until the 25th of November at the Royal Courts of Justice. On the application of the Crown they were again adjourned to the 4th of December, and the case ordered to be argued before a Court consisting of five judges.

Dec. 4. …

Sir H. James, A.G. (A. Charles, Q.C., C. Mathews and Dankwerts with him), appeared for the Crown.

With regard to the substantial question in the case–whether the prisoners in killing Parker were guilty of murder–the law is that where a private person acting upon his own judgment takes the life of a fellow creature, his act can only be justified on the ground of self-defence–self-defence against the acts of the person whose life is taken. This principle has been extended to include the case of a man killing another to prevent him from committing some great crime upon a third person. But the principle has no application to this case, for the prisoners were not protecting themselves against any act of Parker. If he had had food in his possession and they had taken it from him, they would have been guilty of theft; and if they killed him to obtain this food, they would have been guilty of murder. …

A. Collins, Q.C., for the prisoners.

The facts found on the special verdict shew that the prisoners were not guilty of murder, at the time when they killed Parker but killed him under the pressure of necessity. Necessity will excuse an act which would otherwise be a crime. Stephen, Digest of Criminal Law, art. 32, Necessity. The law as to compulsion by necessity is further explained in Stephen's History of the Criminal Law, vol. ii., p. 108, and an opinion is expressed that in the case often put by casuists, of two drowning men on a plank large enough to support one only, and one thrusting the other off, the survivor could not be subjected to legal punishment. In the American case of The United States v. Holmes, the proposition that a passenger on board a vessel may be thrown overboard to save the others is sanctioned. The law as to inevitable necessity is fully considered [p. 278] in Russell on Crimes, vol. i. p. 847, and there are passages relating it in Bracton, vol. ii. p. 277; Hale's Pleas of the Crown, p. 54 and c. 40; East's Pleas of the Crown, p. 221, citing Dalton, c. 98, "Homicide of Necessity," and several cases . . . . Lord Bacon, Bac. Max., Reg. 5, gives the instance of two shipwrecked persons clinging to the same plank and one of them thrusting the other from it, finding that it will not support both, and says that this homicide is excusable through unavoidable necessity and upon the great universal principle of self-preservation, which prompts every man to save his own life in preference to that of another where one of them must inevitably perish. It is true that Hale's Pleas of the Crown, p. 54, states distinctly that hunger is no excuse for theft, but that is on the ground that there can be no such extreme necessity in this country. In the present case the prisoners were in circumstances where no assistance could be given. The essence of the crime of murder is intention, and here the intention of the prisoners was only to preserve their lives. …

Dec. 9.

The judgment of the Court (Lord Coleridge, C.J., Grove and Denman, JJ., Pollock and Huddleston, B-B.) was delivered by LORD COLERIDGE, C.J.

The two prisoners, Thomas Dudley and Edwin Stephens, were indicted for the murder of Richard Parker on the high seas on the 25th of July in the present year. They were tried before my Brother Huddleston at Exeter on the 6th of November, and under the direction of my learned Brother, the jury returned a special verdict, the legal effect of which has been argued before us, and on which we are now to pronounce judgment.

The special verdict as, after certain objections by Mr. Collins to which the Attorney General yielded, it is finally settled before us is as follows. (His Lordship read the special verdict as above set out.) From these facts, stated with the cold precision of a special verdict, it appears sufficiently that the prisoners were subject to terrible temptation, to sufferings which might break down the bodily power of the strongest man and try the conscience of the best. Other details yet more harrowing, facts still more loathsome and appalling, were presented to the jury, and are to be found recorded in my learned Brother's notes. But nevertheless this is clear, that the prisoners put to death a weak and unoffending boy upon the chance of preserving their own lives by feeding upon his flesh and blood after he was killed, and with the

certainty of depriving him of any possible chance of survival. The verdict finds in terms that "if the men had not fed upon the body of the boy they would probably not have survived," and that, "the boy being in a much weaker condition was likely to have died before them." They might possibly have been picked up next day by a passing ship; they might possibly not have been picked up at all; in either case it is obvious that the killing of the boy would have been an unnecessary and profitless act. It is found by the verdict that the boy was incapable of resistance, and, in fact, made none; and it is not even suggested that his death was due to any violence on his part attempted against, or even so much as feared by, those who killed him. Under these circumstances the jury say that they are ignorant whether those who killed him were guilty of murder, and have referred it to this Court to [p. 280] determine what is the legal consequence which follows from the facts which they have found.

There remains to be considered the real question in the case – whether killing under the circumstances set forth in the verdict be or be not murder. The contention that it could be anything else was, to the minds of us all, both new and strange, and we stopped the Attorney General in his negative argument in order that we might hear what could be said in support of a proposition which appeared to us to be at once dangerous, immoral, and opposed to all legal principle and analogy. All, no doubt, that can be said has been urged before us, and we are now to consider and determine what it amounts to. First it is said that it follows from various definitions of murder in books of authority, which definitions imply, if they do not state, the doctrine, that in order to save your own life you may lawfully take away the life of another, when that other is neither attempting nor threatening yours, nor is guilty of any illegal act whatever towards you or any one else. But if these definitions be looked at they will not be found to sustain this contention. … Now, except for the purpose of testing how far the conservation of a man's own life is in all cases and under all circumstances an absolute, unqualified, and paramount duty, we exclude from our consideration all the incidents of war. We are dealing with a case of private homicide, not one imposed upon men in the service of their Sovereign and in the defence of their country. Now it is admitted that the deliberate killing of this unoffending and unresisting boy was clearly murder, unless the killing can be [p. 287] justified by some well-recognised excuse admitted by the law. It is further admitted that there was in this case no such excuse, unless the killing was justified by what has been called "necessity." But the temptation to the act which existed here was not what the law has ever called necessity. Nor is this to be regretted. Though law and morality are not the same, and many things may be immoral which are not necessarily illegal, yet the absolute divorce of law from morality would be of fatal consequence; and such divorce would follow if the temptation to murder in this case were to be held by law an absolute defence of it. It is not so. To preserve one's life is generally speaking a duty, but it may be the plainest and the highest duty to sacrifice it. War is full of instances in which it is a man's duty not to live, but to die. The duty, in case of shipwreck, of a captain to his crew, of the crew to the passengers, of soldiers to women and children, as in the noble case of the Birkenhead; these duties impose on men the moral necessity, not of the preservations but of the sacrifice of their lives for others, from which in no country, least of all, it is to be hoped, in England, will men ever shrink as indeed, they have not shrunk. It is not correct, therefore, to say that there is any absolute or unqualified necessity to preserve one's life. "Necesse est ut eam, non ut vivam," is a saying of a Roman officer quoted by Lord Bacon himself with high eulogy in the very chapter on necessity to which so much reference has been made. It would be a very easy and cheap display of commonplace learning to quote from Greek and Latin authors, from Horace, from Juvenal, from Cicero, from Euripides, passage after passages, in which the duty of dying for others has been laid down in glowing and emphatic language as resulting from the principles of heathen ethics; it is enough in a Christian country to remind ourselves of the Great Example whom we profess to follow. It is not needful to point out the awful danger of admitting the principle which has been contended for. Who is to be the judge of this sort of necessity? By what measure is the comparative value of lives to be measured? Is it to be strength, or intellect, or what ? It is plain that the principle leaves to him who is to profit by it to determine the necessity which will justify him in deliberately taking another's life to save his own. In

this case the weakest, the youngest, the most unresisting, was chosen. Was it more [p. 288] necessary to kill him than one of the grown men? The answer must be "No" -

"So spake the Fiend, and with necessity,
The tyrant's plea, excused his devilish deeds."

It is not suggested that in this particular case the deeds were devilish, but it is quite plain that such a principle once admitted might be made the legal cloak for unbridled passion and atrocious crime. There is no safe path for judges to tread but to ascertain the law to the best of their ability and to declare it according to their judgment; and if in any case the law appears to be too severe on individuals, to leave it to the Sovereign to exercise that prerogative of mercy which the Constitution has intrusted to the hands fittest to dispense it.

It must not be supposed that in refusing to admit temptation to be an excuse for crime it is forgotten how terrible the temptation was; how awful the suffering; how hard in such trials to keep the judgment straight and the conduct pure. We are often compelled to set up standards we cannot reach ourselves, and to lay down rules which we could not ourselves satisfy. But a man has no right to declare temptation to be an excuse, though he might himself have yielded to it, nor allow compassion for the criminal to change or weaken in any manner the legal definition of the crime. It is therefore our duty to declare that the prisoners' act in this case was wilful murder, that the facts as stated in the verdict are no legal justification of the homicide; and to say that in our unanimous opinion the prisoners are upon this special verdict guilty, of murder. [n. 1]

THE COURT then proceeded to pass sentence of death upon the prisoners. [n. 2]

Solicitors for the Crown: The Solicitors for the Treasury.

Solicitors for the prisoners: Irvine & Hodges.

1. My brother Grove has furnished me with the following suggestion, too late to be embodied in the judgment but well worth preserving: " If the two accused men were justified in killing Parker, then if not rescued in time, two of the three survivors would be justified in killing the third, and of two who remained the stronger would be justified in killing the weaker, so that three men might be justifiably killed to give the fourth a chance of surviving." – C.

2. This sentence was afterwards commuted by the Crown to six months' imprisonment.

Jeremy Bentham, Principles of Morals and Legislation (1780)

A brief overview of the reading: *One familiar way to think about the right thing to do is to ask what will produce the greatest amount of happiness for the greatest number of people. This way of thinking about morality finds its clearest expression in the philosophy of Jeremy Bentham (1748-1832). In his Introduction to the Principles of Morals and Legislation (1780), Bentham argues that the principle of utility should be the basis of morality and law, and by utility he understands whatever promotes pleasure and prevents pain. Is the principle of utility the right guide to all questions of right and wrong?*

Chapter I. Of the Principle of Utility.

I. Nature 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. In words a man may pretend to abjure their empire: but in reality he will remain subject to it all the while. The principle of utility recognizes this subjection, and assumes it for the foundation of that system, the object of which is to rear the fabric of felicity by the hands of reason and of law. Systems which attempt to question it, deal in sounds instead of sense, in caprice instead of reason, in darkness instead of light.

But enough of metaphor and declamation: it is not by such means that moral science is to be improved.

II. The principle of utility is the foundation of the present work: it will be proper therefore at the outset to give an explicit and determinate account of what is meant by it. By the principle of utility is meant that principle which approves or disapproves of every action whatsoever. according to the tendency 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. I say of every action whatsoever, and therefore not only of every action of a private individual, but of every measure of government.

III. By utility is meant that property in any object, whereby it tends to produce benefit, advantage, pleasure, good, or happiness, (all this in the present case comes to the same thing) or (what comes again to the same thing) to prevent the happening of mischief, pain, evil, or unhappiness to the party whose interest is considered: if that party be the community in general, then the happiness of the community: if a particular individual, then the happiness of that individual.

IV. The interest of the community is one of the most general expressions that can occur in the phraseology of morals: no wonder that the meaning of it is often lost. When it has a meaning, it is this. The community is a fictitious body, composed of the individual persons who are considered as constituting as it were its members. The interest of the community then is, what is it?— the sum of the interests of the several members who compose it.

V. It is in vain to talk of the interest of the community, without understanding what is the interest of the individual. A thing is said to promote the interest, or to be for the interest, of an individual, when it tends to add to the sum total of his pleasures: or, what comes to the same thing, to diminish the sum total of his pains.

VI. An action then may be said to be conformable to then principle of utility, or, for shortness sake, to utility, (meaning with respect to the community at large) when the tendency it has to augment the happiness of the community is greater than any it has to diminish it.

VII. A measure of government (which is but a particular kind of action, performed by a particular person or persons) may be said to be conformable to or dictated by the principle of utility, when in like manner the tendency which it has to augment the happiness of the community is greater than any which it has to diminish it.

VIII. When an action, or in particular a measure of government, is supposed by a man to be conformable to the principle of utility, it may be convenient, for the purposes of discourse, to imagine a kind of law or dictate, called a law or dictate of utility: and to speak of the action in question, as being conformable to such law or dictate.

IX. A man may be said to be a partizan of the principle of utility, when the approbation or disapprobation he annexes to any action, or to any measure, is determined by and proportioned to the tendency which he conceives it to have to augment or to diminish the happiness of the community: or in other words, to its conformity or unconformity to the laws or dictates of utility.

X. Of an action that is conformable to the principle of utility one may always say either that it is one that ought to be done, or at least that it is not one that ought not to be done. One may say also, that it is right it should be done; at least that it is not wrong it should be done: that it is a right action; at least that it is not a wrong action. When thus interpreted, the words ought, and right and wrong and others of that stamp, have a meaning: when otherwise, they have none.

XI. Has the rectitude of this principle been ever formally contested? It should seem that it had, by those who have not known what they have been meaning. Is it 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.

XII. Not that there is or ever has been that human creature at breathing, however stupid or perverse, who has not on many, perhaps on most occasions of his life, deferred to it. By the natural constitution of the human frame, on most occasions of their lives men in general embrace this principle, without thinking of it: if not for the ordering of their own actions, yet for the trying of their own actions, as well as of those of other men. There have been, at the same time, not many perhaps, even of the most intelligent, who have been disposed to embrace it purely and without reserve. There are even few who have not taken some occasion or other to quarrel with it, either on account of their not understanding always how to apply it, or on account of some prejudice or other which they were afraid to examine into, or could not bear to part with. For such is the stuff that man is made of: in principle and in practice, in a right track and in a wrong one, the rarest of all human qualities is consistency.

XIII. When a man attempts to combat the principle of utility, it is with reasons drawn, without his being aware of it, from that very principle itself. His arguments, if they prove any thing, prove not that the principle is wrong, but that, according to the applications he supposes to be made of it, it is misapplied. Is it possible for a man to move the earth? Yes; but he must first find out another earth to stand upon.

XIV. To disprove the propriety of it by arguments is impossible; but, from the causes that have been mentioned, or from some confused or partial view of it, a man may happen to be disposed not to relish it. Where this is the case, if he thinks the settling of his opinions on such a subject worth the trouble, let him take the following steps, and at length, perhaps, he may come to reconcile himself to it.

1. Let him settle with himself, whether he would wish to discard this principle altogether; if so, let him consider what it is that all his reasonings (in matters of politics especially) can amount to?
2. If he would, let him settle with himself, whether he would judge and act without any principle, or whether there is any other he would judge an act by?
3. If there be, let him examine and satisfy himself whether the principle he thinks he has found is really any separate intelligible principle; or whether it be not a mere principle in words, a kind of phrase, which at bottom expresses neither more nor less than the mere averment of his own unfounded sentiments; that is, what in another person he might be apt to call caprice?
4. If he is inclined to think that his own approbation or disapprobation, annexed to the idea of an act, without any regard to its consequences, is a sufficient foundation for him to judge and act upon, let him ask himself whether his sentiment is to be a standard of right and wrong, with respect to every other man, or whether every man's sentiment has the same privilege of being a standard to itself?
5. In the first case, let him ask himself whether his principle is not despotical, and hostile to all the rest of human race?
6. In the second case, whether it is not anarchial, and whether at this rate there are not as many different standards of right and wrong as there are men? and whether even to the same man, the same thing, which is right today, may not (without the least change in its nature) be wrong tomorrow? and whether the same thing is not right and wrong in the same place at the same time? and in either case, whether all argument is not at an end? and whether, when two men have said, "I like this," and "I don't like it," they can (upon such a principle) have any thing more to say?
7. If he should have said to himself, No: for that the sentiment which he proposes as a standard must be grounded on

reflection, let him say on what particulars the reflection is to turn? if on particulars having relation to the utility of the act, then let him say whether this is not deserting his own principle, and borrowing assistance from that very one in opposition to which he sets it up: or if not on those particulars, on what other particulars?
8. If he should be for compounding the matter, and adopting his own principle in part, and the principle of utility in part, let him say how far he will adopt it?
9. When he has settled with himself where he will stop, then let him ask himself how he justifies to himself the adopting it so far? and why he will not adopt it any farther?
10. Admitting any other principle than the principle of utility to be a right principle, a principle that it is right for a man to pursue; admitting (what is not true) that the word right can have a meaning without reference to utility, let him say whether there is any such thing as a motive that a man can have to pursue the dictates of it: if there is, let him say what that motive is, and how it is to be distinguished from those which enforce the dictates of utility: if not, then lastly let him say what it is this other principle can be good for?

Chapter IV. Value of a Lot of Pleasure or Pain, How to be Measured.

I. Pleasures then, and the avoidance of pains, are the ends that the legislator has in view; it behoves him therefore to understand their value. Pleasures and pains are the instruments he has to work with: it behoves him therefore to understand their force, which is again, in other words, their value.

II. To a person considered by himself, the value of a pleasure or pain considered by itself, will be greater or less, according to the four following circumstances:
1. Its intensity.
2. Its duration.
3. Its certainty or uncertainty.
4. Its propinquity or remoteness.

III. These are the circumstances which are to be considered in estimating a pleasure or a pain considered each of them by itself. But when the value of any pleasure or pain is considered for the purpose of estimating the tendency of any act by which it is produced, there are two other circumstances to be taken into the account;
these are,
5. Its fecundity, or the chance it has of being followed by sensations of the same kind: that is, pleasures, if it be a pleasure: pains, if it be a pain.
6. Its purity, or the chance it has of not being followed by sensations of the opposite kind: that is, pains, if it be a pleasure: pleasures, if it be a pain.
These two last, however, are in strictness scarcely to be deemed properties of the pleasure or the pain itself; they are not, therefore, in strictness to be taken into the account of the value of that pleasure or that pain. They are in strictness to be deemed properties only of the act, or other event, by which such pleasure or pain has been produced; and accordingly are only to be taken into the account of the tendency of such act or such event.

IV. To a number of persons, with reference to each of whom to the value of a pleasure or a pain is considered, it will be greater or less, according to seven circumstances: to wit, the six preceding ones; viz.,
1. Its intensity.
2. Its duration.
3. Its certainty or uncertainty.
4. Its propinquity or remoteness.

5. Its fecundity.
6. Its purity.
And one other; to wit:
7. Its extent; that is, the number of persons to whom it extends; or (in other words) who are affected by it.

V. To take an exact account then of the general tendency of any act, by which the interests of a community are affected, proceed as follows. Begin with any one person of those whose interests seem most immediately to be affected by it: and take an account,
1. Of the value of each distinguishable pleasure which appears to be produced by it in the first instance.
2. Of the value of each pain which appears to be produced by it in the first instance.
3. Of the value of each pleasure which appears to be produced by it after the first. This constitutes the fecundity of the first pleasure and the impurity of the first pain.
4. Of the value of each pain which appears to be produced by it after the first. This constitutes the fecundity of the first pain, and the impurity of the first pleasure.
5. Sum up all the values of all the pleasures on the one side, and those of all the pains on the other. The balance, if it be on the side of pleasure, will give the good tendency of the act upon the whole, with respect to the interests of that individual person; if on the side of pain, the bad tendency of it upon the whole.
6. Take an account of the number of persons whose interests appear to be concerned; and repeat the above process with respect to each. Sum up the numbers expressive of the degrees of good tendency, which the act has, with respect to each individual, in regard to whom the tendency of it is good upon the whole: do this again with respect to each individual, in regard to whom the tendency of it is good upon the whole: do this again with respect to each individual, in regard to whom the tendency of it is bad upon the whole. Take the balance which if on the side of pleasure, will give the general good tendency of the act, with respect to the total number or community of individuals concerned; if on the side of pain, the general evil tendency, with respect to the same community.

VI. It is not to be expected that this process should be strictly pursued previously to every moral judgment, or to every legislative or judicial operation. It may, however, be always kept in view: and as near as the process actually pursued on these occasions approaches to it, so near will such process approach to the character of an exact one.

VII. The same process is alike applicable to pleasure and pain, in whatever shape they appear: and by whatever denomination they are distinguished: to pleasure, whether it be called good (which is properly the cause or instrument of pleasure) or profit (which is distant pleasure, or the cause or instrument of, distant pleasure,) or convenience, or advantage, benefit, emolument, happiness, and so forth: to pain, whether it be called evil, (which corresponds to good) or mischief, or inconvenience or disadvantage, or loss, or unhappiness, and so forth.

VIII. Nor is this a novel and unwarranted, any more than it is a useless theory. In all this there is nothing but what the practice of mankind, wheresoever they have a clear view of their own interest, is perfectly conformable to. An article of property, an estate in land, for instance, is valuable, on what account? On account of the pleasures of all kinds which it enables a man to produce, and what comes to the same thing the pains of all kinds which it enables him to avert. But the value of such an article of property is universally understood to rise or fall according to the length or shortness of the time which a man has in it: the certainty or uncertainty of its coming into possession: and the nearness or remoteness of the time at which, if at all, it is to come into possession. As to the intensity of the pleasures which a man may derive from it, this is never thought of, because it depends upon the use which each particular person may come to make of it; which cannot be estimated till the particular pleasures he may come to derive from it, or the

particular pains he may come to exclude by means of it, are brought to view. For the same reason, neither does he think of the fecundity or purity of those pleasures. Thus much for pleasure and pain, happiness and unhappiness, in general. We come now to consider the several particular kinds of pain and pleasure.

J.S. Mill, Utilitarianism (1863)

A brief overview of the reading: *Jeremy Bentham's (1748-1832) principle of utility is open to the objection that it may well sacrifice the rights of the minority for the sake of the happiness of the majority. John Stuart Mill (1806-1873), himself a utilitarian, sought to rescue utilitarianism from this and other objections. In his essay Utilitarianism, Mill argues that respect for individuals rights as "the most sacred and binding part of morality" is compatible with the idea that justice rests ultimately on utilitarian considerations. But is Mill right to be confident? Can the principle of utility support the notion that some rights should be upheld even if doing so makes the majority very unhappy?*

Chapter I. General Remarks.

THERE ARE few circumstances among those which make up the present condition of human knowledge, more unlike what might have been expected, or more significant of the backward state in which speculation on the most important subjects still lingers, than the little progress which has been made in the decision of the controversy respecting the criterion of right and wrong. From the dawn of philosophy, the question concerning the summum bonum, or, what is the same thing, concerning the foundation of morality, has been accounted the main problem in speculative thought, has occupied the most gifted intellects, and divided them into sects and schools, carrying on a vigorous warfare against one another. And after more than two thousand years the same discussions continue, philosophers are still ranged under the same contending banners, and neither thinkers nor mankind at large seem nearer to being unanimous on the subject, than when the youth Socrates listened to the old Protagoras, and asserted (if Plato's dialogue be grounded on a real conversation) the theory of utilitarianism against the popular morality of the so-called sophist. It is true that similar confusion and uncertainty, and in some cases similar discordance, exist respecting the first principles of all the sciences, not excepting that which is deemed the most certain of them, mathematics; without much impairing, generally indeed without impairing at all, the trustworthiness of the conclusions of those sciences. An apparent anomaly, the explanation of which is, that the detailed doctrines of a science are not usually deduced from, nor depend for their evidence upon, what are called its first principles. Were it not so, there would be no science more

precarious, or whose conclusions were more insufficiently made out, than algebra; which derives none of its certainty from what are commonly taught to learners as its elements, since these, as laid down by some of its most eminent teachers, are as full of fictions as English law, and of mysteries as theology. The truths which are ultimately accepted as the first principles of a science, are really the last results of metaphysical analysis, practised on the elementary notions with which the science is conversant; and their relation to the science is not that of foundations to an edifice, but of roots to a tree, which may perform their office equally well though they be never dug down to and exposed to light. But though in science the particular truths precede the general theory, the contrary might be expected to be the case with a practical art, such as morals or legislation. All action is for the sake of some end, and rules of action, it seems natural to suppose, must take their whole character and colour from the end to which they are subservient. When we engage in a pursuit, a clear and precise conception of what we are pursuing would seem to be the first thing we need, instead of the last we are to look forward to. A test of right and wrong must be the means, one would think, of ascertaining what is right or wrong, and not a consequence of having already ascertained it.

The difficulty is not avoided by having recourse to the popular theory of a natural faculty, a sense or instinct, informing us of right and wrong. For- besides that the existence of such- a moral instinct is itself one of the matters in dispute- those believers in it who have any pretensions to philosophy, have been obliged to abandon the idea that it discerns what is right or wrong in the particular case in hand, as our other senses discern the sight or sound actually present. Our moral faculty, according to all those of its interpreters who are entitled to the name of thinkers, supplies us only with the general principles of moral judgments; it is a branch of our reason, not of our sensitive faculty; and must be looked to for the abstract doctrines of morality, not for perception of it in the concrete. The intuitive, no less than what may be termed the inductive, school of ethics, insists on the necessity of general laws. They both agree that the morality of an individual action is not a question of direct perception, but of the application of a law to an individual case. They recognise also, to a great extent, the same moral laws; but differ as to their evidence, and the source from which they derive their authority. According to the one opinion, the principles of morals are evident a priori, requiring nothing to command assent, except that the meaning of the terms be understood. According to the other doctrine, right and wrong, as well as truth and falsehood, are questions of observation and experience. But both hold equally that morality must be deduced from principles; and the intuitive school affirm as strongly as the inductive, that there is a science of morals. Yet they seldom attempt to make out a list of the a priori principles which are to serve as the premises of the science; still more rarely do they make any effort to reduce those various principles to one first principle, or common ground of obligation. They either assume the ordinary precepts of morals as of a priori authority, or they lay down as the common groundwork of those maxims, some generality much less obviously authoritative than the maxims themselves, and which has never succeeded in gaining popular acceptance. Yet to support their pretensions there ought either to be some one fundamental principle or law, at the root of all morality, or if there be several, there should be a determinate order of precedence among them; and the one principle, or the rule for deciding between the various principles when they conflict, ought to be self-evident.

To inquire how far the bad effects of this deficiency have been mitigated in practice, or to what extent the moral beliefs of mankind have been vitiated or made uncertain by the absence of any distinct recognition of an ultimate standard, would imply a complete survey and criticism, of past and present ethical doctrine. It would, however, be easy to show that whatever steadiness or consistency these moral beliefs have, attained, has been mainly due to the tacit influence of a standard not recognised. Although the non-existence of an acknowledged first principle has made ethics not so much a guide as a consecration of men’s actual sentiments, still, as men’s sentiments, both of favour and of aversion, are greatly influenced by what they suppose to be the effects of things upon their happiness, the principle of utility, or as Bentham latterly called it, the greatest happiness principle, has had

a large share in forming the moral doctrines even of those who most scornfully reject its authority. Nor is there any school of thought which refuses to admit that the influence of actions on happiness is a most material and even predominant consideration in many of the details of morals, however unwilling to acknowledge it as the fundamental principle of morality, and the source of moral obligation. I might go much further, and say that to all those a priori moralists who deem it necessary to argue at all, utilitarian arguments are indispensable. It is not my present purpose to criticise these thinkers; but I cannot help referring, for illustration, to a systematic treatise by one of the most illustrious of them, the Metaphysics of Ethics, by Kant. This remarkable man, whose system of thought will long remain one of the landmarks in the history of philosophical speculation, does, in the treatise in question, lay down a universal first principle as the origin and ground of moral obligation; it is this: “So act, that the rule on which thou actest would admit of being adopted as a law by all rational beings.” But when he begins to deduce from this precept any of the actual duties of morality, he fails, almost grotesquely, to show that there would be any contradiction, any logical (not to say physical) impossibility, in the adoption by all rational beings of the most outrageously immoral rules of conduct. All he shows is that the consequences of their universal adoption would be such as no one would choose to incur.

On the present occasion, I shall, without further discussion of the other theories, attempt to contribute something towards the understanding and appreciation of the Utilitarian or Happiness theory, and towards such proof as it is susceptible of. It is evident that this cannot be proof in the ordinary and popular meaning of the term. Questions of ultimate ends are not amenable to direct proof. Whatever can be proved to be good, must be so by being shown to be a means to something admitted to be good without proof. The medical art is proved to be good by its conducing to health; but how is it possible to prove that health is good? The art of music is good, for the reason, among others, that it produces pleasure; but what proof is it possible to give that pleasure is good? If, then, it is asserted that there is a comprehensive formula, including all things which are in themselves good, and that whatever else is good, is not so as an end, but as a mean, the formula may be accepted or rejected, but is not a subject of what is commonly understood by proof. We are not, however, to infer that its acceptance or rejection must depend on blind impulse, or arbitrary choice. There is a larger meaning of the word proof, in which this question is as amenable to it as any other of the disputed questions of philosophy. The subject is within the cognisance of the rational faculty; and neither does that faculty deal with it solely in the way of intuition. Considerations may be presented capable of determining the intellect either to give or withhold its assent to the doctrine; and this is equivalent to proof.

We shall examine presently of what nature are these considerations; in what manner they apply to the case, and what rational grounds, therefore, can be given for accepting or rejecting the utilitarian formula. But it is a preliminary condition of rational acceptance or rejection, that the formula should be correctly understood. I believe that the very imperfect notion ordinarily formed of its meaning, is the chief obstacle which impedes its reception; and that could it be cleared, even from only the grosser misconceptions, the question would be greatly simplified, and a large proportion of its difficulties removed. Before, therefore, I attempt to enter into the philosophical grounds which can be given for assenting to the utilitarian standard, I shall offer some illustrations of the doctrine itself; with the view of showing more clearly what it is, distinguishing it from what it is not, and disposing of such of the practical objections to it as either originate in, or are closely connected with, mistaken interpretations of its meaning. Having thus prepared the ground, I shall afterwards endeavour to throw such light as I can upon the question, considered as one of philosophical theory.

Chapter 2. What Utilitarianism Is.

A PASSING remark is all that needs be given to the ignorant blunder of supposing that those who stand up for utility as the test of right and wrong, use the term in that restricted and merely colloquial sense in which utility is opposed to pleasure. An apology is due to the philosophical opponents of utilitarianism, for even the momentary appearance of confounding them with any one capable of so absurd a misconception; which is the more extraordinary, inasmuch as the contrary accusation, of referring everything to pleasure, and that too in its grossest form, is another of the common charges against utilitarianism: and, as has been pointedly remarked by an able writer, the same sort of persons, and often the very same persons, denounce the theory "as impracticably dry when the word utility precedes the word pleasure, and as too practicably voluptuous when the word pleasure precedes the word utility." Those who know anything about the matter are aware that every writer, from Epicurus to Bentham, who maintained the theory of utility, meant by it, not something to be contradistinguished from pleasure, but pleasure itself, together with exemption from pain; and instead of opposing the useful to the agreeable or the ornamental, have always declared that the useful means these, among other things. Yet the common herd, including the herd of writers, not only in newspapers and periodicals, but in books of weight and pretension, are perpetually falling into this shallow mistake. Having caught up the word utilitarian, while knowing nothing whatever about it but its sound, they habitually express by it the rejection, or the neglect, of pleasure in some of its forms; of beauty, of ornament, or of amusement. Nor is the term thus ignorantly misapplied solely in disparagement, but occasionally in compliment; as though it implied superiority to frivolity and the mere pleasures of the moment. And this perverted use is the only one in which the word is popularly known, and the one from which the new generation are acquiring their sole notion of its meaning. Those who introduced the word, but who had for many years discontinued it as a distinctive appellation, may well feel themselves called upon to resume it, if by doing so they can hope to contribute anything towards rescuing it from this utter degradation.[1]

The creed which accepts as the foundation of morals, Utility, or the Greatest Happiness Principle, holds that actions are right in proportion as they tend to promote happiness, wrong as they tend to produce the reverse of happiness. By happiness is intended pleasure, and the absence of pain; by unhappiness, pain, and the privation of pleasure. To give a clear view of the moral standard set up by the theory, much more requires to be said; in particular, what things it includes in the ideas of pain and pleasure; and to what extent this is left an open question. But these supplementary explanations do not affect the theory of life on which this theory of morality is grounded- namely, that pleasure, and freedom from pain, are the only things desirable as ends; and that all desirable things (which are as numerous in the utilitarian as in any other scheme) are desirable either for the pleasure inherent in themselves, or as means to the promotion of pleasure and the prevention of pain.

Now, such a theory of life excites in many minds, and among them in some of the most estimable in feeling and purpose, inveterate dislike. To suppose that life has (as they express it) no higher end than pleasure- no better and nobler object of desire and pursuit- they designate as utterly mean and grovelling; as a doctrine worthy only of swine, to whom the followers of Epicurus were, at a very early period, contemptuously likened; and modern holders of the doctrine are occasionally made the subject of equally polite comparisons by its German, French, and English assailants.

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[1] The author of this essay has reason for believing himself to be the first person who brought the word utilitarian into use. He did not invent it, but adopted it from a passing expression in Mr. Galt's Annals of the Parish. After using it as a designation for several years, he and others abandoned it from a growing dislike to anything resembling a badge or watchword of sectarian distinction. But as a name for one single opinion, not a set of opinions- to denote the recognition of utility as a standard, not any particular way of applying it- the term supplies a want in the language, and offers, in many cases, a convenient mode of avoiding tiresome circumlocution.

When thus attacked, the Epicureans have always answered, that it is not they, but their accusers, who represent human nature in a degrading light; since the accusation supposes human beings to be capable of no pleasures except those of which swine are capable. If this supposition were true, the charge could not be gainsaid, but would then be no longer an imputation; for if the sources of pleasure were precisely the same to human beings and to swine, the rule of life which is good enough for the one would be good enough for the other. The comparison of the Epicurean life to that of beasts is felt as degrading, precisely because a beast's pleasures do not satisfy a human being's conceptions of happiness. Human beings have faculties more elevated than the animal appetites, and when once made conscious of them, do not regard anything as happiness which does not include their gratification. I do not, indeed, consider the Epicureans to have been by any means faultless in drawing out their scheme of consequences from the utilitarian principle. To do this in any sufficient manner, many Stoic, as well as Christian elements require to be included. But there is no known Epicurean theory of life which does not assign to the pleasures of the intellect, of the feelings and imagination, and of the moral sentiments, a much higher value as pleasures than to those of mere sensation. It must be admitted, however, that utilitarian writers in general have placed the superiority of mental over bodily pleasures chiefly in the greater permanency, safety, uncostliness, etc., of the former- that is, in their circumstantial advantages rather than in their intrinsic nature. And on all these points utilitarians have fully proved their case; but they might have taken the other, and, as it may be called, higher ground, with entire consistency. It is quite compatible with the principle of utility to recognise the fact, that some kinds of pleasure are more desirable and more valuable than others. It would be absurd that while, in estimating all other things, quality is considered as well as quantity, the estimation of pleasures should be supposed to depend on quantity alone.

If I am asked, what I mean by difference of quality in pleasures, or what makes one pleasure more valuable than another, merely as a pleasure, except its being greater in amount, there is but one possible answer. Of two pleasures, if there be one to which all or almost all who have experience of both give a decided preference, irrespective of any feeling of moral obligation to prefer it, that is the more desirable pleasure. If one of the two is, by those who are competently acquainted with both, placed so far above the other that they prefer it, even though knowing it to be attended with a greater amount of discontent, and would not resign it for any quantity of the other pleasure which their nature is capable of, we are justified in ascribing to the preferred enjoyment a superiority in quality, so far outweighing quantity as to render it, in comparison, of small account.

Now it is an unquestionable fact that those who are equally acquainted with, and equally capable of appreciating and enjoying, both, do give a most marked preference to the manner of existence which employs their higher faculties. Few human creatures would consent to be changed into any of the lower animals, for a promise of the fullest allowance of a beast's pleasures; no intelligent human being would consent to be a fool, no instructed person would be an ignoramus, no person of feeling and conscience would be selfish and base, even though they should be persuaded that the fool, the dunce, or the rascal is better satisfied with his lot than they are with theirs. They would not resign what they possess more than he for the most complete satisfaction of all the desires which they have in common with him. If they ever fancy they would, it is only in cases of unhappiness so extreme, that to escape from it they would exchange their lot for almost any other, however undesirable in their own eyes. A being of higher faculties requires more to make him happy, is capable probably of more acute suffering, and certainly accessible to it at more points, than one of an inferior type; but in spite of these liabilities, he can never really wish to sink into what he feels to be a lower grade of existence. We may give what explanation we please of this unwillingness; we may attribute it to pride, a name which is given indiscriminately to some of the most and to some of the least estimable feelings of which mankind are capable: we may refer it to the love of liberty and personal independence, an appeal to which was with the Stoics one of the most effective means for the inculcation of it; to the love of power, or to the love

of excitement, both of which do really enter into and contribute to it: but its most appropriate appellation is a sense of dignity, which all human beings possess in one form or other, and in some, though by no means in exact, proportion to their higher faculties, and which is so essential a part of the happiness of those in whom it is strong, that nothing which conflicts with it could be, otherwise than momentarily, an object of desire to them.

Whoever supposes that this preference takes place at a sacrifice of happiness- that the superior being, in anything like equal circumstances, is not happier than the inferior- confounds the two very different ideas, of happiness, and content. It is indisputable that the being whose capacities of enjoyment are low, has the greatest chance of having them fully satisfied; and a highly endowed being will always feel that any happiness which he can look for, as the world is constituted, is imperfect. But he can learn to bear its imperfections, if they are at all bearable; and they will not make him envy the being who is indeed unconscious of the imperfections, but only because he feels not at all the good which those imperfections qualify. It is better to be a human being dissatisfied than a pig satisfied; better to be Socrates dissatisfied than a fool satisfied. And if the fool, or the pig, are a different opinion, it is because they only know their own side of the question. The other party to the comparison knows both sides.

It may be objected, that many who are capable of the higher pleasures, occasionally, under the influence of temptation, postpone them to the lower. But this is quite compatible with a full appreciation of the intrinsic superiority of the higher. Men often, from infirmity of character, make their election for the nearer good, though they know it to be the less valuable; and this no less when the choice is between two bodily pleasures, than when it is between bodily and mental. They pursue sensual indulgences to the injury of health, though perfectly aware that health is the greater good.

It may be further objected, that many who begin with youthful enthusiasm for everything noble, as they advance in years sink into indolence and selfishness. But I do not believe that those who undergo this very common change, voluntarily choose the lower description of pleasures in preference to the higher. I believe that before they devote themselves exclusively to the one, they have already become incapable of the other. Capacity for the nobler feelings is in most natures a very tender plant, easily killed, not only by hostile influences, but by mere want of sustenance; and in the majority of young persons it speedily dies away if the occupations to which their position in life has devoted them, and the society into which it has thrown them, are not favourable to keeping that higher capacity in exercise. Men lose their high aspirations as they lose their intellectual tastes, because they have not time or opportunity for indulging them; and they addict themselves to inferior pleasures, not because they deliberately prefer them, but because they are either the only ones to which they have access, or the only ones which they are any longer capable of enjoying. It may be questioned whether any one who has remained equally susceptible to both classes of pleasures, ever knowingly and calmly preferred the lower; though many, in all ages, have broken down in an ineffectual attempt to combine both.

From this verdict of the only competent judges, I apprehend there can be no appeal. On a question which is the best worth having of two pleasures, or which of two modes of existence is the most grateful to the feelings, apart from its moral attributes and from its consequences, the judgment of those who are qualified by knowledge of both, or, if they differ, that of the majority among them, must be admitted as final. And there needs be the less hesitation to accept this judgment respecting the quality of pleasures, since there is no other tribunal to be referred to even on the question of quantity. What means are there of determining which is the acutest of two pains, or the intensest of two pleasurable sensations, except the general suffrage of those who are familiar with both? Neither pains nor pleasures are homogeneous, and pain is always heterogeneous with pleasure. What is there to decide whether a particular

pleasure is worth purchasing at the cost of a particular pain, except the feelings and judgment of the experienced? When, therefore, those feelings and judgment declare the pleasures derived from the higher faculties to be preferable in kind, apart from the question of intensity, to those of which the animal nature, disjoined from the higher faculties, is suspectible, they are entitled on this subject to the same regard.

I have dwelt on this point, as being a necessary part of a perfectly just conception of Utility or Happiness, considered as the directive rule of human conduct. But it is by no means an indispensable condition to the acceptance of the utilitarian standard; for that standard is not the agent's own greatest happiness, but the greatest amount of happiness altogether; and if it may possibly be doubted whether a noble character is always the happier for its nobleness, there can be no doubt that it makes other people happier, and that the world in general is immensely a gainer by it. Utilitarianism, therefore, could only attain its end by the general cultivation of nobleness of character, even if each individual were only benefited by the nobleness of others, and his own, so far as happiness is concerned, were a sheer deduction from the benefit. But the bare enunciation of such an absurdity as this last, renders refutation superfluous.

According to the Greatest Happiness Principle, as above explained, the ultimate end, with reference to and for the sake of which all other things are desirable (whether we are considering our own good or that of other people), is an existence exempt as far as possible from pain, and as rich as possible in enjoyments, both in point of quantity and quality; the test of quality, and the rule for measuring it against quantity, being the preference felt by those who in their opportunities of experience, to which must be added their habits of self-consciousness and self-observation, are best furnished with the means of comparison. This, being, according to the utilitarian opinion, the end of human action, is necessarily also the standard of morality; which may accordingly be defined, the rules and precepts for human conduct, by the observance of which an existence such as has been described might be, to the greatest extent possible, secured to all mankind; and not to them only, but, so far as the nature of things admits, to the whole sentient creation.

Against this doctrine, however, arises another class of objectors, who say that happiness, in any form, cannot be the rational purpose of human life and action; because, in the first place, it is unattainable: and they contemptuously ask, what right hast thou to be happy? a question which Mr. Carlyle clenches by the addition, What right, a short time ago, hadst thou even to be? Next, they say, that men can do without happiness; that all noble human beings have felt this, and could not have become noble but by learning the lesson of Entsagen, or renunciation; which lesson, thoroughly learnt and submitted to, they affirm to be the beginning and necessary condition of all virtue.

The first of these objections would go to the root of the matter were it well founded; for if no happiness is to be had at all by human beings, the attainment of it cannot be the end of morality, or of any rational conduct. Though, even in that case, something might still be said for the utilitarian theory; since utility includes not solely the pursuit of happiness, but the prevention or mitigation of unhappiness; and if the former aim be chimerical, there will be all the greater scope and more imperative need for the latter, so long at least as mankind think fit to live, and do not take refuge in the simultaneous act of suicide recommended under certain conditions by Novalis. When, however, it is thus positively asserted to be impossible that human life should be happy, the assertion, if not something like a verbal quibble, is at least an exaggeration. If by happiness be meant a continuity of highly pleasurable excitement, it is evident enough that this is impossible. A state of exalted pleasure lasts only moments, or in some cases, and with some intermissions, hours or days, and is the occasional brilliant flash of enjoyment, not its permanent and steady

flame. Of this the philosophers who have taught that happiness is the end of life were as fully aware as those who taunt them. The happiness which they meant was not a life of rapture; but moments of such, in an existence made up of few and transitory pains, many and various pleasures, with a decided predominance of the active over the passive, and having as the foundation of the whole, not to expect more from life than it is capable of bestowing. A life thus composed, to those who have been fortunate enough to obtain it, has always appeared worthy of the name of happiness. And such an existence is even now the lot of many, during some considerable portion of their lives. The present wretched education, and wretched social arrangements, are the only real hindrance to its being attainable by almost all.

The objectors perhaps may doubt whether human beings, if taught to consider happiness as the end of life, would be satisfied with such a moderate share of it. But great numbers of mankind have been satisfied with much less. The main constituents of a satisfied life appear to be two, either of which by itself is often found sufficient for the purpose: tranquillity, and excitement. With much tranquillity, many find that they can be content with very little pleasure: with much excitement, many can reconcile themselves to a considerable quantity of pain. There is assuredly no inherent impossibility in enabling even the mass of mankind to unite both; since the two are so far from being incompatible that they are in natural alliance, the prolongation of either being a preparation for, and exciting a wish for, the other. It is only those in whom indolence amounts to a vice, that do not desire excitement after an interval of repose: it is only those in whom the need of excitement is a disease, that feel the tranquillity which follows excitement dull and insipid, instead of pleasurable in direct proportion to the excitement which preceded it. When people who are tolerably fortunate in their outward lot do not find in life sufficient enjoyment to make it valuable to them, the cause generally is, caring for nobody but themselves. To those who have neither public nor private affections, the excitements of life are much curtailed, and in any case dwindle in value as the time approaches when all selfish interests must be terminated by death: while those who leave after them objects of personal affection, and especially those who have also cultivated a fellow-feeling with the collective interests of mankind, retain as lively an interest in life on the eve of death as in the vigour of youth and health. Next to selfishness, the principal cause which makes life unsatisfactory is want of mental cultivation. A cultivated mind – I do not mean that of a philosopher, but any mind to which the fountains of knowledge have been opened, and which has been taught, in any tolerable degree, to exercise its faculties- finds sources of inexhaustible interest in all that surrounds it; in the objects of nature, the achievements of art, the imaginations of poetry, the incidents of history, the ways of mankind, past and present, and their prospects in the future. It is possible, indeed, to become indifferent to all this, and that too without having exhausted a thousandth part of it; but only when one has had from the beginning no moral or human interest in these things, and has sought in them only the gratification of curiosity.

Now there is absolutely no reason in the nature of things why an amount of mental culture sufficient to give an intelligent interest in these objects of contemplation, should not be the inheritance of every one born in a civilised country. As little is there an inherent necessity that any human being should be a selfish egotist, devoid of every feeling or care but those which centre in his own miserable individuality. Something far superior to this is sufficiently common even now, to give ample earnest of what the human species may be made. Genuine private affections and a sincere interest in the public good, are possible, though in unequal degrees, to every rightly brought up human being. In a world in which there is so much to interest, so much to enjoy, and so much also to correct and improve, every one who has this moderate amount of moral and intellectual requisites is capable of an existence which may be called enviable; and unless such a person, through bad laws, or subjection to the will of others, is denied the liberty to use the sources of happiness within his reach, he will not fail to find this enviable existence, if he escape the positive evils of life, the great sources of physical and mental suffering- such as indigence, disease, and the unkindness,

worthlessness, or premature loss of objects of affection. The main stress of the problem lies, therefore, in the contest with these calamities, from which it is a rare good fortune entirely to escape; which, as things now are, cannot be obviated, and often cannot be in any material degree mitigated. Yet no one whose opinion deserves a moment's consideration can doubt that most of the great positive evils of the world are in themselves removable, and will, if human affairs continue to improve, be in the end reduced within narrow limits. Poverty, in any sense implying suffering, may be completely extinguished by the wisdom of society, combined with the good sense and providence of individuals. Even that most intractable of enemies, disease, may be indefinitely reduced in dimensions by good physical and moral education, and proper control of noxious influences; while the progress of science holds out a promise for the future of still more direct conquests over this detestable foe. And every advance in that direction relieves us from some, not only of the chances which cut short our own lives, but, what concerns us still more, which deprive us of those in whom our happiness is wrapt up. As for vicissitudes of fortune, and other disappointments connected with worldly circumstances, these are principally the effect either of gross imprudence, of ill-regulated desires, or of bad or imperfect social institutions.

All the grand sources, in short, of human suffering are in a great degree, many of them almost entirely, conquerable by human care and effort; and though their removal is grievously slow- though a long succession of generations will perish in the breach before the conquest is completed, and this world becomes all that, if will and knowledge were not wanting, it might easily be made- yet every mind sufficiently intelligent and generous to bear a part, however small and unconspicuous, in the endeavour, will draw a noble enjoyment from the contest itself, which he would not for any bribe in the form of selfish indulgence consent to be without.

And this leads to the true estimation of what is said by the objectors concerning the possibility, and the obligation, of learning to do without happiness. Unquestionably it is possible to do without happiness; it is done involuntarily by nineteen-twentieths of mankind, even in those parts of our present world which are least deep in barbarism; and it often has to be done voluntarily by the hero or the martyr, for the sake of something which he prizes more than his individual happiness. But this something, what is it, unless the happiness of others or some of the requisites of happiness? It is noble to be capable of resigning entirely one's own portion of happiness, or chances of it: but, after all, this self-sacrifice must be for some end; it is not its own end; and if we are told that its end is not happiness, but virtue, which is better than happiness, I ask, would the sacrifice be made if the hero or martyr did not believe that it would earn for others immunity from similar sacrifices? Would it be made if he thought that his renunciation of happiness for himself would produce no fruit for any of his fellow creatures, but to make their lot like his, and place them also in the condition of persons who have renounced happiness? All honour to those who can abnegate for themselves the personal enjoyment of life, when by such renunciation they contribute worthily to increase the amount of happiness in the world; but he who does it, or professes to do it, for any other purpose, is no more deserving of admiration than the ascetic mounted on his pillar. He may be an inspiriting proof of what men can do, but assuredly not an example of what they should.

Though it is only in a very imperfect state of the world's arrangements that any one can best serve the happiness of others by the absolute sacrifice of his own, yet so long as the world is in that imperfect state, I fully acknowledge that the readiness to make such a sacrifice is the highest virtue which can be found in man. I will add, that in this condition the world, paradoxical as the assertion may be, the conscious ability to do without happiness gives the best prospect of realising, such happiness as is attainable. For nothing except that consciousness can raise a person above the chances of life, by making him feel that, let fate and fortune do their worst, they have not power to subdue him: which, once felt, frees him from excess of anxiety concerning the evils of life, and enables him, like many

a Stoic in the worst times of the Roman Empire, to cultivate in tranquillity the sources of satisfaction accessible to him, without concerning himself about the uncertainty of their duration, any more than about their inevitable end. Meanwhile, let utilitarians never cease to claim the morality of self devotion as a possession which belongs by as good a right to them, as either to the Stoic or to the Transcendentalist. The utilitarian morality does recognise in human beings the power of sacrificing their own greatest good for the good of others. It only refuses to admit that the sacrifice is itself a good. A sacrifice which does not increase, or tend to increase, the sum total of happiness, it considers as wasted. The only self-renunciation which it applauds, is devotion to the happiness, or to some of the means of happiness, of others; either of mankind collectively, or of individuals within the limits imposed by the collective interests of mankind.

I must again repeat, what the assailants of utilitarianism seldom have the justice to acknowledge, that the happiness which forms the utilitarian standard of what is right in conduct, is not the agent's own happiness, but that of all concerned. As between his own happiness and that of others, utilitarianism requires him to be as strictly impartial as a disinterested and benevolent spectator. In the golden rule of Jesus of Nazareth, we read the complete spirit of the ethics of utility. To do as you would be done by, and to love your neighbour as yourself, constitute the ideal perfection of utilitarian morality. As the means of making the nearest approach to this ideal, utility would enjoin, first, that laws and social arrangements should place the happiness, or (as speaking practically it may be called) the interest, of every individual, as nearly as possible in harmony with the interest of the whole; and secondly, that education and opinion, which have so vast a power over human character, should so use that power as to establish in the mind of every individual an indissoluble association between his own happiness and the good of the whole; especially between his own happiness and the practice of such modes of conduct, negative and positive, as regard for the universal happiness prescribes; so that not only he may be unable to conceive the possibility of happiness to himself, consistently with conduct opposed to the general good, but also that a direct impulse to promote the general good may be in every individual one of the habitual motives of action, and the sentiments connected therewith may fill a large and prominent place in every human being's sentient existence. If the, impugners of the utilitarian morality represented it to their own minds in this its, true character, I know not what recommendation possessed by any other morality they could possibly affirm to be wanting to it; what more beautiful or more exalted developments of human nature any other ethical system can be supposed to foster, or what springs of action, not accessible to the utilitarian, such systems rely on for giving effect to their mandates.

The objectors to utilitarianism cannot always be charged with representing it in a discreditable light. On the contrary, those among them who entertain anything like a just idea of its disinterested character, sometimes find fault with its standard as being too high for humanity. They say it is exacting too much to require that people shall always act from the inducement of promoting the general interests of society. But this is to mistake the very meaning of a standard of morals, and confound the rule of action with the motive of it. It is the business of ethics to tell us what are our duties, or by what test we may know them; but no system of ethics requires that the sole motive of all we do shall be a feeling of duty; on the contrary, ninety-nine hundredths of all our actions are done from other motives, and rightly so done, if the rule of duty does not condemn them. It is the more unjust to utilitarianism that this particular misapprehension should be made a ground of objection to it, inasmuch as utilitarian moralists have gone beyond almost all others in affirming that the motive has nothing to do with the morality of the action, though much with the worth of the agent. He who saves a fellow creature from drowning does what is morally right, whether his motive be duty, or the hope of being paid for his trouble; he who betrays the friend that trusts him, is guilty of a crime, even if his object be to serve another friend to whom he is under greater obligations.

But to speak only of actions done from the motive of duty, and in direct obedience to principle: it is a misapprehension of the utilitarian mode of thought, to conceive it as implying that people should fix their minds upon so wide a generality as the world, or society at large. The great majority of good actions are intended not for the benefit of the world, but for that of individuals, of which the good of the world is made up; and the thoughts of the most virtuous man need not on these occasions travel beyond the particular persons concerned, except so far as is necessary to assure himself that in benefiting them he is not violating the rights, that is, the legitimate and authorised expectations, of any one else. The multiplication of happiness is, according to the utilitarian ethics, the object of virtue: the occasions on which any person (except one in a thousand) has it in his power to do this on an extended scale, in other words to be a public benefactor, are but exceptional; and on these occasions alone is he called on to consider public utility; in every other case, private utility, the interest or happiness of some few persons, is all he has to attend to. Those alone the influence of whose actions extends to society in general, need concern themselves habitually about large an object. In the case of abstinences indeed- of things which people forbear to do from moral considerations, though the consequences in the particular case might be beneficial- it would be unworthy of an intelligent agent not to be consciously aware that the action is of a class which, if practised generally, would be generally injurious, and that this is the ground of the obligation to abstain from it. The amount of regard for the public interest implied in this recognition, is no greater than is demanded by every system of morals, for they all enjoin to abstain from whatever is manifestly pernicious to society.

The same considerations dispose of another reproach against the doctrine of utility, founded on a still grosser misconception of the purpose of a standard of morality, and of the very meaning of the words right and wrong. It is often affirmed that utilitarianism renders men cold and unsympathising; that it chills their moral feelings towards individuals; that it makes them regard only the dry and hard consideration of the consequences of actions, not taking into their moral estimate the qualities from which those actions emanate. If the assertion means that they do not allow their judgment respecting the rightness or wrongness of an action to be influenced by their opinion of the qualities of the person who does it, this is a complaint not against utilitarianism, but against having any standard of morality at all; for certainly no known ethical standard decides an action to be good or bad because it is done by a good or a bad man, still less because done by an amiable, a brave, or a benevolent man, or the contrary. These considerations are relevant, not to the estimation of actions, but of persons; and there is nothing in the utilitarian theory inconsistent with the fact that there are other things which interest us in persons besides the rightness and wrongness of their actions. The Stoics, indeed, with the paradoxical misuse of language which was part of their system, and by which they strove to raise themselves above all concern about anything but virtue, were fond of saying that he who has that has everything; that he, and only he, is rich, is beautiful, is a king. But no claim of this description is made for the virtuous man by the utilitarian doctrine. Utilitarians are quite aware that there are other desirable possessions and qualities besides virtue, and are perfectly willing to allow to all of them their full worth. They are also aware that a right action does not necessarily indicate a virtuous character, and that actions which are blamable, often proceed from qualities entitled to praise. When this is apparent in any particular case, it modifies their estimation, not certainly of the act, but of the agent. I grant that they are, notwithstanding, of opinion, that in the long run the best proof of a good character is good actions; and resolutely refuse to consider any mental disposition as good, of which the predominant tendency is to produce bad conduct. This makes them unpopular with many people; but it is an unpopularity which they must share with every one who regards the distinction between right and wrong in a serious light; and the reproach is not one which a conscientious utilitarian need be anxious to repel.

If no more be meant by the objection than that many utilitarians look on the morality of actions, as measured by the utilitarian standard, with too exclusive a regard, and do not lay sufficient stress upon the other beauties of

character which go towards making a human being lovable or admirable, this may be admitted. Utilitarians who have cultivated their moral feelings, but not their sympathies nor their artistic perceptions, do fall into this mistake; and so do all other moralists under the same conditions. What can be said in excuse for other moralists is equally available for them, namely, that, if there is to be any error, it is better that it should be on that side. As a matter of fact, we may affirm that among utilitarians as among adherents of other systems, there is every imaginable degree of rigidity and of laxity in the application of their standard: some are even puritanically rigorous, while others are as indulgent as can possibly be desired by sinner or by sentimentalist. But on the whole, a doctrine which brings prominently forward the interest that mankind have in the repression and prevention of conduct which violates the moral law, is likely to be inferior to no other in turning the sanctions of opinion again such violations. It is true, the question, What does violate the moral law? is one on which those who recognise different standards of morality are likely now and then to differ. But difference of opinion on moral questions was not first introduced into the world by utilitarianism, while that doctrine does supply, if not always an easy, at all events a tangible and intelligible mode of deciding such differences.

It may not be superfluous to notice a few more of the common misapprehensions of utilitarian ethics, even those which are so obvious and gross that it might appear impossible for any person of candour and intelligence to fall into them; since persons, even of considerable mental endowments, often give themselves so little trouble to understand the bearings of any opinion against which they entertain a prejudice, and men are in general so little conscious of this voluntary ignorance as a defect, that the vulgarest misunderstandings of ethical doctrines are continually met with in the deliberate writings of persons of the greatest pretensions both to high principle and to philosophy. We not uncommonly hear the doctrine of utility inveighed against as a godless doctrine. If it be necessary to say anything at all against so mere an assumption, we may say that the question depends upon what idea we have formed of the moral character of the Deity. If it be a true belief that God desires, above all things, the happiness of his creatures, and that this was his purpose in their creation, utility is not only not a godless doctrine, but more profoundly religious than any other. If it be meant that utilitarianism does not recognise the revealed will of God as the supreme law of morals, I answer, that a utilitarian who believes in the perfect goodness and wisdom of God, necessarily believes that whatever God has thought fit to reveal on the subject of morals, must fulfil the requirements of utility in a supreme degree. But others besides utilitarians have been of opinion that the Christian revelation was intended, and is fitted, to inform the hearts and minds of mankind with a spirit which should enable them to find for themselves what is right, and incline them to do it when found, rather than to tell them, except in a very general way, what it is; and that we need a doctrine of ethics, carefully followed out, to interpret to us the will God. Whether this opinion is correct or not, it is superfluous here to discuss; since whatever aid religion, either natural or revealed, can afford to ethical investigation, is as open to the utilitarian moralist as to any other. He can use it as the testimony of God to the usefulness or hurtfulness of any given course of action, by as good a right as others can use it for the indication of a transcendental law, having no connection with usefulness or with happiness.

Again, Utility is often summarily stigmatised as an immoral doctrine by giving it the name of Expediency, and taking advantage of the popular use of that term to contrast it with Principle. But the Expedient, in the sense in which it is opposed to the Right, generally means that which is expedient for the particular interest of the agent himself; as when a minister sacrifices the interests of his country to keep himself in place. When it means anything better than this, it means that which is expedient for some immediate object, some temporary purpose, but which violates a rule whose observance is expedient in a much higher degree. The Expedient, in this sense, instead of being the same thing with the useful, is a branch of the hurtful. Thus, it would often be expedient, for the purpose of getting over some momentary embarrassment, or attaining some object immediately useful to ourselves or others, to tell a lie. But inasmuch as the cultivation in ourselves of a sensitive feeling on the subject of veracity, is one of the most useful, and

the enfeeblement of that feeling one of the most hurtful, things to which our conduct can be instrumental; and inasmuch as any, even unintentional, deviation from truth, does that much towards weakening the trustworthiness of human assertion, which is not only the principal support of all present social well-being, but the insufficiency of which does more than any one thing that can be named to keep back civilisation, virtue, everything on which human happiness on the largest scale depends; we feel that the violation, for a present advantage, of a rule of such transcendant expediency, is not expedient, and that he who, for the sake of a convenience to himself or to some other individual, does what depends on him to deprive mankind of the good, and inflict upon them the evil, involved in the greater or less reliance which they can place in each other's word, acts the part of one of their worst enemies. Yet that even this rule, sacred as it is, admits of possible exceptions, is acknowledged by all moralists; the chief of which is when the withholding of some fact (as of information from a malefactor, or of bad news from a person dangerously ill) would save an individual (especially an individual other than oneself) from great and unmerited evil, and when the withholding can only be effected by denial. But in order that the exception may not extend itself beyond the need, and may have the least possible effect in weakening reliance on veracity, it ought to be recognised, and, if possible, its limits defined; and if the principle of utility is good for anything, it must be good for weighing these conflicting utilities against one another, and marking out the region within which one or the other preponderates.

Again, defenders of utility often find themselves called upon to reply to such objections as this- that there is not time, previous to action, for calculating and weighing the effects of any line of conduct on the general happiness. This is exactly as if any one were to say that it is impossible to guide our conduct by Christianity, because there is not time, on every occasion on which anything has to be done, to read through the Old and New Testaments. The answer to the objection is, that there has been ample time, namely, the whole past duration of the human species. During all that time, mankind have been learning by experience the tendencies of actions; on which experience all the prudence, as well as all the morality of life, are dependent. People talk as if the commencement of this course of experience had hitherto been put off, and as if, at the moment when some man feels tempted to meddle with the property or life of another, he had to begin considering for the first time whether murder and theft are injurious to human happiness. Even then I do not think that he would find the question very puzzling; but, at all events, the matter is now done to his hand.

It is truly a whimsical supposition that, if mankind were agreed in considering utility to be the test of morality, they would remain without any agreement as to what is useful, and would take no measures for having their notions on the subject taught to the young, and enforced by law and opinion. There is no difficulty in proving any ethical standard whatever to work ill, if we suppose universal idiocy to be conjoined with it; but on any hypothesis short of that, mankind must by this time have acquired positive beliefs as to the effects of some actions on their happiness; and the beliefs which have thus come down are the rules of morality for the multitude, and for the philosopher until he has succeeded in finding better. That philosophers might easily do this, even now, on many subjects; that the received code of ethics is by no means of divine right; and that mankind have still much to learn as to the effects of actions on the general happiness, I admit, or rather, earnestly maintain. The corollaries from the principle of utility, like the precepts of every practical art, admit of indefinite improvement, and, in a progressive state of the human mind, their improvement is perpetually going on.

But to consider the rules of morality as improvable, is one thing; to pass over the intermediate generalisations entirely, and endeavour to test each individual action directly by the first principle, is another. It is a strange notion that the acknowledgment of a first principle is inconsistent with the admission of secondary ones. To inform a traveller respecting the place of his. ultimate destination, is not to forbid the use of landmarks and direction-posts on the way.

The proposition that happiness is the end and aim of morality, does not mean that no road ought to be laid down to that goal, or that persons going thither should not be advised to take one direction rather than another. Men really ought to leave off talking a kind of nonsense on this subject, which they would neither talk nor listen to on other matters of practical concernment. Nobody argues that the art of navigation is not founded on astronomy, because sailors cannot wait to calculate the Nautical Almanack. Being rational creatures, they go to sea with it ready calculated; and all rational creatures go out upon the sea of life with their minds made up on the common questions of right and wrong, as well as on many of the far more difficult questions of wise and foolish. And this, as long as foresight is a human quality, it is to be presumed they will continue to do. Whatever we adopt as the fundamental principle of morality, we require subordinate principles to apply it by; the impossibility of doing without them, being common to all systems, can afford no argument against any one in particular; but gravely to argue as if no such secondary principles could be had, and as if mankind had remained till now, and always must remain, without drawing any general conclusions from the experience of human life, is as high a pitch, I think, as absurdity has ever reached in philosophical controversy.

The remainder of the stock arguments against utilitarianism mostly consist in laying to its charge the common infirmities of human nature, and the general difficulties which embarrass conscientious persons in shaping their course through life. We are told that a utilitarian will be apt to make his own particular case an exception to moral rules, and, when under temptation, will see a utility in the breach of a rule, greater than he will see in its observance. But is utility the only creed which is able to furnish us with excuses for evil doing, and means of cheating our own conscience? They are afforded in abundance by all doctrines which recognise as a fact in morals the existence of conflicting considerations; which all doctrines do, that have been believed by sane persons. It is not the fault of any creed, but of the complicated nature of human affairs, that rules of conduct cannot be so framed as to require no exceptions, and that hardly any kind of action can safely be laid down as either always obligatory or always condemnable. There is no ethical creed which does not temper the rigidity of its laws, by giving a certain latitude, under the moral responsibility of the agent, for accommodation to peculiarities of circumstances; and under every creed, at the opening thus made, self-deception and dishonest casuistry get in. There exists no moral system under which there do not arise unequivocal cases of conflicting obligation. These are the real difficulties, the knotty points both in the theory of ethics, and in the conscientious guidance of personal conduct. They are overcome practically, with greater or with less success, according to the intellect and virtue of the individual; but it can hardly be pretended that any one will be the less qualified for dealing with them, from possessing an ultimate standard to which conflicting rights and duties can be referred. If utility is the ultimate source of moral obligations, utility may be invoked to decide between them when their demands are incompatible. Though the application of the standard may be difficult, it is better than none at all: while in other systems, the moral laws all claiming independent authority, there is no common umpire entitled to interfere between them; their claims to precedence one over another rest on little better than sophistry, and unless determined, as they generally are, by the unacknowledged influence of considerations of utility, afford a free scope for the action of personal desires and partialities. We must remember that only in these cases of conflict between secondary principles is it requisite that first principles should be appealed to. There is no case of moral obligation in which some secondary principle is not involved; and if only one, there can seldom be any real doubt which one it is, in the mind of any person by whom the principle itself is recognised.

Chapter 3. Of the Ultimate Sanction of the Principle of Utility.

THE QUESTION is often asked, and properly so, in regard to any supposed moral standard- What is its sanction? what are the motives to obey it? or more specifically, what is the source of its obligation? whence does it derive its binding force? It is a necessary part of moral philosophy to provide the answer to this question; which,

though frequently assuming the shape of an objection to the utilitarian morality, as if it had some special applicability to that above others, really arises in regard to all standards. It arises, in fact, whenever a person is called on to adopt a standard, or refer morality to any basis on which he has not been accustomed to rest it. For the customary morality, that which education and opinion have consecrated, is the only one which presents itself to the mind with the feeling of being in itself obligatory; and when a person is asked to believe that this morality derives its obligation from some general principle round which custom has not thrown the same halo, the assertion is to him a paradox; the supposed corollaries seem to have a more binding force than the original theorem; the superstructure seems to stand better without, than with, what is represented as its foundation. He says to himself, I feel that I am bound not to rob or murder, betray or deceive; but why am I bound to promote the general happiness? If my own happiness lies in something else, why may I not give that the preference?

If the view adopted by the utilitarian philosophy of the nature of the moral sense be correct, this difficulty will always present itself, until the influences which form moral character have taken the same hold of the principle which they have taken of some of the consequences- until, by the improvement of education, the feeling of unity with our fellow-creatures shall be (what it cannot be denied that Christ intended it to be) as deeply rooted in our character, and to our own consciousness as completely a part of our nature, as the horror of crime is in an ordinarily well brought up young person. In the meantime, however, the difficulty has no peculiar application to the doctrine of utility, but is inherent in every attempt to analyse morality and reduce it to principles; which, unless the principle is already in men's minds invested with as much sacredness as any of its applications, always seems to divest them of a part of their sanctity.

The principle of utility either has, or there is no reason why it might not have, all the sanctions which belong to any other system of morals. Those sanctions are either external or internal. Of the external sanctions it is not necessary to speak at any length. They are, the hope of favour and the fear of displeasure, from our fellow creatures or from the Ruler of the Universe, along with whatever we may have of sympathy or affection for them, or of love and awe of Him, inclining us to do his will independently of selfish consequences. There is evidently no reason why all these motives for observance should not attach themselves to the utilitarian morality, as completely and as powerfully as to any other. Indeed, those of them which refer to our fellow creatures are sure to do so, in proportion to the amount of general intelligence; for whether there be any other ground of moral obligation than the general happiness or not, men do desire happiness; and however imperfect may be their own practice, they desire and commend all conduct in others towards themselves, by which they think their happiness is promoted. With regard to the religious motive, if men believe, as most profess to do, in the goodness of God, those who think that conduciveness to the general happiness is the essence, or even only the criterion of good, must necessarily believe that it is also that which God approves. The whole force therefore of external reward and punishment, whether physical or moral, and whether proceeding from God or from our fellow men, together with all that the capacities of human nature admit of disinterested devotion to either, become available to enforce the utilitarian morality, in proportion as that morality is recognised; and the more powerfully, the more the appliances of education and general cultivation are bent to the purpose.

So far as to external sanctions. The internal sanction of duty, whatever our standard of duty may be, is one and the same- a feeling in our own mind; a pain, more or less intense, attendant on violation of duty, which in properly cultivated moral natures rises, in the more serious cases, into shrinking from it as an impossibility. This feeling, when disinterested, and connecting itself with the pure idea of duty, and not with some particular form of it, or with any of the merely accessory circumstances, is the essence of Conscience; though in that complex phenomenon as it actually

exists, the simple fact is in general all encrusted over with collateral associations, derived from sympathy, from love, and still more from fear; from all the forms of religious feeling; from the recollections of childhood and of all our past life; from self-esteem, desire of the esteem of others, and occasionally even self-abasement. This extreme complication is, I apprehend, the origin of the sort of mystical character which, by a tendency of the human mind of which there are many other examples, is apt to be attributed to the idea of moral obligation, and which leads people to believe that the idea cannot possibly attach itself to any other objects than those which, by a supposed mysterious law, are found in our present experience to excite it. Its binding force, however, consists in the existence of a mass of feeling which must be broken through in order to do what violates our standard of right, and which, if we do nevertheless violate that standard, will probably have to be encountered afterwards in the form of remorse. Whatever theory we have of the nature or origin of conscience, this is what essentially constitutes it.

The ultimate sanction, therefore, of all morality (external motives apart) being a subjective feeling in our own minds, I see nothing embarrassing to those whose standard is utility, in the question, what is the sanction of that particular standard? We may answer, the same as of all other moral standards- the conscientious feelings of mankind. Undoubtedly this sanction has no binding efficacy on those who do not possess the feelings it appeals to; but neither will these persons be more obedient to any other moral principle than to the utilitarian one. On them morality of any kind has no hold but through the external sanctions. Meanwhile the feelings exist, a fact in human nature, the reality of which, and the great power with which they are capable of acting on those in whom they have been duly cultivated, are proved by experience. No reason has ever been shown why they may not be cultivated to as great intensity in connection with the utilitarian, as with any other rule of morals.

There is, I am aware, a disposition to believe that a person who sees in moral obligation a transcendental fact, an objective reality belonging to the province of “Things in themselves,” is likely to be more obedient to it than one who believes it to be entirely subjective, having its seat in human consciousness only. But whatever a person’s opinion may be on this point of Ontology, the force he is really urged by is his own subjective feeling, and is exactly measured by its strength. No one’s belief that duty is an objective reality is stronger than the belief that God is so; yet the belief in God, apart from the expectation of actual reward and punishment, only operates on conduct through, and in proportion to, the subjective religious feeling. The sanction, so far as it is disinterested, is always in the mind itself; and the notion therefore of the transcendental moralists must be, that this sanction will not exist in the mind unless it is believed to have its root out of the mind; and that if a person is able to say to himself, This which is restraining me, and which is called my conscience, is only a feeling in my own mind, he may possibly draw the conclusion that when the feeling ceases the obligation ceases, and that if he find the feeling inconvenient, he may disregard it, and endeavour to get rid of it. But is this danger confined to the utilitarian morality? Does the belief that moral obligation has its seat outside the mind make the feeling of it too strong to be got rid of? The fact is so far otherwise, that all moralists admit and lament the ease with which, in the generality of minds, conscience can be silenced or stifled. The question, Need I obey my conscience? is quite as often put to themselves by persons who never heard of the principle of utility, as by its adherents. Those whose conscientious feelings are so weak as to allow of their asking this question, if they answer it affirmatively, will not do so because they believe in the transcendental theory, but because of the external sanctions.

It is not necessary, for the present purpose, to decide whether the feeling of duty is innate or implanted. Assuming it to be innate, it is an open question to what objects it naturally attaches itself; for the philosophic supporters of that theory are now agreed that the intuitive perception is of principles of morality and not of the details. If there be anything innate in the matter, I see no reason why the feeling which is innate should not be that of regard to the pleasures and pains of others. If there is any principle of morals which is intuitively obligatory, I should say it must

be that. If so, the intuitive ethics would coincide with the utilitarian, and there would be no further quarrel between them. Even as it is, the intuitive moralists, though they believe that there are other intuitive moral obligations, do already believe this to one; for they unanimously hold that a large portion of morality turns upon the consideration due to the interests of our fellow-creatures. Therefore, if the belief in the transcendental origin of moral obligation gives any additional efficacy to the internal sanction, it appears to me that the utilitarian principle has already the benefit of it.

On the other hand, if, as is my own belief, the moral feelings are not innate, but acquired, they are not for that reason the less natural. It is natural to man to speak, to reason, to build cities, to cultivate the ground, though these are acquired faculties. The moral feelings are not indeed a part of our nature, in the sense of being in any perceptible degree present in all of us; but this, unhappily, is a fact admitted by those who believe the most strenuously in their transcendental origin. Like the other acquired capacities above referred to, the moral faculty, if not a part of our nature, is a natural outgrowth from it; capable, like them, in a certain small degree, of springing up spontaneously; and susceptible of being brought by cultivation to a high degree of development. Unhappily it is also susceptible, by a sufficient use of the external sanctions and of the force of early impressions, of being cultivated in almost any direction: so that there is hardly anything so absurd or so mischievous that it may not, by means of these influences, be made to act on the human mind with all the authority of conscience. To doubt that the same potency might be given by the same means to the principle of utility, even if it had no foundation in human nature, would be flying in the face of all experience.

But moral associations which are wholly of artificial creation, when intellectual culture goes on, yield by degrees to the dissolving force of analysis: and if the feeling of duty, when associated with utility, would appear equally arbitrary; if there were no leading department of our nature, no powerful class of sentiments, with which that association would harmonise, which would make us feel it congenial, and incline us not only to foster it in others (for which we have abundant interested motives), but also to cherish it in ourselves; if there were not, in short, a natural basis of sentiment for utilitarian morality, it might well happen that this association also, even after it had been implanted by education, might be analysed away. But there is this basis of powerful natural sentiment; and this it is which, when once the general happiness is recognised as the ethical standard, will constitute the strength of the utilitarian morality. This firm foundation is that of the social feelings of mankind; the desire to be in unity with our fellow creatures, which is already a powerful principle in human nature, and happily one of those which tend to become stronger, even without express inculcation, from the influences of advancing civilisation. The social state is at once so natural, so necessary, and so habitual to man, that, except in some unusual circumstances or by an effort of voluntary abstraction, he never conceives himself otherwise than as a member of a body; and this association is riveted more and more, as mankind are further removed from the state of savage independence. Any condition, therefore, which is essential to a state of society, becomes more and more an inseparable part of every person's conception of the state of things which he is born into, and which is the destiny of a human being.

Now, society between human beings, except in the relation of master and slave, is manifestly impossible on any other footing than that the interests of all are to be consulted. Society between equals can only exist on the understanding that the interests of all are to be regarded equally. And since in all states of civilisation, every person, except an absolute monarch, has equals, every one is obliged to live on these terms with somebody; and in every age some advance is made towards a state in which it will be impossible to live permanently on other terms with anybody. In this way people grow up unable to conceive as possible to them a state of total disregard of other people's interests. They are under a necessity of conceiving themselves as at least abstaining from all the grosser injuries, and (if only for their own protection) living in a state of constant protest against them. They are also familiar with the fact of

co-operating with others and proposing to themselves a collective, not an individual interest as the aim (at least for the time being) of their actions. So long as they are co-operating, their ends are identified with those of others; there is at least a temporary feeling that the interests of others are their own interests. Not only does all strengthening of social ties, and all healthy growth of society, give to each individual a stronger personal interest in practically consulting the welfare of others; it also leads him to identify his feelings more and more with their good, or at least with an even greater degree of practical consideration for it. He comes, as though instinctively, to be conscious of himself as a being who of course pays regard to others. The good of others becomes to him a thing naturally and necessarily to be attended to, like any of the physical conditions of our existence. Now, whatever amount of this feeling a person has, he is urged by the strongest motives both of interest and of sympathy to demonstrate it, and to the utmost of his power encourage it in others; and even if he has none of it himself, he is as greatly interested as any one else that others should have it. Consequently the smallest germs of the feeling are laid hold of and nourished by the contagion of sympathy and the influences of education; and a complete web of corroborative association is woven round it, by the powerful agency of the external sanctions.

This mode of conceiving ourselves and human life, as civilisation goes on, is felt to be more and more natural. Every step in political improvement renders it more so, by removing the sources of opposition of interest, and levelling those inequalities of legal privilege between individuals or classes, owing to which there are large portions of mankind whose happiness it is still practicable to disregard. In an improving state of the human mind, the influences are constantly on the increase, which tend to generate in each individual a feeling of unity with all the rest; which, if perfect, would make him never think of, or desire, any beneficial condition for himself, in the benefits of which they are not included. If we now suppose this feeling of unity to be taught as a religion, and the whole force of education, of institutions, and of opinion, directed, as it once was in the case of religion, to make every person grow up from infancy surrounded on all sides both by the profession and the practice of it, I think that no one, who can realise this conception, will feel any misgiving about the sufficiency of the ultimate sanction for the Happiness morality. To any ethical student who finds the realisation difficult, I recommend, as a means of facilitating it, the second of M. Comte's two principle works, the Traite de Politique Positive. I entertain the strongest objections to the system of politics and morals set forth in that treatise; but I think it has superabundantly shown the possibility of giving to the service of humanity, even without the aid of belief in a Providence, both the psychological power and the social efficacy of a religion; making it take hold of human life, and colour all thought, feeling, and action, in a manner of which the greatest ascendancy ever exercised by any religion may be but a type and foretaste; and of which the danger is, not that it should be insufficient but that it should be so excessive as to interfere unduly with human freedom and individuality.

Neither is it necessary to the feeling which constitutes the binding force of the utilitarian morality on those who recognise it, to wait for those social influences which would make its obligation felt by mankind at large. In the comparatively early state of human advancement in which we now live, a person cannot indeed feel that entireness of sympathy with all others, which would make any real discordance in the general direction of their conduct in life impossible; but already a person in whom the social feeling is at all developed, cannot bring himself to think of the rest of his fellow creatures as struggling rivals with him for the means of happiness, whom he must desire to see defeated in their object in order that he may succeed in his. The deeply rooted conception which every individual even now has of himself as a social being, tends to make him feel it one of his natural wants that there should be harmony between his feelings and aims and those of his fellow creatures. If differences of opinion and of mental culture make it impossible for him to share many of their actual feelings- perhaps make him denounce and defy those feelings- he still needs to be conscious that his real aim and theirs do not conflict; that he is not opposing himself to what they really wish for, namely their own good, but is, on the contrary, promoting it. This feeling in most individuals is much inferior in

strength to their selfish feelings, and is often wanting altogether. But to those who have it, it possesses all the characters of a natural feeling. It does not present itself to their minds as a superstition of education, or a law despotically imposed by the power of society, but as an attribute which it would not be well for them to be without. This conviction is the ultimate sanction of the greatest happiness morality. This it is which makes any mind, of well-developed feelings, work with, and not against, the outward motives to care for others, afforded by what I have called the external sanctions; and when those sanctions are wanting, or act in an opposite direction, constitutes in itself a powerful internal binding force, in proportion to the sensitiveness and thoughtfulness of the character; since few but those whose mind is a moral blank, could bear to lay out their course of life on the plan of paying no regard to others except so far as their own private interest compels.

Chapter 4. Of what sort of Proof the Principle of Utility is Susceptible.

IT HAS already been remarked, that questions of ultimate ends do not admit of proof, in the ordinary acceptation of the term. To be incapable of proof by reasoning is common to all first principles; to the first premises of our knowledge, as well as to those of our conduct. But the former, being matters of fact, may be the subject of a direct appeal to the faculties which judge of fact- namely, our senses, and our internal consciousness. Can an appeal be made to the same faculties on questions of practical ends? Or by what other faculty is cognisance taken of them? Questions about ends are, in other words, questions what things are desirable. The utilitarian doctrine is, that happiness is desirable, and the only thing desirable, as an end; all other things being only desirable as means to that end. What ought to be required of this doctrine- what conditions is it requisite that the doctrine should fulfil- to make good its claim to be believed?

The only proof capable of being given that an object is visible, is that people actually see it. The only proof that a sound is audible, is that people hear it: and so of the other sources of our experience. In like manner, I apprehend, the sole evidence it is possible to produce that anything is desirable, is that people do actually desire it. If the end which the utilitarian doctrine proposes to itself were not, in theory and in practice, acknowledged to be an end, nothing could ever convince any person that it was so. No reason can be given why the general happiness is desirable, except that each person, so far as he believes it to be attainable, desires his own happiness. This, however, being a fact, we have not only all the proof which the case admits of, but all which it is possible to require, that happiness is a good: that each person's happiness is a good to that person, and the general happiness, therefore, a good to the aggregate of all persons. Happiness has made out its title as one of the ends of conduct, and consequently one of the criteria of morality.

But it has not, by this alone, proved itself to be the sole criterion. To do that, it would seem, by the same rule, necessary to show, not only that people desire happiness, but that they never desire anything else. Now it is palpable that they do desire things which, in common language, are decidedly distinguished from happiness. They desire, for example, virtue, and the absence of vice, no less really than pleasure and the absence of pain. The desire of virtue is not as universal, but it is as authentic a fact, as the desire of happiness. And hence the opponents of the utilitarian standard deem that they have a right to infer that there are other ends of human action besides happiness, and that happiness is not the standard of approbation and disapprobation.

But does the utilitarian doctrine deny that people desire virtue, or maintain that virtue is not a thing to be desired? The very reverse. It maintains not only that virtue is to be desired, but that it is to be desired disinterestedly, for itself. Whatever may be the opinion of utilitarian moralists as to the original conditions by which virtue is made virtue; however they may believe (as they do) that actions and dispositions are only virtuous because they promote

another end than virtue; yet this being granted, and it having been decided, from considerations of this description, what is virtuous, they not only place virtue at the very head of the things which are good as means to the ultimate end, but they also recognise as a psychological fact the possibility of its being, to the individual, a good in itself, without looking to any end beyond it; and hold, that the mind is not in a right state, not in a state conformable to Utility, not in the state most conducive to the general happiness, unless it does love virtue in this manner- as a thing desirable in itself, even although, in the individual instance, it should not produce those other desirable consequences which it tends to produce, and on account of which it is held to be virtue. This opinion is not, in the smallest degree, a departure from the Happiness principle. The ingredients of happiness are very various, and each of them is desirable in itself, and not merely when considered as swelling an aggregate. The principle of utility does not mean that any given pleasure, as music, for instance, or any given exemption from pain, as for example health, is to be looked upon as means to a collective something termed happiness, and to be desired on that account. They are desired and desirable in and for themselves; besides being means, they are a part of the end. Virtue, according to the utilitarian doctrine, is not naturally and originally part of the end, but it is capable of becoming so; and in those who love it disinterestedly it has become so, and is desired and cherished, not as a means to happiness, but as a part of their happiness.

To illustrate this farther, we may remember that virtue is not the only thing, originally a means, and which if it were not a means to anything else, would be and remain indifferent, but which by association with what it is a means to, comes to be desired for itself, and that too with the utmost intensity. What, for example, shall we say of the love of money? There is nothing originally more desirable about money than about any heap of glittering pebbles. Its worth is solely that of the things which it will buy; the desires for other things than itself, which it is a means of gratifying. Yet the love of money is not only one of the strongest moving forces of human life, but money is, in many cases, desired in and for itself; the desire to possess it is often stronger than the desire to use it, and goes on increasing when all the desires which point to ends beyond it, to be compassed by it, are falling off. It may, then, be said truly, that money is desired not for the sake of an end, but as part of the end. From being a means to happiness, it has come to be itself a principal ingredient of the individual's conception of happiness. The same may be said of the majority of the great objects of human life- power, for example, or fame; except that to each of these there is a certain amount of immediate pleasure annexed, which has at least the semblance of being naturally inherent in them; a thing which cannot be said of money. Still, however, the strongest natural attraction, both of power and of fame, is the immense aid they give to the attainment of our other wishes; and it is the strong association thus generated between them and all our objects of desire, which gives to the direct desire of them the intensity it often assumes, so as in some characters to surpass in strength all other desires. In these cases the means have become a part of the end, and a more important part of it than any of the things which they are means to. What was once desired as an instrument for the attainment of happiness, has come to be desired for its own sake. In being desired for its own sake it is, however, desired as part of happiness. The person is made, or thinks he would be made, happy by its mere possession; and is made unhappy by failure to obtain it. The desire of it is not a different thing from the desire of happiness, any more than the love of music, or the desire of health. They are included in happiness. They are some of the elements of which the desire of happiness is made up. Happiness is not an abstract idea, but a concrete whole; and these are some of its parts. And the utilitarian standard sanctions and approves their being so. Life would be a poor thing, very ill provided with sources of happiness, if there were not this provision of nature, by which things originally indifferent, but conducive to, or otherwise associated with, the satisfaction of our primitive desires, become in themselves sources of pleasure more valuable than the primitive pleasures, both in permanency, in the space of human existence that they are capable of covering, and even in intensity.

Virtue, according to the utilitarian conception, is a good of this description. There was no original desire of it, or motive to it, save its conduciveness to pleasure, and especially to protection from pain. But through the association thus formed, it may be felt a good in itself, and desired as such with as great intensity as any other good; and with this difference between it and the love of money, of power, or of fame, that all of these may, and often do, render the individual noxious to the other members of the society to which he belongs, whereas there is nothing which makes him so much a blessing to them as the cultivation of the disinterested love of virtue. And consequently, the utilitarian standard, while it tolerates and approves those other acquired desires, up to the point beyond which they would be more injurious to the general happiness than promotive of it, enjoins and requires the cultivation of the love of virtue up to the greatest strength possible, as being above all things important to the general happiness.

It results from the preceding considerations, that there is in reality nothing desired except happiness. Whatever is desired otherwise than as a means to some end beyond itself, and ultimately to happiness, is desired as itself a part of happiness, and is not desired for itself until it has become so. Those who desire virtue for its own sake, desire it either because the consciousness of it is a pleasure, or because the consciousness of being without it is a pain, or for both reasons united; as in truth the pleasure and pain seldom exist separately, but almost always together, the same person feeling pleasure in the degree of virtue attained, and pain in not having attained more. If one of these gave him no pleasure, and the other no pain, he would not love or desire virtue, or would desire it only for the other benefits which it might produce to himself or to persons whom he cared for. We have now, then, an answer to the question, of what sort of proof the principle of utility is susceptible. If the opinion which I have now stated is psychologically true- if human nature is so constituted as to desire nothing which is not either a part of happiness or a means of happiness, we can have no other proof, and we require no other, that these are the only things desirable. If so, happiness is the sole end of human action, and the promotion of it the test by which to judge of all human conduct; from whence it necessarily follows that it must be the criterion of morality, since a part is included in the whole.
And now to decide whether this is really so; whether mankind do desire nothing for itself but that which is a pleasure to them, or of which the absence is a pain; we have evidently arrived at a question of fact and experience, dependent, like all similar questions, upon evidence. It can only be determined by practised self-consciousness and self-observation, assisted by observation of others. I believe that these sources of evidence, impartially consulted, will declare that desiring a thing and finding it pleasant, aversion to it and thinking of it as painful, are phenomena entirely inseparable, or rather two parts of the same phenomenon; in strictness of language, two different modes of naming the same psychological fact: that to think of an object as desirable (unless for the sake of its consequences), and to think of it as pleasant, are one and the same thing; and that to desire anything, except in proportion as the idea of it is pleasant, is a physical and metaphysical impossibility.

So obvious does this appear to me, that I expect it will hardly be disputed: and the objection made will be, not that desire can possibly be directed to anything ultimately except pleasure and exemption from pain, but that the will is a different thing from desire; that a person of confirmed virtue, or any other person whose purposes are fixed, carries out his purposes without any thought of the pleasure he has in contemplating them, or expects to derive from their fulfilment; and persists in acting on them, even though these pleasures are much diminished, by changes in his character or decay of his passive sensibilities, or are outweighed by the pains which the pursuit of the purposes may bring upon him. All this I fully admit, and have stated it elsewhere, as positively and emphatically as any one. Will, the active phenomenon, is a different thing from desire, the state of passive sensibility, and though originally an offshoot from it, may in time take root and detach itself from the parent stock; so much so, that in the case of an habitual purpose, instead of willing the thing because we desire it, we often desire it only because we will it. This, however, is but an instance of that familiar fact, the power of habit, and is nowise confined to the case of virtuous actions. Many

indifferent things, which men originally did from a motive of some sort, they continue to do from habit. Sometimes this is done unconsciously, the consciousness coming only after the action: at other times with conscious volition, but volition which has become habitual, and is put in operation by the force of habit, in opposition perhaps to the deliberate preference, as often happens with those who have contracted habits of vicious or hurtful indulgence.

Third and last comes the case in which the habitual act of will in the individual instance is not in contradiction to the general intention prevailing at other times, but in fulfilment of it; as in the case of the person of confirmed virtue, and of all who pursue deliberately and consistently any determinate end. The distinction between will and desire thus understood is an authentic and highly important psychological fact; but the fact consists solely in this- that will, like all other parts of our constitution, is amenable to habit, and that we may will from habit what we no longer desire for itself or desire only because we will it. It is not the less true that will, in the beginning, is entirely produced by desire; including in that term the repelling influence of pain as well as the attractive one of pleasure. Let us take into consideration, no longer the person who has a confirmed will to do right, but him in whom that virtuous will is still feeble, conquerable by temptation, and not to be fully relied on; by what means can it be strengthened? How can the will to be virtuous, where it does not exist in sufficient force, be implanted or awakened? Only by making the person desire virtue- by making him think of it in a pleasurable light, or of its absence in a painful one. It is by associating the doing right with pleasure, or the doing wrong with pain, or by eliciting and impressing and bringing home to the person's experience the pleasure naturally involved in the one or the pain in the other, that it is possible to call forth that will to be virtuous, which, when confirmed, acts without any thought of either pleasure or pain. Will is the child of desire, and passes out of the dominion of its parent only to come under that of habit. That which is the result of habit affords no presumption of being intrinsically good; and there would be no reason for wishing that the purpose of virtue should become independent of pleasure and pain, were it not that the influence of the pleasurable and painful associations which prompt to virtue is not sufficiently to be depended on for unerring constancy of action until it has acquired the support of habit. Both in feeling and in conduct, habit is the only thing which imparts certainty; and it is because of the importance to others of being able to rely absolutely on one's feelings and conduct, and to oneself of being able to rely on one's own, that the will to do right ought to be cultivated into this habitual independence. In other words, this state of the will is a means to good, not intrinsically a good; and does not contradict the doctrine that nothing is a good to human beings but in so far as it is either itself pleasurable, or a means of attaining pleasure or averting pain.

But if this doctrine be true, the principle of utility is proved. Whether it is so or not, must now be left to the consideration of the thoughtful reader.

Chapter 5. On the Connection between Justice and Utility.

IN ALL ages of speculation, one of the strongest obstacles to the reception of the doctrine that Utility or Happiness is the criterion of right and wrong, has been drawn from the 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 (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 idee mere, 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.[2]*

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[2] See this point enforced and illustrated by Professor 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.

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 exhorted,

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 bex 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.* 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[3].

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

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3 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.

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.
THE END

John Locke, Second Treatise of Government (1690)

A brief overview of the reading: *In his Second Treatise of Government, John Locke (1632-1704) argues that legitimate government is a limited government based on consent, in which the majority rules but may not violate people's fundamental rights. At first glance, Locke's theory may seem familiar, but it also conceals some puzzling questions. On Locke's view, a legitimate government may not violate our natural right to life, liberty, and property. But Locke allows that government may legitimately take our property through taxation and require citizens to sacrifice their lives in war. If government may do these things, then what counts as a law that violates our rights?*

John Locke, *Second Treatise of Government*

CHAP. I.

Sec. 1. It having been shewn in the foregoing discourse,

1. That Adam had not, either by natural right of fatherhood, or by positive donation from God, any such authority over his children, or dominion over the world, as is pretended:

2. That if he had, his heirs, yet, had no right to it:

3. That if his heirs had, there being no law of nature nor positive law of God that determines which is the right heir in all cases that may arise, the right of succession, and consequently of bearing rule, could not have been certainly determined:

4. That if even that had been determined, yet the knowledge of which is the eldest line of Adam's posterity, being so long since utterly lost, that in the races of mankind and families of the world, there remains not to one above another, the least pretence to be the eldest house, and to have the right of inheritance:

All these premises having, as I think, been clearly made out, it is impossible that the rulers now on earth should make any benefit, or derive any the least shadow of authority from that, which is held to be the fountain of all power, Adam's private dominion and paternal jurisdiction; so that he that will not give just occasion to think that all government in the world is the product only of force and violence, and that men live together by no other rules but that of beasts, where the strongest carries it, and so lay a foundation for perpetual disorder and mischief, tumult, sedition and rebellion, (things that the followers of that hypothesis so loudly cry out against) must of necessity find out another rise of government, another original of political power, and another way of designing and knowing the persons that have it, than what Sir Robert Filmer hath taught us.

Sec. 2. To this purpose, I think it may not be amiss, to set down what I take to be political power; that the power of a MAGISTRATE over a subject may be distinguished from that of a FATHER over his children, a MASTER over his servant, a HUSBAND over his wife, and a LORD over his slave. All which distinct powers happening sometimes together in the same man, if he be considered under these different relations, it may help us to distinguish these powers one from wealth, a father of a family, and a captain of a galley.

Sec. 3. POLITICAL POWER, then, I take to be a RIGHT of making laws with penalties of death, and consequently all less penalties, for the regulating and preserving of property, and of employing the force of the community, in the execution of such laws, and in the defence of the common-wealth from foreign injury; and all this only for the public good.

CHAP. II. Of the State of Nature.

Sec. 4. TO understand political power right, and derive it from its original, we must consider, what state 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.

Sec. 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. His words are, "The like natural inducement hath brought men to know that it is no less their duty, to love others than themselves; for seeing those things which are equal, must needs all have one measure; if I cannot but wish to receive good, even as much at every man's hands, as any man can wish unto his own soul, how should I look to have any part of my desire herein satisfied, unless myself be careful to satisfy the like desire, which is undoubtedly in other men, being of one and the same nature? To have any thing offered them repugnant to this desire, must needs in all respects grieve them as much as me; so that if I do harm, I must look to suffer, there being no reason that others should shew greater measure of love to me, than they have by me shewed unto them: 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; from which relation of equality between ourselves and them that are as ourselves, what several rules and canons natural reason hath drawn, for direction of life, no man is ignorant, Eccl. Pol. Lib. 1."

Sec. 6. But though this be a state of liberty, yet it is not a state of licence: though man in that state have an uncontroulable 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 authorize us to destroy one another, as if we were made for one another's uses, as the inferior ranks of creatures are for our's. 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 may 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.

Sec. 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 no body 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.

Sec. 8. And thus, in the state of nature, one man comes by a power over another; but yet no absolute or arbitrary power, to use a criminal, when he has got him in his hands, according to the passionate heats, or boundless extravagancy of his own will; but only to retribute to him, so far as calm reason and conscience dictate, what is proportionate to his transgression, which is so much as may serve for reparation and restraint: for these two are the only reasons, why one man may lawfully do harm to another, which is that we call punishment. In transgressing the law of nature, the offender declares himself to live by another rule than that of reason and common equity, which is that measure God has set to the actions of men, for their mutual security; and so he becomes dangerous to mankind, the tye, which is to secure them from injury and violence, being slighted and broken by him. Which being a trespass against the whole species, and the peace and safety of it, provided for by the law of nature, every man upon this score, by the right he hath to preserve mankind in general, may restrain, or where it is necessary, destroy things noxious to them, and so may bring such evil on any one, who hath transgressed that law, as may make him repent the doing of it, and thereby deter him, and by his example others, from doing the like mischief. And in the case, and upon this ground, EVERY MAN HATH A RIGHT TO PUNISH THE OFFENDER, AND BE EXECUTIONER OF THE LAW OF NATURE.

Sec. 9. I doubt not but this will seem a very strange doctrine to some men: but before they condemn it, I desire them to resolve me, by what right any prince or state can put to death, or punish an alien, for any crime he commits in their country. It is certain their laws, by virtue of any sanction they receive from the promulgated will of the legislative, reach not a stranger: they speak not to him, nor, if they did, is he bound to hearken to them. The legislative authority, by which they are in force over the subjects of that commonwealth, hath no power over him. Those who have the supreme power of making laws in England, France or Holland, are to an Indian, but like the rest of the world, men without authority: and therefore, if by the law of nature every man hath not a power to punish offences against it, as he soberly judges the case to require, I see not how the magistrates of any community can punish an alien of another country; since, in reference to him, they can have no more power than what every man naturally may have over another.

Sec. 10. Besides the crime which consists in violating the law, 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 to some person or other, and 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 has 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 has suffered.

Sec. 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 every body; 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 has 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 every body, 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 tyger, 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 plainwas it writ in the hearts of all mankind.

Sec. 12. By the same reason may a man in the state of nature punish the lesser breaches of that law. It will perhaps be demanded, with death? I answer, each transgression may be punished to that degree, and with so much severity, as will suffice to make it an ill bargain to the offender, give him cause to repent, and terrify others from doing the like. Every offence, that can be committed in the state of nature, may in the state of nature be also punished equally, and as far forth as it may, in a commonwealth: for though it would be besides my present purpose, to enter here into the particulars of the law of nature, or its measures of punishment; yet, it is certain there is such a law, and that too, as intelligible and plain to a rational creature, and a studier of that law, as the positive laws of commonwealths; nay, possibly plainer; as much as reason is easier to be understood, than the fancies and intricate contrivances of men, following contrary and hidden interests put into words; for so truly are a great part of the municipal laws of countries, which are only so far right, as they are founded on the law of nature, by which they are to be regulated and interpreted.

Sec. 13. To this strange doctrine, viz. That in the state of nature every one has the executive power of the law of nature, I doubt not but it will be objected, that it is unreasonable for men to be judges in their own cases, that selflove will make men partial to themselves and their friends: and on the other side, that ill nature, passion and revenge will carry them too far in punishing others; and hence nothing but confusion and disorder will follow, and that therefore God hath certainly appointed government to restrain the partiality and violence of men. I easily grant, that civil government is the proper remedy for the inconveniencies of the state of nature, which must certainly be great, where men may be judges in their own case, since it is easy to be imagined, that he who was so unjust as to do his brother an injury, will scarce be so just as to condemn himself for it: but I shall desire those who make this objection, to remember, that absolute monarchs are but men; and if government is to be the remedy of those evils, which necessarily follow from men's being judges in their own cases, and the state of nature is therefore not to be endured, I desire to know what kind of government that is, and how much better it is than the state of nature, where one man, commanding a multitude, has the liberty to be judge in his own case, and may do to all his subjects whatever he pleases, without the least liberty to any one to question or controul those who execute his pleasure and in whatsoever he doth, whether led by reason, mistake or passion, must be submitted to. Much better it is in the state of nature, wherein men are not bound to submit to the unjust will of another. And if he that judges, judges amiss in his own, or any other case, he is answerable for it to the rest of mankind.

Sec. 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. I have named all governors of independent communities, whether they are, or are not, in league with others: for

it is not every compact that puts an end to the state of nature between men, but only this one of agreeing together mutually to enter into one community, and make one body politic; other promises, and compacts, men may make one with another, and yet still be in the state of nature. The promises and bargains for truck, &c. between the two men in the desert island, mentioned by Garcilasso de la Vega, in his history of Peru; or between a Swiss and an Indian, in the woods of America, are binding to them, though they are perfectly in a state of nature, in reference to one another: for truth and keeping of faith belongs to men, as men, and not as members of society.

Sec. 15. To those that say, there were never any men in the state of nature, I will not only oppose the authority of the judicious Hooker, Eccl. Pol. lib. i. sect. 10, where he says, The laws which have been hitherto mentioned, i.e. the laws of nature, do bind men absolutely, even as they are men, although they have never any settled fellowship, never any solemn agreement amongst themselves what to do, or not to do: but forasmuch as we are not by ourselves sufficient to furnish ourselves with competent store of things, needful for such a life as our nature doth desire, a life fit for the dignity of man; therefore to supply those defects and imperfections which are in us, as living single and solely by ourselves, we are naturally induced to seek communion and fellowship with others: this was the cause of men's uniting themselves at first in politic societies. But I moreover affirm, that all men are naturally in that state, and remain so, till by their own consents they make themselves members of some politic society; and I doubt not in the sequel of this discourse, to make it very clear.

CHAP. III. Of the State of War.

Sec. 16. THE state of war is a state of enmity and destruction: and therefore declaring by word or action, not a passionate and hasty, but a sedate settled design upon another man's life, puts him in a state of war with him against whom he has declared such an intention, and so has exposed his life to the other's power to be taken away by him, or any one that joins with him in his defence, and espouses his quarrel; it being reasonable and just, I should have a right to destroy that which threatens me with destruction: for, by the fundamental law of nature, man being to be preserved as much as possible, when all cannot be preserved, the safety of the innocent is to be preferred: and one may destroy a man who makes war upon him, or has discovered an enmity to his being, for the same reason that he may kill a wolf or a lion; because such men are not under the ties of the commonlaw of reason, have no other rule, but that of force and violence, and so may be treated as beasts of prey, those dangerous and noxious creatures, that will be sure to destroy him whenever he falls into their power.

Sec. 17. And hence it is, that he who attempts to get another man into his absolute power, does thereby put himself into a state of war with him; it being to be understood as a declaration of a design upon his life: for I have reason to conclude, that he who would get me into his power without my consent, would use me as he pleased when he had got me there, and destroy me too when he had a fancy to it; for no body can desire to have me in his absolute power, unless it be to compel me by force to that which is against the right of my freedom, i.e. make me a slave. To be free from such force is the only security of my preservation; and reason bids me look on him, as an enemy to my preservation, who would take away that freedom which is the fence to it; so that he who makes an attempt to enslave me, thereby puts himself into a state of war with me. He that, in the state of nature, would take away the freedom that belongs to any one in that state, must necessarily be supposed to have a foundationtofeallathevrest;hasghelthat,hin theestateeofgsociety, would take away the freedom belonging to those of that society or commonwealth, must be supposed to design to take away from them every thing else, and so be looked on as in a state of war.

Sec. 18. This makes it lawful for a man to kill a thief, who has not in the least hurt him, nor declared any design upon his life, any farther than, by the use of force, so to get him in his power, as to take away his money, or what he

pleases, from him; because using force, where he has no right, to get me into his power, let his pretence be what it will, I have no reason to suppose, that he, who would take away my liberty, would not, when he had me in his power, take away every thing else. And therefore it is lawful for me to treat him as one who has put himself into a state of war with me, i.e. kill him if I can; for to that hazard does he justly expose himself, whoever introduces a state of war, and is aggressor in it.

Sec. 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, good will, 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, tho' 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.

Sec. 20. But when the actual force is over, the state of war ceases between those that are in society, and are equally on both sides subjected to the fair determination of the law; because then there lies open the remedy of appeal for the past injury, and to prevent future harm: but where no such appeal is, as in the state of nature, for want of positive laws, and judges with authority to appeal to, the state of war once begun, continues, with a right to the innocent party to destroy the other whenever he can, until the aggressor offers peace, and desires reconciliation on such terms as may repair any wrongs he has already done, and secure the innocent for the future; nay, where an appeal to the law, and constituted judges, lies open, but the remedy is denied by a manifest perverting of justice, and a barefaced wresting of the laws to protect or indemnify the violence or injuries of some men, or party of men, there it is hard to imagine any thing but a state of war: for wherever violence is used, and injury done, though by hands appointed to administer justice, it is still violence and injury, however coloured with the name, pretences, or forms of law, the end whereof being to protect and redress the innocent, by an unbiassed application of it, to all who are under it; wherever that is not bona fide done, war is made upon the sufferers, who having no appeal on earth to right them, they are left to the only remedy in such cases, an appeal to heaven.

Sec. 21. To avoid this state of war (wherein there is no appeal but to heaven, and wherein every the least difference is apt to end, where there is no authority to decide between the contenders) is one great reason of men's putting themselves into society, and quitting the state of nature: for where there is an authority, a power on earth, from which relief can be had by appeal, there the continuance of the state of war is excluded, and the controversy is decided by that power. Had there been any such court, any superior jurisdiction on earth, to determine the right between Jephtha and the Ammonites, they had never come to a state of war: but we see he was forced to appeal to heaven. The Lord the Judge (says he) be judge this day between the children of Israel and the children of Ammon, Judg. xi. 27. and then prosecuting, and relying on his appeal, he leads out his army to battle: and therefore in such controversies, where the question is put, who shall be judge? It cannot be meant, who shall decide the controversy; every one knows what Jephtha here tells us, that the Lord the Judge shall judge. Where there is no judge on earth, the appeal lies to

God in heaven. That question then cannot mean, who shall judge, whether another hath put himself in a state of war with me, and whether I may, as Jephtha did, appeal to heaven in it? of that I myself can only be judge in my own conscience, as I will answer it, at the great day, to the supreme judge of all men.

CHAP. IV. Of Slavery.

Sec. 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, Observations, A. 55. 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 the rule prescribes not; and 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.

Sec. 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. No body 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.

Sec. 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. xxi.

CHAP. V. Of Property.

Sec. 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, Psal. cxv. 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 any thing: 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 shew, 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.

Sec. 26. God, who hath given the world to men in common, hath also given them reason to make use of it to the best advantage of life, and convenience. The earth, and all that is therein, is given to men for the support and comfort of their being. And tho' all the fruits it naturally produces, and beasts it feeds, belong to mankind in common, as they are produced by the spontaneous hand of nature; and no body has originally a private dominion, exclusive of the rest of mankind, in any of them, as they are thus in their natural state: yet being given for the use of men, there must of necessity be a means to appropriate them some way or other, before they can be of any use, or at all beneficial to any particular man. The fruit, or venison, which nourishes the wild Indian, who knows no enclosure, and is still a tenant in common, must be his, and so his, i.e. a part of him, that another can no longer have any right to it, before it can do him any good for the support of his life.

Sec. 27. Though the earth, and all inferior creatures, be common to all men, yet every man has a property in his own person: this no body 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, 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 hath 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.

Sec. 28. He that is nourished by the acorns he picked up under an oak, or the apples he gathered from the trees in the wood, has certainly appropriated them to himself. No body can deny but the nourishment is his. I ask then, when did they begin to be his? when he digested? or when he eat? or when he boiled? or when he brought them home? or when he picked them up? and it is plain, if the first gathering made them not his, nothing else could. That labour put a distinction between them and common: that added something to them more than nature, the common mother of all, had done; and so they became his private right. And will any one say, he had no right to those acorns or apples, he thus appropriated, because he had not the consent of all mankind to make them his? Was it a robbery thus to assume to himself what belonged to all in common? If such a consent as that was necessary, man had starved, notwithstanding the plenty God had given him. We see in commons, which remain so by compact, that it is the taking any part of what is common, and removing it out of the state nature leaves it in, which begins the property; without which the common is of no use. And the taking of this or that part, does not depend on the express consent of all the commoners. Thus the grass my horse has bit; the turfs my servant has cut; and the ore I have digged in any place, where I have a right to them in common with others, become my property, without the assignation or consent of any body. The labour that was mine, removing them out of that common state they were in, hath fixed my property in them.

Sec. 29. By making an explicit consent of every commoner, necessary to any one's appropriating to himself any part of what is given in common, children or servants could not cut the meat, which their father or master had provided for them in common, without assigning to every one his peculiar part. Though the water running in the fountain be every one's, yet who can doubt, but that in the pitcher is his only who drew it out? His labour hath taken it out of the hands of nature, where it was common, and belonged equally to all her children, and hath thereby appropriated it to himself.

Sec. 30. Thus this law of reason makes the deer that Indian's who hath killed it; it is allowed to be his goods, who hath bestowed his labour upon it, though before it was the common right of every one. And amongst those who are counted the civilized part of mankind, who have made and multiplied positive laws to determine property, this original law of nature, for the beginning of property, in what was before common, still takes place; and by virtue thereof, what fish any one catches in the ocean, that great and still remaining common of mankind; or what ambergrise any one takes up here, is by the labour that removes it out of that common state nature left it in, made his property, who takes that pains about it. And even amongst us, the hare that any one is hunting, is thought his who pursues her during the chase: for being a beast that is still looked upon as common, and no man's private possession; whoever has employed so much labour about any of that kind, as to find and pursue her, has thereby removed her from the state of nature, wherein she was common, and hath begun a property.

Sec. 31. It will perhaps be objected to this, that if gathering the acorns, or other fruits of the earth, &c. makes a right to them, then any one may ingross 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, 1 Tim. vi. 12. 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 Tabour 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 ingross 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.

Sec. 32. But the chief matter of property being now not the fruits of the earth, and the beasts that subsist on it, but the earth itself; as that which takes in and carries with it all the rest; I think it is plain, that property in that too is acquired as the former. As much land as a man tills, plants, improves, cultivates, and can use the product of, so much is his property. He by his labour does, as it were, inclose it from the common. Nor will it invalidate his right, to say every body else has an equal title to it; and therefore he cannot appropriate, he cannot inclose, without the consent of all his fellow-commoners, all mankind. God, when he gave the world in common to all mankind, commanded man also to labour, and the penury of his condition required it of him. God and his reason commanded him to subdue the earth, i.e. improve it for the benefit of life, and therein lay out something upon it that was his own, his labour. He that in obedience to this command of God, subdued, tilled and sowed any part of it, thereby annexed to it something that was his property, which another had no title to, nor could without injury take from him.

Sec. 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. No body 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.

Sec. 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.

Sec. 35. It is true, in land that is common in England, or any other country, where there is plenty of people under government, who have money and commerce, no one can inclose or appropriate any part, without the consent of all his fellowcommoners; because this is left common by compact, i.e. by the law of the land, which is not to be violated. And though it be common, in respect of some men, it is not so to all mankind; but is the joint property of this country, or this parish. Besides, the remainder, after such enclosure, would not be as good to the rest of the commoners, as the whole was when they could all make use of the whole; whereas in the beginning and first peopling of the great common of the world, it was quite otherwise. The law man was under, was rather for appropriating. God commanded, and his wants forced him to labour. That was his property which could not be taken from him where-ever he had fixed it. And hence subduing or cultivating the earth, and having dominion, we see are joined together. The one gave title to the other. So that God, by commanding to subdue, gave authority so far to appropriate: and the condition of human life, which requires labour and materials to work on, necessarily introduces private possessions.

Sec. 36. The measure of property nature has well set by the extent of men's labour and the conveniencies of life: no man's labour could subdue, or appropriate all; nor could his enjoyment consume more than a small part; so that it was impossible for any man, this way, to intrench upon the right of another, or acquire to himself a property, to the prejudice of his neighbour, who would still have room for as good, and as large a possession (after the other had taken out his) as before it was appropriated. This measure did confine every man's possession to a very moderate proportion, and such as he might appropriate to himself, without injury to any body, in the first ages of the world, when men were more in danger to be lost, by wandering from their company, in the then vast wilderness of the earth, than to be straitened for want of room to plant in. And the same measure may be allowed still without prejudice to any body, as full as the world seems: for supposing a man, or family, in the state they were at first peopling of the world by the children of Adam, or Noah; let him plant in some inland, vacant places of America, we shall find that the possessions he could make himself, upon the measures we have given, would not be very large, nor, even to this day, prejudice the rest of mankind, or give them reason to complain, or think themselves injured by this man's incroachment, though the race of men have now spread themselves to all the corners of the world, and do infinitely exceed the small number was at the beginning. Nay, the extent of ground is of so little value, without labour, that I have heard it affirmed, that in Spain itself a man may be permitted to plough, sow and reap, without being disturbed, upon land he has no other title to, but only his making use of it. But, on the contrary, the inhabitants think themselves beholden to him, who, by his industry on neglected, and consequently waste land, has increased the stock of corn, which they wanted. But be this as it will, which I lay no stress on; this I dare boldly affirm, that the same rule of propriety, (viz.) that every man should have as much as he could make use of, would hold still in the world, without straitening any body; since there is land enough in the world to suffice double the inhabitants, had not the invention of money, and the tacit agreement of men to put a value on it, introduced (by consent) larger possessions, and a right to them; which, how it has done, I shall by and by shew more at large.

Sec. 37. This is certain, that in the beginning, before the desire of having more than man 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 of 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. To which let me add, that he who appropriates land to himself by his labour, does not lessen, but increase the common stock of mankind: for the provisions serving to the support of human life, produced by one acre of inclosed and cultivated land, are (to speak much within compass) ten times more than those which are yielded by an acre of land of an equal richness lying waste in common. And therefore he that incloses land, and has a greater plenty of the conveniencies of life from ten acres, than he could have from an hundred left to nature, may truly be said to give ninety acres to mankind: for his labour now supplies him with provisions out of ten acres, which were but the product of an hundred lying in common. I have here rated the improved land very low, in making its product but as ten to one, when it is much nearer an hundred to one: for I ask, whether in the wild woods and uncultivated waste of America, left to nature, without any improvement, tillage or husbandry, a thousand acres yield the needy and wretched inhabitants as many conveniencies of life, as ten acres of equally fertile land do in Devonshire, where they are well cultivated? 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 imployed his pains about any of the spontaneous products of nature, as any way to alter them from the state which 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 putrified, 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.

Sec. 38. The same measures governed the possession of land too: whatsoever he tilled and reaped, laid up and made use of, before it spoiled, that was his peculiar right; whatsoever he enclosed, and could feed, and make use of, the cattle and product was also his. But if either the grass of his enclosure rotted on the ground, or the fruit of his planting perished without gathering, and laying up, this part of the earth, notwithstanding his enclosure, was still to be looked on as waste, and might be the possession of any other. Thus, at the beginning, Cain might take as much ground as he could till, and make it his own land, and yet leave enough to Abel's sheep to feed on; a few acres would serve for both their possessions. But as families increased, and industry inlarged their stocks, their possessions inlarged with the need of them; but yet it was commonly without any fixed property in the ground they made use of, till they incorporated, settled themselves together, and built cities; and then, by consent, they came in time, to set out the bounds of their distinct territories, and agree on limits between them and their neighbours; and by laws within themselves, settled the properties of those of the same society: for we see, that in that part of the world which was first inhabited, and therefore like to be best peopled, even as low down as Abraham's time, they wandered with their flocks, and their herds, which was their substance, freely up and down; and this Abraham did, in a country where he was a stranger. Whence it is plain, that at least a great part of the land lay in common; that the inhabitants valued it not, nor claimed property in any more than they made use of. But when there was not room enough in the same place, for their herds to feed together, they by consent, as Abraham and Lot did, Gen. xiii. 5. Separated and inlarged their pasture, where it best liked them. And for the same reason Esau went from his father, and his brother, and planted in mount Seir, Gen. xxxvi. 6.

Sec. 39. And thus, without supposing any private dominion, and property in Adam, over all the world, exclusive of all other men, which can no way be proved, nor any one's property be made out from it; but supposing the world given, as it was, to the children of men in common, we see how labour could make men distinct titles to several parcels of it, for their private uses; wherein there could be no doubt of right, no room for quarrel.

Sec. 40. Nor is it so strange, as perhaps before consideration it may appear, that the property of labour should be able to over-balance the community of land: for it is labour indeed that puts the difference of value on every thing; and let any one consider what the difference is between an acre of land planted with tobacco or sugar, sown with wheat or barley, and an acre of the same land lying in common, without any husbandry upon it, and he will find, that the improvement of labour makes the far greater part of the value. I think it will be but a very modest computation to say, that of the products of the earth useful to the life of man nine tenths are the effects of labour: nay, if we will rightly estimate things as they come to our use, and cast up the several expences about them, what in them is purely owing to nature, and what to labour, we shall find, that in most of them ninety-nine hundredths are wholly to be put on the account of labour.

Sec. 41. There cannot be a clearer demonstration of any thing, than several nations of the Americans are of this, who are rich in land, and poor in all the comforts of life; whom nature having furnished as liberally as any other people, with the materials of plenty, i.e. a fruitful soil, apt to produce in abundance, what might serve for food, raiment, and delight; yet for want of improving it by labour, have not one hundredth part of the conveniencies we enjoy: and a king of a large and fruitful territory there, feeds, lodges, and is clad worse than a day-labourer in England.

Sec. 42. To make this a little clearer, let us but trace some of the ordinary provisions of life, through their several progresses, before they come to our use, and see how much they receive of their value from human industry. Bread, wine and cloth, are things of daily use, and great plenty; yet notwithstanding, acorns, water and leaves, or skins, must be our bread, drink and cloathing, did not labour furnish us with these more useful commodities: for whatever bread is more worth than acorns, wine than water, and cloth or silk, than leaves, skins or moss, that is wholly owing to labour and industry; the one of these being the food and raiment which unassisted nature furnishes us with; the other, provisions which our industry and pains prepare for us, which how much they exceed the other in value, when any one hath computed, he will then see how much labour 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; and we shall find the benefit of it amount to little more than nothing. This shews how much numbers of men are to be preferred to largeness of dominions; and that the increase of lands, and the right employing of them, is the great art of government: and that prince, who shall be so wise and godlike, as by established laws of liberty to secure protection and encouragement to the honest industry of mankind, against the oppression of power and narrowness of party, will quickly be too hard for his neighbours: but this by the by. To return to the argument in hand,

Sec. 43. An acre of land, that bears here twenty bushels of wheat, and another in America, which, with the same husbandry, would do the like, are, without doubt, of the same natural intrinsic value: but yet the benefit mankind receives from the one in a year, is worth 5l. and from the other possibly not worth a penny, if all the profit an Indian received from it were to be valued, and sold here; at least, I may truly say, not one thousandth. It is labour then which puts the greatest part of value upon land, without which it would scarcely be worth any thing: it is to that we owe the greatest part of all its useful products; for all that the straw, bran, bread, of that acre of wheat, is more worth than the product of an acre of as good land, which lies waste, is all the effect of labour: for it is not barely the plough-man’s pains, the reaper’s and thresher’s toil, and the baker’s sweat, is to be counted into the bread we eat; the labour of those who broke the oxen, who digged and wrought the iron and stones, who felled and framed the timber employed about the plough, mill, oven, or any other utensils, which are a vast number, requisite to this corn, from its being feed to be sown to its being made bread, must all be charged on the account of labour, and received as an effect of that:

nature and the earth furnished only the almost worthless materials, as in themselves. It would be a strange catalogue of things, that industry provided and made use of, about every loaf of bread, before it came to our use, if we could trace them; iron, wood, leather, bark, timber, stone, bricks, coals, lime, cloth, dying drugs, pitch, tar, masts, ropes, and all the materials made use of in the ship, that brought any of the commodities made use of by any of the workmen, to any part of the work; all which it would be almost impossible, at least too long, to reckon up.

Sec. 44. From all which it is evident, that though the things of nature are given in common, yet 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 conveniencies of life, was perfectly his own, and did not belong in common to others.

Sec. 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 expresly or tacitly disowning all claim and right to the land in the others 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 and parcels of the earth; 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; tho' this can scarce happen amongst that part of mankind that have consented to the use of money.

Sec. 46. The greatest part of things really useful to the life of man, and such as the necessity of subsisting made the first commoners of the world look after, as it doth the Americans now, are generally things of short duration; such as, if they are not consumed by use, will decay and perish of themselves: gold, silver and diamonds, are things that fancy or agreement hath put the value on, more than real use, and the necessary support of life. Now of those good things which nature hath provided in common, every one had a right (as hath been said) to as much as he could use, and property in all that he could effect with his labour; all that his industry could extend to, to alter from the state nature had put it in, was his. He that gathered a hundred bushels of acorns or apples, had thereby a property in them, they were his goods as soon as gathered. He was only to look, that he used them before they spoiled, else he took more than his share, and robbed others. And indeed it was a foolish thing, as well as dishonest, to hoard up more than he could make use of. If he gave away a part to any body else, so that it perished not uselesly in his possession, these he also made use of. And if he also bartered away plums, that would have rotted in a week, for nuts that would last good for his eating a whole year, he did no injury; he wasted not the common stock; destroyed no part of the portion of goods that belonged to others, so long as nothing perished uselesly in his hands. Again, if he would give his nuts for a piece of metal, pleased with its colour; or exchange his sheep for shells, or wool for a sparkling pebble or a diamond, and keep those by him all his life he invaded not the right of others, he might heap up as much of these durable things as he pleased; the exceeding of the bounds of his just property not lying in the largeness of his possession, but the perishing of any thing uselesly in it.

Sec. 47. And thus came in the use of money, some lasting thing that men might keep without spoiling, and that by mutual consent men would take in exchange for the truly useful, but perishable supports of life.

Sec. 48. And as different degrees of industry were apt to give men possessions in different proportions, so this invention of money gave them the opportunity to continue and enlarge them: for supposing an island, separate from all possible commerce with the rest of the world, wherein there were but an hundred families, but there were sheep, horses and cows, with other useful animals, wholsome fruits, and land enough for corn for a hundred thousand times as many, but nothing in the island, either because of its commonness, or perishableness, fit to supply the place of money; what reason could any one have there to enlarge his possessions beyond the use of his family, and a plentiful supply to its consumption, either in what their own industry produced, or they could barter for like perishable, useful commodities, with others? Where there is not some thing, both lasting and scarce, and so valuable to be hoarded up, there men will not be apt to enlarge their possessions of land, were it never so rich, never so free for them to take: for I ask, what would a man value ten thousand, or an hundred thousand acres of excellent land, ready cultivated, and well stocked too with cattle, in the middle of the inland parts of America, where he had no hopes of commerce with other parts of the world, to draw money to him by the sale of the product? It would not be worth the enclosing, and we should see him give up again to the wild common of nature, whatever was more than would supply the conveniencies of life to be had there for him and his family.

Sec. 49. Thus in the beginning all the world was America, and more so than that is now; for no such thing as money was any where known. Find out something that hath the use and value of money amongst his neighbours, you shall see the same man will begin presently to enlarge his possessions.

Sec. 50. But since gold and silver, being little useful to the life of man in proportion to food, raiment, and carriage, has its value only from the consent of men, whereof labour yet makes, in great part, the measure, it is plain, that men have agreed to a disproportionate and unequal possession of the earth, they having, by a tacit and voluntary consent, found out, a way how a man may fairly possess more land than he himself can use the product of, by receiving in exchange for the overplus gold and silver, which may be hoarded up without injury to any one; these metals not spoiling or decaying in the hands of the possessor. This partage of things in an inequality of private possessions, men have made practicable out of the bounds of society, and without compact, only by putting a value on gold and silver, and tacitly agreeing in the use of money: for in governments, the laws regulate the right of property, and the possession of land is determined by positive constitutions.

Sec. 51. And thus, I think, it is very easy to conceive, without any difficulty, how labour could at first begin a title of property in the common things of nature, and how the spending it upon our uses bounded it. So that there could then be no reason of quarrelling about title, nor any doubt about the largeness of possession it gave. Right and conveniency went together; for as a man had a right to all he could employ his labour upon, so he had no temptation to labour for more than he could make use of. This left no room for controversy about the title, nor for encroachment on the right of others; what portion a man carved to himself, was easily seen; and it was useless, as well as dishonest, to carve himself too much, or take more than he needed.

CHAP. VII. Of Political or Civil Society.

Sec. 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: and though all these might, and commonly did meet together, and make up but one family, wherein the master or mistress of it had some sort of rule proper to a family; each of these, or all together, came short of political society, as we shall see, if we consider the different ends, ties, and bounds of each of these.

Sec. 78. Conjugal society is made by a voluntary compact between man and woman; and tho' it consist chiefly in such a communion and right in one another's bodies as is necessary to its chief end, procreation; yet it draws with it mutual support and assistance, and a communion of interests too, as necessary not only to unite their care and affection, but also necessary to their common off-spring, who have a right to be nourished, and maintained by them, till they are able to provide for themselves.

Sec. 79. For the end of conjunction, between male and female, being not barely procreation, but the continuation of the species; this conjunction betwixt male and female ought to last, even after procreation, so long as is necessary to the nourishment and support of the young ones, who are to be sustained even after procreation, so long as is necessary to the nourishment and support of the young ones, who are to be sustained by those that got them, till they are able to shift and provide for themselves. This rule, which the infinite wise maker hath set to the works of his hands, we find the inferior creatures steadily obey. In those viviparous animals which feed on grass, the conjunction between male and female lasts no longer than the very act of copulation; because the teat of the dam being sufficient to nourish the young, till it be able to feed on grass, the male only begets, but concerns not himself for the female or young, to whose sustenance he can contribute nothing. But in beasts of prey the conjunction lasts longer: because the dam not being able well to subsist herself, and nourish her numerous off-spring by her own prey alone, a more laborious, as well as more dangerous way of living, than by feeding on grass, the assistance of the male is necessary to the maintenance of their common family, which cannot subsist till they are able to prey for themselves, but by the joint care of male and female. The same is to be observed in all birds, (except some domestic ones, where plenty of food excuses the cock from feeding, and taking care of the young brood) whose young needing food in the nest, the cock and hen continue mates, till the young are able to use their wing, and provide for themselves.

Sec. 80. And herein I think lies the chief, if not the only reason, why the male and female in mankind are tied to a longer conjunction than other creatures, viz. because the female is capable of conceiving, and de facto is commonly with child again, and brings forth too a new birth, long before the former is out of a dependency for support on his parents help, and able to shift for himself, and has all the assistance is due to him from his parents: whereby the father, who is bound to take care for those he hath begot, is under an obligation to continue in conjugal society with the same woman longer than other creatures, whose young being able to subsist of themselves, before the time of procreation returns again, the conjugal bond dissolves of itself, and they are at liberty, till Hymen at his usual anniversary season summons them again to chuse new mates. Wherein one cannot but admire the wisdom of the great Creator, who having given to man foresight, and an ability to lay up for the future, as well as to supply the present necessity, hath made it necessary, that society of man and wife should be more lasting, than of male and female amongst other creatures; that so their industry might be encouraged, and their interest better united, to make provision and lay up goods for their common issue, which uncertain mixture, or easy and frequent solutions of conjugal society would mightily disturb.

Sec. 81. But tho'these are ties upon mankind, which make the conjugal bonds more firm and lasting in man, than the other species of animals; yet it would give one reason to enquire, why this compact, where procreation and education

are secured, and inheritance taken care for, may not be made determinable, either by consent, or at a certain time, or upon certain conditions, as well as any other voluntary compacts, there being no necessity in the nature of the thing, nor to the ends of it, that it should always be for life; I mean, to such as are under no restraint of any positive law, which ordains all such contracts to be perpetual.

Sec. 82. But the husband and wife, though they have but one common concern, yet having different understandings, will unavoidably sometimes have different wills too; it therefore being necessary that the last determination, i. e. the rule, should be placed somewhere; it naturally falls to the man's share, as the abler and the stronger. But this reaching but to the things of their common interest and property, leaves the wife in the full and free possession of what by contract is her peculiar right, and gives the husband no more power over her life than she has over his; the power of the husband being so far from that of an absolute monarch, that the wife has in many cases a liberty to separate from him, where natural right, or their contract allows it; whether that contract be made by themselves in the state of nature, or by the customs or laws of the country they live in; and the children upon such separation fall to the father or mother's lot, as such contract does determine.

Sec. 83. For all the ends of marriage being to be obtained under politic government, as well as in the state of nature, the civil magistrate doth not abridge the right or power of either naturally necessary to those ends, viz. procreation and mutual support and assistance whilst they are together; but only decides any controversy that may arise between man and wife about them. If it were otherwise, and that absolute sovereignty and power of life and death naturally belonged to the husband, and were necessary to the society between man and wife, there could be no matrimony in any of those countries where the husband is allowed no such absolute authority. But the ends of matrimony requiring no such power in the husband, the condition of conjugal society put it not in him, it being not at all necessary to that state. Conjugal society could subsist and attain its ends without it; nay, community of goods, and the power over them, mutual assistance and maintenance, and other things belonging to conjugal society, might be varied and regulated by that contract which unites man and wife in that society, as far as may consist with procreation and the bringing up of children till they could shift for themselves; nothing being necessary to any society, that is not necessary to the ends for which it is made.

Sec. 84. The society betwixt parents and children, and the distinct rights and powers belonging respectively to them, I have treated of so largely, in the foregoing chapter, that I shall not here need to say any thing of it. And I think it is plain, that it is far different from a politic society.

Sec. 85. Master and servant are names as old as history, but given to those of far different condition; for a freeman makes himself a servant to another, by selling him, for a certain time, the service he undertakes to do, in exchange for wages he is to receive: and though this commonly puts him into the family of his master, and under the ordinary discipline thereof; yet it gives the master but a temporary power over him, and no greater than what is contained in the contract between them. But there is another sort of servants, which by a peculiar name we call slaves, who being captives taken in a just war, are by the right of nature subjected to the absolute dominion and arbitrary power of their masters. These men having, as I say, forfeited their lives, and with it their liberties, and lost their estates; and being in the state of slavery, not capable of any property, cannot in that state be considered as any part of civil society; the chief end whereof is the preservation of property.

Sec. 86. Let us therefore consider a master of a family with all these subordinate relations of wife, children, servants, and slaves, united under the domestic rule of a family; which, what resemblance soever it may have in its order,

offices, and number too, with a little common-wealth, yet is very far from it, both in its constitution, power and end: or if it must be thought a monarchy, and the paterfamilias the absolute monarch in it, absolute monarchy will have but a very shattered and short power, when it is plain, by what has been said before, that the master of the family has a very distinct and differently limited power, both as to time and extent, over those several persons that are in it; for excepting the slave (and the family is as much a family, and his power as paterfamilias as great, whether there be any slaves in his family or no) he has no legislative power of life and death over any of them, and none too but what a mistress of a family may have as well as he. And he certainly can have no absolute power over the whole family, who has but a very limited one over every individual in it. But how a family, or any other society of men, differ from that which is properly political society, we shall best see, by considering wherein political society itself consists.

Sec. 87. Man being born, as has been proved, with a title to perfect freedom, and an uncontrouled 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, by settled standing rules, indifferent, and the same to all parties; and by men having authority from the community, for the execution of those rules, 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 who 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 shewed it, the perfect state of nature.

Sec. 88. And thus the common-wealth comes by a power to set down what punishment shall belong to the several transgressions which they think worthy of it, committed amongst the members of that society, (which is the power of making laws) as well as it has the power to punish any injury done unto any of its members, by any one that is not of it, (which is the power of war and peace;) and all this for the preservation of the property of all the members of that society, as far as is possible. But though every man who has entered into civil society, and is become a member of any commonwealth, has thereby quitted his power to punish offences, against the law of nature, in prosecution of his own private judgment, yet with the judgment of offences, which he has given up to the legislative in all cases, where he can appeal to the magistrate, he has given a right to the common-wealth to employ his force, for the execution of the judgments of the common-wealth, whenever he shall be called to it; which indeed are his own judgments, they being made by himself, or his representative. And herein we have the original of the legislative and executive power of civil society, which is to judge by standing laws, how far offences are to be punished, when committed within the common-wealth; and also to determine, by occasional judgments founded on the present circumstances of the fact, how far injuries from without are to be vindicated; and in both these to employ all the force of all the members, when there shall be need.

Sec. 89. Where-ever therefore any number of men are so united into one society, as to quit every one his executive power of the law of nature, and to resign it to the public, there and there only is a political, or civil society. And this is done, where-ever any number of men, in the state of nature, enter into society to make one people, one body politic, under one supreme government; or else when any one joins himself to, and incorporates with any government already made: for hereby he authorizes the society, or which is all one, the legislative thereof, to make laws for him, as the public good of the society shall require; to the execution whereof, his own assistance (as to his own decrees) is due. And this puts men out of a state of nature into that of a common-wealth, by setting up a judge on earth, with authority to determine all the controversies, and redress the injuries that may happen to any member of the commonwealth; which judge is the legislative, or magistrates appointed by it. And where-ever there are any number of men, however associated, that have no such decisive power to appeal to, there they are still in the state of nature.

Sec. 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; 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. (* 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, Hook. Eccl. Pol. l. i. sect. 16.)

Sec. 91. For he being supposed to have all, both legislative and executive power in himself alone, there is no judge to be found, no appeal lies open to any one, who may fairly, and indifferently, and with authority decide, and from whose decision relief and redress may be expected of any injury or inconviency, that may be suffered from the prince, or by his order: so that such a man, however intitled, Czar, or Grand Seignior, or how you please, is as much in the state of nature, with all under his dominion, as he is with therest of mankind: for where-ever any two men are, who have no standing rule, and common judge to appeal to on earth, for the determination of controversies of right betwixt them, there they are still in the state of* nature, and under all the inconveniencies of it, with only this woful difference to the subject, or rather slave of an absolute prince: that whereas, in the ordinary state of nature, he has a liberty to judge of his right, and according to the best of his power, to maintain it; now, whenever his property is invaded by the will and order of his monarch, he has not only no appeal, as those in society ought to have, but as if he were degraded from the common state of rational creatures, is denied a liberty to judge of, or to defend his right; and so is exposed to all the misery and inconveniencies, that a man can fear from one, who being in the unrestrained state of nature, is yet corrupted with flattery, and armed with power. (* To take away all such mutual grievances, injuries and wrongs, i.e. such as attend men in the state of nature, there was no way but only by growing into composition and agreement amongst themselves, by ordaining some kind of govemment public, and by yielding themselves subject thereunto, that unto whom they granted authority to rule and govem, by them the peace, tranquillity and happy estate of the rest might be procured. Men always knew that where force and injury was offered, they might be defenders of themselves; they knew that however men may seek their own commodity, yet if this were done with injury unto others, it was not to be suffered, but by all men, and all good means to be withstood. Finally, they knew that no man might in reason take upon him to determine his own right, and according to his own determination proceed in maintenance

thereof, in as much as every man is towards himself, and them whom he greatly affects, partial; and therefore that strifes and troubles would be endless, except they gave their common consent, all to be ordered by some, whom they should agree upon, without which consent there would be no reason that one man should take upon him to be lord or judge over another, Hooker's Eccl. Pol. l. i. sect. 10.)

Sec. 92. For he that thinks absolute power purifies men's blood, and corrects the baseness of human nature, need read but the history of this, or any other age, to be convinced of the contrary. He that would have been insolent and injurious in the woods of America, would not probably be much better in a throne; where perhaps learning and religion shall be found out to justify all that he shall do to his subjects, and the sword presently silence all those that dare question it: for what the protection of absolute monarchy is, what kind of fathers of their countries it makes princes to be and to what a degree of happiness and security it carries civil society, where this sort of government is grown to perfection, he that will look into the late relation of Ceylon, may easily see.

Sec. 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. This every one thinks necessary, and believes he deserves to be thought a declared enemy to society and mankind, who should go about to take it away. 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: for if it be asked, what security, what fence is there, in such a state, against the violence and oppression of this absolute ruler? the very question can scarce be borne. They are ready to tell you, that it deserves death only to ask after safety. Betwixt subject and subject, they will grant, there must be measures, laws and judges, for their mutual peace and security: but as for the ruler, he ought to be absolute, and is above all such circumstances; because he has power to do more hurt and wrong, it is right when he does it. To ask how you may be guarded from harm, or injury, on that side where the strongest hand is to do it, is presently the voice of faction and rebellion: as if when men quitting the state of nature entered into society, they agreed that all of them but one, should be under the restraint of laws, but that he should still retain all the liberty of the state of nature, increased with power, and made licentious by impunity. This is to think, that men are so foolish, that they take care to avoid what mischiefs may be done them by pole-cats, or foxes; but are content, nay, think it safety, to be devoured by lions.

Sec. 94. But whatever flatterers may talk to amuse people's understandings, it hinders not men from feeling; and when they perceive, that any man, in what station soever, is out of the bounds of the civil society which they are of, and that they have no appeal on earth against any harm, they may receive from him, they are apt to think themselves in the state of nature, in respect of him whom they find to be so; and to take care, as soon as they can, to have that safety and security in civil society, for which it was first instituted, and for which only they entered into it. And therefore, though perhaps at first , (as shall be shewed more at large hereafter in the following part of this discourse) some one good and excellent man having got a pre -eminency amongst the rest, had this deference paid to his goodness and virtue, as to a kind of natural authority, that the chief rule, with arbitration of their differences, by a tacit consent devolved into his hands, without any other caution, but the assurance they had of his uprightness and wisdom; yet when time, giving authority, and (as some men would persuade us) sacredness of customs, which the negligent, and unforeseeing innocence of the first ages began, had brought in successors of another stamp, the people finding their properties not secure under the government, as then it was, (whereas government has no other

end but the preservation of * property) could never be safe nor at rest, nor think themselves in civil society, till the legislature was placed in collective bodies of men, call them senate, parliament, or what you please. By which means every single person became subject, equally with other the meanest men, to those laws, which he himself, as part of the legislative, had established; nor could any one, by his own authority; avoid the force of the law, when once made; nor by any pretence of superiority plead exemption, thereby to license his own, or the miscarriages of any of his dependents.** No man in civil society can be exempted from the laws of it: for if any man may do what he thinks fit, and there be no appeal on earth, for redress or security against any harm he shall do; I ask, whether he be not perfectly still in the state of nature, and so can be no part or member of that civil society; unless any one will say, the state of nature and civil society are one and the same thing, which I have never yet found any one so great a patron of anarchy as to affirm. (* At the first, when some certain kind of regiment was once appointed, it may be that nothing was then farther thought upon for the manner of goveming, but all permitted unto their wisdom and discretion, which were to rule, till by experience they found this for all parts very inconvenient, so as the thing which they had devised for a remedy, did indeed but increase the sore, which it should have cured. They saw, that to live by one man's will, became the cause of all men's misery. This constrained them to come unto laws, wherein all men might see their duty beforehand, and know the penalties of transgressing them. Hooker's Eccl. Pol. l. i. sect. 10.) (** Civil law being the act of the whole body politic, doth therefore over- rule each several part of the same body. Hooker, ibid.)

CHAP. VIII. Of the Beginning of Political Societies.

Sec. 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 any 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.

Sec. 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 necessary to that which is one body to 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, impowered to act by positive laws, where no number is set by that positive law which impowers 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.

Sec. 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 hath, who may submit himself, and consent to any acts of it if he thinks fit.

Sec. 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 any thing to be the act of the whole: but such a consent is next to impossible ever to be had, if we consider the infirmities of health, and avocations of business, which in a number, though much less than that of a common-wealth, will necessarily keep many away from the public assembly. To which if we add the variety of opinions, and contrariety of interests, which unavoidably happen in all collections of men, the coming into society upon such terms would be only like Cato's coming into the theatre, only to go out again. 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 bom 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.

Sec. 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 expresly 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 a 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.

Sec. 100. To this I find two objections made. First, That there are no instances to be found in story, of a company of men independent, and equal one amongst another, that met together, and in this way began and set up a government. Secondly, It is impossible of right, that men should do so, because all men being born under government, they are to submit to that, and are not at liberty to begin a new one.

Sec. 101. To the first there is this to answer, That it is not at all to be wondered, that history gives us but a very little account of men, that lived together in the state of nature. The inconveniences of that condition, and the love and want of society, no sooner brought any number of them together, but they presently united and incorporated, if they designed to continue together. And if we may not suppose men ever to have been in the state of nature, because we hear not much of them in such a state, we may as well suppose the armies of Salmanasser or Xerxes were never children, because we hear little of them, till they were men, and imbodied in armies. Government is every where antecedent to records, and letters seldom come in amongst a people till a long continuation of civil society has, by other more necessary arts, provided for their safety, ease, and plenty: and then they begin to look after the history of their founders, and search into their original, when they have outlived the memory of it: for it is with commonwealths as with particular persons, they are commonly ignorant of their own births and infancies: and if they know any thing of their original, they are beholden for it, to the accidental records that others have kept of it. And those that we have, of the beginning of any polities in the world, excepting that of the Jews, where God himself immediately interposed, and which favours not at all paternal dominion, are all either plain instances of such a beginning as I have mentioned, or at least have manifest footsteps of it.

Sec. 102. He must shew a strange inclination to deny evident matter of fact, when it agrees not with his hypothesis, who will not allow, that shew a strange inclination to deny evident matter of fact, when it agrees not with his

hypothesis, who will not allow, that the beginning of Rome and Venice were by the uniting together of several men free and independent one of another, amongst whom there was no natural superiority or subjection. And if Josephus Acosta's word may be taken, he tells us, that in many parts of America there was no government at all. There are great and apparent conjectures, says he, that these men, speaking of those of Peru, for a long time had neither kings nor commonwealths, but lived in troops, as they do this day in Florida, the Cheriquanas, those of Brazil, and many other nations, which have no certain kings, but as occasion is offered, in peace or war, they choose their captains as they please, 1. i. c. 25. If it be said, that every man there was born subject to his father, or the head of his family; that the subjection due from a child to a father took not away his freedom of uniting into what political society he thought fit, has been already proved. But be that as it will, these men, it is evident, were actually free; and whatever superiority some politicians now would place in any of them, they themselves claimed it not, but by consent were all equal, till by the same consent they set rulers over themselves. So that their politic societies all began from a voluntary union, and the mutual agreement of men freely acting in the choice of their governors, and forms of government.

Sec. 103. And I hope those who went away from Sparta with Palantus, mentioned by Justin, 1. iii. c. 4. will be allowed to have been freemen independent one of another, and to have set up a government over themselves, by their own consent. Thus I have given several examples, out of history, of people free and in the state of nature, that being met together incorporated and began a commonwealth. And if the want of such instances be an argument to prove that government were not, nor could not be so begun, I suppose the contenders for paternal empire were better let it alone, than urge it against natural liberty: for 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. But if I might advise them in the case, they would do well not to search too much into the original of governments, as they have begun de facto, lest they should find, at the foundation of most of them, something very little favourable to the design they promote, and such a power as they contend for.

Sec. 104. But to conclude, reason being plain on our side, that men are naturally free, and the examples of history shewing, that the governments of the world, that were begun in peace, had their beginning laid on that foundation, and were made by the consent of the people; there can be little room for doubt, either where the right is, or what has been the opinion, or practice of mankind, about the first erecting of governments.

Sec. 105. I will not deny, that if we look back as far as history will direct us, towards the original of commonwealths, we shall generally find them under the government and administration of one man. And I am also apt to believe, that where a family was numerous enough to subsist by itself, and continued entire together, without mixing with others, as it often happens, where there is much land, and few people, the government commonly began in the father: for the father having, by the law of nature, the same power with every man else to punish, as he thought fit, any offences against that law, might thereby punish his transgressing children, even when they were men, and out of their pupilage; and they were very likely to submit to his punishment, and all join with him against the offender, in their turns, giving him thereby power to execute his sentence against any transgression, and so in effect make him the law-maker, and governor over all that remained in conjunction with his family. He was fittest to be trusted; paternal affection secured their property and interest under his care; and the custom of obeying him, in their childhood, made it easier to submit to him, rather than to any other. If therefore they must have one to rule them, as government is hardly to be avoided amongst men that live together; who so likely to be the man as he that was their common father; unless negligence, cruelty, or any other defect of mind or body made him unfit for it? But when either the father died, and left his next

heir, for want of age, wisdom, courage, or any other qualities, less fit for rule; or where several families met, and consented to continue together; there, it is not to be doubted, but they used their natural freedom, to set up him, whom they judged the ablest, and most likely, to rule well over them. Conformable hereunto we find the people of America, who (living out of the reach of the conquering swords, and spreading domination of the two great empires of Peru and Mexico) enjoyed their own natural freedom, though, caeteris paribus, they commonly prefer the heir of their deceased king; yet if they find him any way weak, or uncapable, they pass him by, and set up the stoutest and bravest man for their ruler.

Sec. 106. Thus, though looking back as far as records give us any account of peopling the world, and the history of nations, we commonly find the government to be in one hand; yet it destroys not that which I affirm, viz. that the beginning of politic society depends upon the consent of the individuals, to join into, and make one society; who, when they are thus incorporated, might set up what form of government they thought fit. But this having given occasion to men to mistake, and think, that by nature government was monarchical, and belonged to the father, it may not be amiss here to consider, why people in the beginning generally pitched upon this form, which though perhaps the father's pre-eminency might, in the first institution of some commonwealths, give a rise to, and place in the beginning, the power in one hand; yet it is plain that the reason, that continued the form of government in a single person, was not any regard, or respect to paternal authority; since all petty monarchies, that is, almost all monarchies, near their original, have been commonly, at least upon occasion, elective.

Sec. 107. First then, in the beginning of things, the father's government of the childhood of those sprung from him, having accustomed them to the rule of one man, and taught them that where it was exercised with care and skill, with affection and love to those under it, it was sufficient to procure and preserve to men all the political happiness they sought for in society. It was no wonder that they should pitch upon, and naturally run into that form of government, which from their infancy they had been all accustomed to; and which, by experience, they had found both easy and safe. To which, if we add, that monarchy being simple, and most obvious to men, whom neither experience had instructed in forms of government, nor the ambition or insolence of empire had taught to beware of the encroachments of prerogative, or the inconveniences of absolute power, which monarchy in succession was apt to lay claim to, and bring upon them, it was not at all strange, that they should not much trouble themselves to think of methods of restraining any exorbitances of those to whom they had given the authority over them, and of balancing the power of government, by placing several parts of it in different hands. They had neither felt the oppression of tyrannical dominion, nor did the fashion of the age, nor their possessions, or way of living, (which afforded little matter for covetousness or ambition) give them any reason to apprehend or provide against it; and therefore it is no wonder they put themselves into such a frame of government, as was not only, as I said, most obvious and simple, but also best suited to their present state and condition; which stood more in need of defence against foreign invasions and injuries, than of multiplicity of laws. The equality of a simple poor way of living, confining their desires within the narrow bounds of each man's small property, made few controversies, and so no need of many laws to decide them, or variety of officers to superintend the process, or look after the execution of justice, where there were but few trespasses, and few offenders. Since then those, who like one another so well as to join into society, cannot but be supposed to have some acquaintance and friendship together, and some trust one in another; they could not but have greater apprehensions of others, than of one another: and therefore their first care and thought cannot but be supposed to be, how to secure themselves against foreign force. It was natural for them to put themselves under a frame of government which might best serve to that end, and chuse the wisest and bravest man to conduct them in their wars, and lead them out against their enemies, and in this chiefly be their ruler.

Sec. 108. Thus we see, that the kings of the Indians in America, which is still a pattern of the first ages in Asia and Europe, whilst the inhabitants were too few for the country, and want of people and money gave men no temptation to enlarge their possessions of land, or contest for wider extent of ground, are little more than generals of their armies; and though they command absolutely in war, yet at home and in time of peace they exercise very little dominion, and have but a very moderate sovereignty, the resolutions of peace and war being ordinarily either in the people, or in a council. Tho' the war itself, which admits not of plurality of governors, naturally devolves the command into the king's sole authority.

Sec. 109. And thus in Israel itself, the chief business of their judges, and first kings, seems to have been to be captains in war, and leaders of their armies; which (besides what is signified by going out and in before the people, which was, to march forth to war, and home again in the heads of their forces) appears plainly in the story of Iephtha. The Ammonites making war upon Israel, the Gileadites in fear send to Iephtha, a bastard of their family whom they had cast off, and article with him, if he will assist them against the Ammonites, to make him their ruler; which they do in these words, And the people made him head and captain over them, Judg. xi, ii. which was, as it seems, all one as to be judge. And he judged Israel, judg. xii. 7. that is, was their captain-general six years. So when Iotham upbraids the Shechemites with the obligation they had to Gideon, who had been their judge and ruler, he tells them, He fought for you, and adventured his life far, and delivered you out of the hands of Midian, Judg. ix. 17. Nothing mentioned of him but what he did as a general: and indeed that is all is found in his history, or in any of the rest of the judges. And Abimelech particularly is called king, though at most he was but their general. And when, being weary of the ill conduct of Samuel's sons, the children of Israel desired a king, like all the nations to judge them, and to go out before them, and to fight their battles, I. Sam viii. 20. God granting their desire, says to Samuel, I will send thee a man, and thou shalt anoint him to be captain over my people Israel, that he may save my people out of the hands of the Philistines, ix. 16. As if the only business of a king had been to lead out their armies, and fight in their defence; and accordingly at his inauguration pouring a vial of oil upon him, declares to Saul, that the Lord had anointed him to be captain over his inheritance, x. 1. And therefore those, who after Saul's being solemnly chosen and saluted king by the tribes at Mispah, were unwilling to have him their king, made no other objection but this, How shall this man save us? v. 27. as if they should have said, this man is unfit to be our king, not having skill and conduct enough in war, to be able to defend us. And when God resolved to transfer the government to David, it is in these words, But now thy kingdom shall not continue: the Lord hath sought him a man after his own heart, and the Lord hath commanded him to be captain over his people, xiii. 14. As if the whole kingly authority were nothing else but to be their general: and therefore the tribes who had stuck to Saul's family, and opposed David's reign, when they came to Hebron with terms of submission to him, they tell him, amongst other arguments they had to submit to him as to their king, that he was in effect their king in Saul's time, and therefore they had no reason but to receive him as their king now. Also (say they) in time past, when Saul was king over us, thou wast he that reddest out and broughtest in Israel, and the Lord said unto thee, Thou shalt feed my people Israel, and thou shalt be a captain over Israel.

Sec. 110. Thus, whether a family by degrees grew up into a common-wealth, and the fatherly authority being continued on to the elder son, every one in his turn growing up under it, tacitly submitted to it, and the easiness and equality of it not offending any one, every one acquiesced, till time seemed to have confirmed it, and settled a right of succession by prescription: or whether several families, or the descendants of several families, whom chance, neighbourhood, or business brought together, uniting into society, the need of a general, whose conduct might defend them against their enemies in war, and the great confidence the innocence and sincerity of that poor but virtuous age, (such as are almost all those which begin governments, that ever come to last in the world) gave men one of another, made the first beginners of commonwealths generally put the rule into one man's hand, without any other express limitation or restraint, but what the nature of the thing, and the end of government required: which ever of those it was

that at first put the rule into the hands of a single person, certain it is no body was intrusted with it but for the public good and safety, and to those ends, in the infancies of commonwealths, those who had it commonly used it. And unless they had done so, young societies could not have subsisted; without such nursing fathers tender and careful of the public weal, all governments would have sunk under the weakness and infirmities of their infancy, and the prince and the people had soon perished together.

Sec. 111. But though the golden age (before vain ambition, and amor sceleratus habendi, evil concupiscence, had corrupted men's minds into a mistake of true power and honour) had more virtue, and consequently better governors, as well as less vicious subjects, and there was then no stretching prerogative on the one side, to oppress the people; nor consequently on the other, any dispute about privilege, to lessen or restrain the power of the magistrate, and so no contest betwixt rulers and people about governors or goveernment: yet, when ambition and luxury in future ages* would retain and increase the power, without doing the business for which it was given; and aided by flattery, taught princes to have distinct and separate interests from their people, men found it necessary to examine more carefully the original and rights of government; and to find out ways to restrain the exorbitances, and prevent the abuses of that power, which they having intrusted in another's hands only for their own good, they found was made use of to hurt them. (* At first, when some certain kind of regiment was once approved, it may be nothing was then farther thought upon for the manner of governing, but all permitted unto their wisdom and discretion which were to rule, till by experience they found this for all parts very inconvenient, so as the thing which they had devised for a remedy, did indeed but increase the sore which it should have cured. They saw, that to live by one man's will, became the cause of all men's misery. This constrained them to come unto laws wherein all men might see their duty before hand, and know the penalties of transgressing them. Hooker's Eccl. Pol. l. i. sect. 10.)

Sec. 112. Thus we may see how probable it is, that people that were naturally free, and by their own consent either submitted to the government of their father, or united together out of different families to make a government, should generally put the rule into one man's hands, and chuse to be under the conduct of a single person, without so much as by express conditions limiting or regulating his power, which they thought safe enough in his honesty and prudence; though they never dreamed of monarchy being lure Divino, which we never heard of among mankind, till it was revealed to us by the divinity of this last age; nor ever allowed paternal power to have a right to dominion, or to be the foundation of all government. And thus much may suffice to shew, that as far as we have any light from history, we have reason to conclude, that all peaceful beginnings of government have been laid in the consent of the people. I say peaceful, because I shall have occasion in another place to speak of conquest, which some esteem a way of beginning of governments. The other objection I find urged against the beginning of polities, in the way I have mentioned, is this, viz.

Sec. 113. That all men being born under government, some or other, it is impossible any of them should ever be free, and at liberty to unite together, and begin a new one, or ever be able to erect a lawful government. If this argument be good; I ask, how came so many lawful monarchies into the world? for if any body, upon this supposition, can shew me any one man in any age of the world free to begin a lawful monarchy, I will be bound to shew him ten other free men at liberty, at the same time to unite and begin a new government under a regal, or any other form; it being demonstration, that if any one, born under the dominion of another, may be so free as to have a right to command others in a new and distinct empire, every one that is born under the dominion of another may be so free too, and may become a ruler, or subject, of a distinct separate government. And so by this their own principle, either all men, however born, are free, or else there is but one lawful prince, one lawful government in the world. And then they have

nothing to do, but barely to shew us which that is; which when they have done, I doubt not but all mankind will easily agree to pay obedience to him.

Sec. 114. Though it be a sufficient answer to their objection, to shew that it involves them in the same difficulties that it doth those they use it against; yet I shall endeavour to discover the weakness of this argument a little farther. All men, say they, are born under government, and therefore they cannot be at liberty to begin a new one. Every one is born a subject to his father, or his prince, and is therefore under the perpetual tie of subjection and allegiance. It is plain mankind never owned nor considered any such natural subjection that they were born in, to one or to the other that tied them, without their own consents, to a subjection to them and their heirs.

Sec. 115. For there are no examples so frequent in history, both sacred and profane, as those of men withdrawing themselves, and their obedience, from the jurisdiction they were born under, and the family or community they were bred up in, and setting up new governments in other places; from whence sprang all that number of petty commonwealths in the beginning of ages, and which always multiplied, as long as there was room enough, till the stronger, or more fortunate, swallowed the weaker; and those great ones again breaking to pieces, dissolved into lesser dominions. All which are so many testimonies against paternal sovereignty, and plainly prove, that it was not the natural right of the father descending to his heirs, that made governments in the beginning, since it was impossible, upon that ground, there should have been so many little kingdoms; all must have been but only one universal monarchy, if men had not been at liberty to separate themselves from their families, and the government, be it what it will, that was set up in it, and go and make distinct commonwealths and other governments, as they thought fit.

Sec. 116. This has been the practice of the world from its first beginning to this day; nor is it now any more hindrance to the freedom of mankind, that they are born under constituted and ancient polities, that have established laws, and set forms of government, than if they were born in the woods, amongst the unconfined inhabitants, that run loose in them: for those, who would persuade us, that by being born under any government, we are naturally subjects to it, and have no more any title or pretence to the freedom of the state of nature, have no other reason (bating that of paternal power, which we have already answered) to produce for it, but only, because our fathers or progenitors passed away their natural liberty, and thereby bound up themselves and their posterity to a perpetual subjection to the government, which they themselves submitted to. It is true, that whatever engagements or promises any one has made for himself, he is under the obligation of them, but cannot, by any compact whatsoever, bind his children or posterity: for his son, when a man, being altogether as free as the father, any act of the father can no more give away the liberty of the son, than it can of any body else: he may indeed annex such conditions to the land, he enjoyed as a subject of any common-wealth, as may oblige his son to be of that community, if he will enjoy those possessions which were his father's; because that estate being his father's property, he may dispose, or settle it, as he pleases.

Sec. 117. And this has generally given the occasion to mistake in this matter; because commonwealths not permitting any part of their dominions to be dismembered, nor to be enjoyed by any but those of their community, the son cannot ordinarily enjoy the possessions of his father, but under the same terms his father did, by becoming a member of the society; whereby he puts himself presently under the government he finds there established, as much as any other subject of that common-wealth. And thus the consent of freemen, born under government, which only makes them members of it, being given separately in their turns, as each comes to be of age, and not in a multitude together; people take no notice of it, and thinking it not done at all, or not necessary, conclude they are naturally subjects as they are men.

Sec. 118. But, it is plain, governments themselves understand it otherwise; they claim no power over the son, because of that they had over the father; nor look on children as being their subjects, by their fathers being so. If a subject of England have a child, by an English woman in France, whose subject is he? Not the king of England's; for he must have leave to be admitted to the privileges of it: nor the king of France's; for how then has his father a liberty to bring him away, and breed him as he pleases? and who ever was judged as a traytor or deserter, if he left, or warred against a country, for being barely born in it of parents that were aliens there? It is plain then, by the practice of governments themselves, as well as by the law of right reason, that a child is born a subject of no country or government. He is under his father's tuition and authority, till he comes to age of discretion; and then he is a freeman, at liberty what government he will put himself under, what body politic he will unite himself to: for if an Englishman's son, born in France, be at liberty, and may do so, it is evident there is no tie upon him by his father's being a subject of this kingdom; nor is he bound up by any compact of his ancestors. And why then hath not his son, by the same reason, the same liberty, though he be born any where else? Since the power that a father hath naturally over his children, is the same, where-ever they be born, and the ties of natural obligations, are not bounded by the positive limits of kingdoms and commonwealths.

Sec. 119. Every man being, as has been shewed, 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. No body 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 possessions, or enjoyment, of any part of the dominions of any government, doth thereby 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.

Sec. 120. To understand this the better, it is fit to consider, that every man, when he at first incorporates himself into any commonwealth, he, by his uniting himself thereunto, annexed also, and submits to the community, those possessions, which he has, or shall acquire, that do not already belong to any other government: for it would be a direct contradiction, for any one to enter into society with others for the securing and regulating of property; and yet to suppose his land, whose property is to be regulated by the laws of the society, should be exempt from the jurisdiction of that government, to which he himself, the proprietor of the land, is a subject. By the same act therefore, whereby any one unites his person, which was before free, to any common-wealth, by the same he unites his possessions, which were before free, to it also; and they become, both of them, person and possession, subject to the government and dominion of that common-wealth, as long as it hath a being. VVhoever therefore, from thenceforth, by inheritance, purchase, permission, or otherways, enjoys any part of the land, so annexed to, and under the government of that common-wealth, must take it with the condition it is under; that is, of submitting to the government of the common-wealth, under whose jurisdiction it is, as far forth as any subject of it.

Sec. 121. But since the government has a direct jurisdiction only over the land, and reaches the possessor of it, (before he has actually incorporated himself in the society) only as he dwells upon, and enjoys that; the obligation any

one is under, by virtue of such enjoyment, to submit to the government, begins and ends with the enjoyment; so that whenever the owner, who has given nothing but such a tacit consent to the government, will, by donation, sale, or otherwise, quit the said possession, he is at liberty to go and incorporate himself into any other common-wealth; or to agree with others to begin a new one, in vacuis locis, in any part of the world, they can find free and unpossessed: whereas he, that has once, by actual agreement, and any express declaration, given his consent to be of any commonwealth, is perpetually and indispensably obliged to be, and remain unalterably a subject to it, and can never be again in the liberty of the state of nature; unless, by any calamity, the government he was under comes to be dissolved; or else by some public act cuts him off from being any longer a member of it.

Sec. 122. But submitting to the laws of any country, living quietly, and enjoying privileges and protection under them, makes not a man a member of that society: this is only a local protection and homage due to and from all those, who, not being in a state of war, come within the territories belonging to any government, to all parts whereof the force of its laws extends. But this no more makes a man a member of that society, a perpetual subject of that common-wealth, than it would make a man a subject to another, in whose family he found it convenient to abide for some time; though, whilst he continued in it, he were obliged to comply with the laws, and submit to the government he found there. And thus we see, that foreigners, by living all their lives under another government, and enjoying the privileges and protection of it, though they are bound, even in conscience, to submit to its administration, as far forth as any denison; yet do not thereby come to be subjects or members of that commonwealth. Nothing can make any man so, but his actually entering into it by positive engagement, and express promise and compact. This is that, which I think, concerning the beginning of political societies, and that consent which makes any one a member of any common-wealth.

CHAP. IX. Of the Ends of Political Society and Government.

Sec. 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 no body, why will he part with his freedom? why will he give up this empire, and subject himself to the dominion and controul 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 unsecure. This makes him willing to quit a 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.

Sec. 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.

Sec. 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.

Sec. 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, They who by any injustice offended, will seldom fail, where they are able, by force to make good their injustice; such resistance many times makes the punishment dangerous, and frequently destructive, to those who attempt it.

Sec. 127. Thus mankind, notwithstanding all the privileges of the state of nature, being but in an ill condition, while they remain in it, are quickly driven into society. Hence it comes to pass, that we seldom find any number of men live any time together in this state. The inconveniencies that they are therein exposed to, by the irregular and uncertain exercise of the power every man has of punishing the transgressions of others, make them take sanctuary under the established laws of government, and therein seek the preservation of their property. It is this makes them so willingly give up every one his single power of punishing, to be exercised by such alone, as shall be appointed to it amongst them; and by such rules as the community, or those authorized by them to that purpose, shall agree on. And in this we have the original right and rise of both the legislative and executive power, as well as of the governments and societies themselves.

Sec. 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 vitiousness of degenerate men, there would be no need of any other; no necessity that men should separate from this great and natural community, and by positive agreements combine into smaller and divided associations. 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 politic society, and incorporates into any common-wealth, separate from the rest of mankind.

Sec. 129. The first power, viz. of doing whatsoever he thought 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.

Sec. 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.

Sec. 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 common-wealth, 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.

CHAP. X. Of the Forms of a Common-wealth.

Sec. 132. THE majority having, as has been shewed, upon men's first uniting into society, the whole power of the community naturally in them, may employ all that power in making laws for the community from time to time, and executing those laws by officers of their own appointing; and then the form of the government is a perfect democracy: or else may put the power of making laws into the hands of a few select men, and their heirs or successors; and then it is an oligarchy: or else into the hands of one man, and then it is a monarchy: if to him and his heirs, it is an hereditary monarchy: if to him only for life, but upon his death the power only of nominating a successor to return to them; an elective monarchy. And so accordingly of these the community may make compounded and mixed forms of government, as they think good. And if the legislative power be at first given by the majority to one or more persons only for their lives, or any limited time, and then the supreme power to revert to them again; when it is so reverted, the community may dispose of it again anew into what hands they please, and so constitute a new form of government: for the form of government depending upon the placing the supreme power, which is the legislative, it being impossible to conceive that an inferior power should prescribe to a superior, or any but the supreme make laws, according as the power of making laws is placed, such is the form of the common-wealth.

Sec. 133. By common-wealth, I must be understood all along to mean, not a democracy, or any form of government, but any independent community, which the Latines signified by the word civitas, to which the word which best answers in our language, is common-wealth, and most properly expresses such a society of men, which community or city in English does not; for there may be subordinate communities in a government; and city amongst us has a quite different notion from common-wealth: and therefore, to avoid ambiguity, I crave leave to use the word common-wealth in that sense, in which I find it used by king James the first; and I take it to be its genuine signification; which if any body dislike, I consent with him to change it for a better.

CHAP. XI. Of the Extent of the Legislative Power.

Sec. 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. This legislative is not only the supreme power of the common-wealth, but sacred and unalterable in the hands where the community have once placed it; nor can any edict of any body else, in what form soever conceived, or by what power soever backed, have the force and obligation of a law, which has not its sanction from that legislative which the public has chosen and appointed: for without this the law could not have that, which is absolutely necessary to its being a law,* the consent of the society, over whom no body can have a power to make laws, but by their own consent, and by authority received from them; and therefore all the obedience, which by

the most solemn ties any one can be obliged to pay, ultimately terminates in this supreme power, and is directed by those laws which it enacts: nor can any oaths to any foreign power whatsoever, or any domestic subordinate power, discharge any member of the society from his obedience to the legislative, acting pursuant to their trust; nor oblige him to any obedience contrary to the laws so enacted, or farther than they do allow; it being ridiculous to imagine one can be tied ultimately to obey any power in the society, which is not the supreme. (* The lawful power of making laws to command whole politic societies of men, belonging so properly unto the same intire societies, that for any prince or potentate of what kind soever upon earth, to exercise the same of himself, and not by express commission immediately and personally received from God, or else by authority derived at the first from their consent, upon whose persons they impose laws, it is no better than mere tyranny. Laws they are not therefore which public approbation hath not made so. Hooker's Eccl. Pol. l. i. sect. 10. Of this point therefore we are to note, that sith men naturally have no full and perfect power to command whole politic multitudes of men, therefore utterly without our consent, we could in such sort be at no man's commandment living. And to be commanded we do consent, when that society, whereof we be a part, hath at any time before consented, without revoking the same after by the like universal agreement. Laws therefore human, of what kind so ever, are available by consent. Ibid.)

Sec. 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 common-wealth; 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 up to the community: for no body can transfer to another more power than he has in himself; and no body 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 common-wealth, 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. 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 inforce 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. (* 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, expresly 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 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. Unless they do this, they are not perfect. Hooker's Eccl. Pol. l. i. sect. 10.)

Sec. 136. Secondly,* The legislative, or supreme authority, cannot assume to its self 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,

and known authorized judges: for the law of nature being unwritten, and so no where 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 ought, 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 to punish delinquents. To avoid these inconveniences, 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 which 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. (* 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's Eccl. Pol. l. iii. sect. 9. To constrain men to any thing inconvenient doth seem unreasonable. Ibid. l. i. sect. 10.)

Sec. 137. Absolute arbitrary power, or governing without settled standing laws, can neither of them consist with the ends of society and government, which men would not quit the freedom of the state of nature for, and tie themselves up under, were it not to preserve their lives, liberties and fortunes, and by stated rules of right and property to secure their peace and quiet. It cannot be supposed that they should intend, had they a power so to do, to give to any one, or more, an absolute arbitrary power over their persons and estates, and put a force into the magistrate's hand to execute his unlimited will arbitrarily upon them. This were to put themselves into a worse condition than the state of nature, wherein they had a liberty to defend their right against the injuries of others, and were upon equal terms of force to maintain it, whether invaded by a single man, or many in combination. Whereas by supposing they have given up themselves to the absolute arbitrary power and will of a legislator, they have disarmed themselves, and armed him, to make a prey of them when he pleases; he being in a much worse condition, who is exposed to the arbitrary power of one man, who has the command of 100,000, than he that is exposed to the arbitrary power of 100,000 single men; no body being secure, that his will, who has such a command, is better than that of other men, though his force be 100,000 times stronger. And therefore, whatever form the common-wealth is under, the ruling power ought to govern by declared and received laws, and not by extemporary dictates and undetermined resolutions: for then mankind will be in a far worse condition than in the state of nature, if they shall have armed one, or a few men with the joint power of a multitude, to force them to obey at pleasure the exorbitant and unlimited decrees of their sudden thoughts, or unrestrained, and till that moment unknown wills, without having any measures set down which may guide and justify their actions: for all the power the government has, being only for the good of the society, as it ought not to be arbitrary and at pleasure, so it ought to be exercised by established and promulgated laws; that both the people may know their duty, and be safe and secure within the limits of the law; and the rulers too kept within their bounds, and not be tempted, by the power they have in their hands, to employ it to such purposes, and by such measures, as they would not have known, and own not willingly.

Sec. 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 their's, that no body hath a right to take their substance or any part of it 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, tho' 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.

Sec. 139. But government, into whatsoever hands it is put, being, as I have before shewed, intrusted with this condition, and for this end, that men might have and secure their properties; the prince, or senate, however it may have power to make laws, for the regulating of property between the subjects one amongst another, yet can never have a power to take to themselves the whole, or any part of the subjects property, without their own consent: for this would be in effect to leave them no property at all. And to let us see, that even absolute power, where it is necessary, is not arbitrary by being absolute, but is still limited by that reason, and confined to those ends, which required it in some cases to be absolute, we need look no farther than the common practice of martial discipline: for the preservation of the army, and in it of the whole common-wealth, requires an absolute obedience to the command of every superior officer, and it is justly death to disobey or dispute the most dangerous or unreasonable of them; but yet we see, that neither the serjeant, that could command a soldier to march up to the mouth of a cannon, or stand in a breach, where he is almost sure to perish, can command that soldier to give him one penny of his money; nor the general, that can condemn him to death for deserting his post, or for not obeying the most desperate orders, can yet, with all his absolute power of life and death, dispose of one farthing of that soldier's estate, or seize one jot of his goods; whom yet he can command any thing, and hang for the least disobedience; because such a blind obedience is necessary to that end, for which the commander has his power, viz. the preservation of the rest; but the disposing of his goods has nothing to do with it.

Sec. 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?

Sec. 141. Fourthly, The legislative cannot transfer the power of making laws to any other hands: for it being but a delegated power from the people, they who have it cannot pass it over to others. The people alone can appoint the form of the common-wealth, which is by constituting the legislative, and appointing in whose hands that shall be. And when the people have said, We will submit to rules, and be governed by laws made by such men, and in such forms, no body else can say other men shall make laws for them; nor can the people be bound by any laws, but such as are enacted by those whom they have chosen, and authorized to make laws for them. The power of the legislative, being

derived from the people by a positive voluntary grant and institution, can be no other than what that positive grant conveyed, which being only to make laws, and not to make legislators, the legislative can have no power to transfer their authority of making laws, and place it in other hands.

Sec. 142. These are the bounds which the trust, that is put in them by the society, and the law of God and nature, have set to the legislative power of every common-wealth, in all forms of government. First, They are to govern by promulgated established laws, not to be varied in particular cases, but to have one rule for rich and poor, for the favourite at court, and the country man at plough. Secondly, These laws also ought to be designed for no other end ultimately, but the good of the people. Thirdly, They must not raise taxes on the property of the people, without the consent of the people, given by themselves, or their deputies. And this properly concerns only such governments where the legislative is always in being, or at least where the people have not reserved any part of the legislative to deputies, to be from time to time chosen by themselves. Fourthly, The legislative neither must nor can transfer the power of making laws to any body else, or place it any where, but where the people have.

CHAP. XVIII. Of Tyranny.

Sec. 199. AS usurpation is the exercise of power, which another hath a right to; so tyranny is the exercise of power beyond right, which no body can have a right to. And this is making use of the power any one has in his hands, not for the good of those who are under it, but for his own private separate advantage. When the governor, however intitled, makes not the law, but his will, the rule; and his commands and actions are not directed to the preservation of the properties of his people, but the satisfaction of his own ambition, revenge, covetousness, or any other irregular passion.

Sec. 200. If one can doubt this to be truth, or reason, because it comes from the obscure hand of a subject, I hope the authority of a king will make it pass with him. King James the first, in his speech to the parliament, 1603, tells them thus, I will ever prefer the weal of the public, and of the whole commonwealth, in making of good laws and constitutions, to any particular and private ends of mine; thinking ever the wealth and weal of the commonwealth to be my greatest weal and worldly felicity; a point wherein a lawful king doth directly differ from a tyrant: for I do acknowledge, that the special and greatest point of difference that is between a rightful king and an usurping tyrant, is this, that whereas the proud and ambitious tyrant doth think his kingdom and people are only ordained for satisfaction of his desires and unreasonable appetites, the righteous and just king doth by the contrary acknowledge himself to be ordained for the procuring of the wealth and property of his people, And again, in his speech to the parliament, 1609, he hath these words, The king binds himself by a double oath, to the observation of the fundamental laws of his kingdom; tacitly, as by being a king, and so bound to protect as well the people, as the laws of his kingdom; and expressly, by his oath at his coronation, so as every just king, in a settled kingdom, is bound to observe that paction made to his people, by his laws, in framing his government agreeable thereunto, according to that paction which God made with Noah after the deluge. Hereafter, seed-time and harvest, and cold and heat, and summer and winter, and day and night, shall not cease while the earth remaineth. And therefore a king governing in a settled kingdom, leaves to be a king, and degenerates into a tyrant, as soon as he leaves off to rule according to his laws, And a little after, Therefore all kings that are not tyrants, or perjured, will be glad to bound themselves within the limits of their laws; and they that persuade them the contrary, are vipers, and pests both against them and the commonwealth. Thus that learned king, who well understood the notion of things, makes the difference betwixt a king and a tyrant to consist only in this, that one makes the laws the bounds of his power, and the good of the public, the end of his government; the other makes all give way to his own will and appetite.

Sec. 201. It is a mistake, to think this fault is proper only to monarchies; other forms of government are liable to it, as well as that: for wherever the power, that is put in any hands for the government of the people, and the preservation of their properties, is applied to other ends, and made use of to impoverish, harass, or subdue them to the arbitrary and irregular commands of those that have it; there it presently becomes tyranny, whether those that thus use it are one or many. Thus we read of the thirty tyrants at Athens, as well as one at Syracuse; and the intolerable dominion of the Decemviri at Rome was nothing better.

Sec. 202. Where-ever law ends, tyranny begins, if the law be transgressed to another's harm; and whosoever in authority exceeds the power given him by the law, and makes use of the force he has under his command, to compass that upon the subject, which the law allows not, ceases in that to be a magistrate; and, acting without authority, may be opposed, as any other man, who by force invades the right of another. This is acknowledged in subordinate magistrates. He that hath authority to seize my person in the street, may be opposed as a thief and a robber, if he endeavours to break into my house to execute a writ, notwithstanding that I know he has such a warrant, and such a legal authority, as will impower him to arrest me abroad. And why this should not hold in the highest, as well as in the most inferior magistrate, I would gladly be informed. Is it reasonable, that the eldest brother, because he has the greatest part of his father's estate, should thereby have a right to take away any of his younger brothers portions? or that a rich man, who possessed a whole country, should from thence have a right to seize, when he pleased, the cottage and garden of his poor neighbour? The being rightfully possessed of great power and riches, exceedingly beyond the greatest part of the sons of Adam, is so far from being an excuse, much less a reason, for rapine and oppression, which the endamaging another without authority is, that it is a great aggravation of it: for the exceeding the bounds of authority is no more a right in a great, than in a petty officer; no more justifiable in a king than a constable; but is so much the worse in him, in that he has more trust put in him, has already a much greater share than the rest of his brethren, and is supposed, from the advantages of his education, employment, and counsellors, to be more knowing in the measures of right and wrong.

Sec. 203. May the commands then of a prince be opposed? may he be resisted as often as any one shall find himself aggrieved, and but imagine he has not right done him? This will unhinge and overturn all polities, and, instead of government and order, leave nothing but anarchy and confusion.

Sec. 204. To this I answer, that force is to be opposed to nothing, but to unjust and unlawful force; whoever makes any opposition in any other case, draws on himself a just condemnation both from God and man; and so no such danger or confusion will follow, as is often suggested: for,

Sec. 205. First, As, in some countries, the person of the prince by the law is sacred; and so, whatever he commands or does, his person is still free from all question or violence, not liable to force, or any judicial censure or condemnation. But yet opposition may be made to the illegal acts of any inferior officer, or other commissioned by him; unless he will, by actually putting himself into a state of war with his people, dissolve the government, and leave them to that defence which belongs to every one in the state of nature: for of such things who can tell what the end will be? and a neighbour kingdom has shewed the world an odd example. In all other cases the sacredness of the person exempts him from all inconveniencies, whereby he is secure, whilst the government stands, from all violence and harm whatsoever; than which there cannot be a wiser constitution: for the harm he can do in his own person not being likely to happen often, nor to extend itself far; nor being able by his single strength to subvert the laws, nor oppress the body of the people, should any prince have so much weakness, and ill nature as to be willing to do it, the

inconveniency of some particular mischiefs, that may happen sometimes, when a heady prince comes to the throne, are well recompensed by the peace of the public, and security of the government, in the person of the chief magistrate, thus set out of the reach of danger: it being safer for the body, that some few private men should be sometimes in danger to suffer, than that the head of the republic should be easily, and upon slight occasions, exposed.

Sec. 206. Secondly, But this privilege, belonging only to the king's person, hinders not, but they may be questioned, opposed, and resisted, who use unjust force, though they pretend a commission from him, which the law authorizes not; as is plain in the case of him that has the king's writ to arrest a man, which is a full commission from the king; and yet he that has it cannot break open a man's house to do it, nor execute this command of the king upon certain days, nor in certain places, though this commission have no such exception in it; but they are the limitations of the law, which if any one transgress, the king's commission excuses him not: for the king's authority being given him only by the law, he cannot impower any one to act against the law, or justify him, by his commission, in so doing; the commission, or command of any magistrate, where he has no authority, being as void and insignificant, as that of any private man; the difference between the one and the other, being that the magistrate has some authority so far, and to such ends, and the private man has none at all: for it is not the commission, but the authority, that gives the right of acting; and against the laws there can be no authority. But, notwithstanding such resistance, the king's person and authority are still both secured, and so no danger to governor or government,

Sec. 207. Thirdly, Supposing a government wherein the person of the chief magistrate is not thus sacred; yet this doctrine of the lawfulness of resisting all unlawful exercises of his power, will not upon every slight occasion indanger him, or imbroil the government: for where the injured party may be relieved, and his damages repaired by appeal to the law, there can be no pretence for force, which is only to be used where a man is intercepted from appealing to the law: for nothing is to be accounted hostile force, but where it leaves not the remedy of such an appeal; and it is such force alone, that puts him that uses it into a state of war, and makes it lawful to resist him. A man with a sword in his hand demands my purse in the high-way, when perhaps I have not twelve pence in my pocket: this man I may lawfully kill. To another I deliver lool. to hold only whilst I alight, which he refuses to restore me, when I am got up again, but draws his sword to defend the possession of it by force, if I endeavour to retake it. The mischief this man does me is a hundred, or possibly a thousand times more than the other perhaps intended me (whom I killed before he really did me any); and yet I might lawfully kill the one, and cannot so much as hurt the other lawfully. The reason whereof is plain; because the one using force, which threatened my life, I could not have time to appeal to the law to secure it: and when it was gone, it was too late to appeal. The law could not restore life to my dead carcass: the loss was irreparable; which to prevent, the law of nature gave me a right to destroy him, who had put himself into a state of war with me, and threatened my destruction. But in the other case, my life not being in danger, I may have the benefit of appealing to the law, and have reparation for my lool. that way.

Sec. 208. Fourthly, But if the unlawful acts done by the magistrate be maintained (by the power he has got), and the remedy which is due by law, be by the same power obstructed; yet the right of resisting, even in such manifest acts of tyranny, will not suddenly, or on slight occasions, disturb the government: for if it reach no farther than some private men's cases, though they have a right to defend themselves, and to recover by force what by unlawful force is taken from them; yet the right to do so will not easily engage them in a contest, wherein they are sure to perish; it being as impossible for one, or a few oppressed men to disturb the government, where the body of the people do not think themselves concerned in it, as for a raving mad-man, or heady malcontent to overturn a well settled state; the people being as little apt to follow the one, as the other.

Sec. 209. But if either these illegal acts have extended to the majority of the people; or if the mischief and oppression has lighted only on some few, but in such cases, as the precedent, and consequences seem to threaten all; and they are persuaded in their consciences, that their laws, and with them their estates, liberties, and lives are in danger, and perhaps their religion too; how they will be hindered from resisting illegal force, used against them, I cannot tell. This is an inconvenience, I confess, that attends all governments whatsoever, when the governors have brought it to this pass, to be generally suspected of their people; the most dangerous state which they can possibly put themselves in. wherein they are the less to be pitied, because it is so easy to be avoided; it being as impossible for a governor, if he really means the good of his people, and the preservation of them, and their laws together, not to make them see and feel it, as it is for the father of a family, not to let his children see he loves, and takes care of them.

Sec. 210. But if all the world shall observe pretences of one kind, and actions of another; arts used to elude the law, and the trust of prerogative (which is an arbitrary power in some things left in the prince's hand to do good, not harm to the people) employed contrary to the end for which it was given: if the people shall find the ministers and subordinate magistrates chosen suitable to such ends, and favoured, or laid by, proportionably as they promote or oppose them: if they see several experiments made of arbitrary power, and that religion underhand favoured, (tho' publicly proclaimed against) which is readiest to introduce it; and the operators in it supported, as much as may be; and when that cannot be done, yet approved still, and liked the better: if a long train of actions shew the councils all tending that way; how can a man any more hinder himself from being persuaded in his own mind, which way things are going; or from casting about how to save himself, than he could from believing the captain of the ship he was in, was carrying him, and the rest of the company, to Algiers, when he found him always steering that course, though cross winds, leaks in his ship, and want of men and provisions did often force him to turn his course another way for some time, which he steadily returned to again, as soon as the wind, weather, and other circumstances would let him?

CHAP. XIX. Of the Dissolution of Government.

Sec. 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 mak ing a conquest upon them: for in that case, (not being able to maintain and support themselves, as one intire 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 an house to subsist when the materials of it are scattered and dissipated by a whirl-wind, or jumbled into a confused heap by an earthquake.

Sec. 212. Besides this over-turning 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 common-wealth: from hence the several members have their mutual influence, sympathy, and connexion: 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 authorized 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 any thing 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.

Sec. 213. This being usually brought about by such in the commonwealth who misuse the power they have; it is hard to consider it aright, and know at whose door to lay it, without knowing the form of government in which it happens. Let us suppose then the legislative placed in the concurrence of three distinct persons. 1. A single hereditary person, having the constant, supreme, executive power, and with it the power of convoking and dissolving the other two within certain periods of time. 2. An assembly of hereditary nobility. 3. An assembly of representatives chosen, pro tempore, by the people. Such a form of government supposed, it is evident,

Sec. 214. First, That when such a single person, or prince, sets up his own arbitrary will in place of the laws, which are the will of the society, declared by the legislative, then the legislative is changed: for that being in effect the legislative, whose rules and laws are put in execution, and required to be obeyed; when other laws are set up, and other rules pretended, and inforced, than what the legislative, constituted by the society, have enacted, it is plain that the legislative is changed. Whoever introduces new laws, not being thereunto authorized by the fundamental appointment of the society, or subverts the old, disowns and overturns the power by which they were made, and so sets up a new legislative.

Sec. 215. Secondly, When the prince hinders the legislative from assembling in its due time, or from acting freely, pursuant to those ends for which it was constituted, the legislative is altered: for it is not a certain number of men, no, nor their meeting, unless they have also freedom of debating, and leisure of perfecting, what is for the good of the society, wherein the legislative consists: when these are taken away or altered, so as to deprive the society of the due exercise of their power, the legislative is truly altered; for it is not names that constitute governments, but the use and exercise of those powers that were intended to accompany them; so that he, who takes away the freedom, or hinders the acting of the legislative in its due seasons, in effect takes away the legislative, and puts an end to the government.

Sec. 216. Thirdly, When, by the arbitrary power of the prince, the electors, or ways of election, are altered, without the consent, and contrary to the common interest of the people, there also the legislative is altered: for, if others than those whom the society hath authorized thereunto, do chuse, or in another way than what the society hath prescribed, those chosen are not the legislative appointed by the people.

Sec. 217. Fourthly, The delivery also of the people into the subjection of a foreign power, either by the prince, or by the legislative, is certainly a change of the legislative, and so a dissolution of the government: for the end why people entered into society being to be preserved one intire, free, independent society, to be governed by its own laws; this is lost, whenever they are given up into the power of another.

Sec. 218. Why, in such a constitution as this, the dissolution of the government in these cases is to be imputed to the prince, is evident; because he, having the force, treasure and offices of the state to employ, and often persuading himself, or being flattered by others, that as supreme magistrate he is uncapable of controul; he alone is in a condition to make great advances toward such changes, under pretence of lawful authority, and has it in his hands to terrify or suppress opposers, as factious, seditious, and enemies to the government: whereas no other part of the legislative, or people, is capable by themselves to attempt any alteration of the legislative, without open and visible rebellion, apt enough to be taken notice of, which, when it prevails, produces effects very little different from foreign conquest. Besides, the prince in such a form of government, having the power of dissolving the other parts of the legislative, and thereby rendering them private persons, they can never in opposition to him, or without his concurrence, alter the legislative by a law, his conse 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 effectually 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 connexion. 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, unconceivable to human capacity, and inconsistent with human society.

Sec. 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 freemen. 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.

Sec. 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. First, 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.

Sec. 222. The reason why men enter into society, is the preservation of their property; and the end why they chuse and authorize a legislative, is, that there may be laws made, and rules set, as guards and fences to the properties of

all the members of the society, to limit the power, and moderate the dominion, of every part and member of the society: for since it can never be supposed to be the will of the society, that the legislative should have a power to destroy that which every one designs to secure, by entering into society, and for which the people submitted themselves to legislators of their own making; whenever the legislators endeavour to take away, and destroy the property of the people, or to reduce them to slavery under arbitrary power, they put themselves into a state of war with the people, who are thereupon absolved from any farther obedience, and are left to the common refuge, which God hath provided for all men, against force and violence. Whensoever therefore the legislative shall transgress this fundamental rule of society; and either by ambition, fear, folly or corruption, endeavour to grasp themselves, or put into the hands of any other, an absolute power over the lives, liberties, and estates of the people; by this breach of trust they forfeit the power the people had put into their hands for quite contrary ends, and it devolves to the people, who. have a right to resume their original liberty, and, by the establishment of a new legislative, (such as they shall think fit) provide for their own safety and security, which is the end for which they are in society. What I have said here, concerning the legislative in general, holds true also concerning the supreme executor, who having a double trust put in him, both to have a part in the legislative, and the supreme execution of the law, acts against both, when he goes about to set up his own arbitrary will as the law of the society. He acts also contrary to his trust, when he either employs the force, treasure, and offices of the society, to corrupt the representatives, and gain them to his purposes; or openly preengages the electors, and prescribes to their choice, such, whom he has, by sollicitations, threats, promises, or otherwise, won to his designs; and employs them to bring in such, who have promised before-hand what to vote, and what to enact. Thus to regulate candidates and electors, and new-model the ways of election, what is it but to cut up the government by the roots, and poison the very fountain of public security? for the people having reserved to themselves the choice of their representatives, as the fence to their properties, could do it for no other end, but that they might always be freely chosen, and so chosen, freely act, and advise, as the necessity of the common-wealth, and the public good should, upon examination, and mature debate, be judged to require. This, those who give their votes before they hear the debate, and have weighed the reasons on all sides, are not capable of doing. To prepare such an assembly as this, and endeavour to set up the declared abettors of his own will, for the true representatives of the people, and the law-makers of the society, is certainly as great a breach of trust, and as perfect a declaration of a design to subvert the government, as is possible to be met with. To which, if one shall add rewards and punishments visibly employed to the same end, and all the arts of perverted law made use of, to take off and destroy all that stand in the way of such a design, and will not comply and consent to betray the liberties of their country, it will be past doubt what is doing. What power they ought to have in the society, who thus employ it contrary to the trust went along with it in its first institution, is easy to determine; and one cannot but see, that he, who has once attempted any such thing as this, cannot any longer be trusted.

Sec. 223. To this perhaps it will be said, that the people being ignorant, and always discontented, to lay the foundation of government in the unsteady opinion and uncertain humour of the people, is to expose it to certain ruin; and no government will be able long to subsist, if the people may set up a new legislative, whenever they take offence at the old one. To this I answer, Quite the contrary. People are not so easily got out of their old forms, as some are apt to suggest. They are hardly to be prevailed with to amend the acknowledged faults in the frame they have been accustomed to. And if there be any original defects, or adventitious ones introduced by time, or corruption; it is not an easy thing to get them changed, even when all the world sees there is an opportunity for it. This slowness and aversion in the people to quit their old constitutions, has, in the many revolutions which have been seen in this kingdom, in this and former ages, still kept us to, or, after some interval of fruitless attempts, still brought us back again to our old legislative of king, lords and commons: and whatever provocations have made the crown be taken from some of our princes heads, they never carried the people so far as to place it in another line.

Sec. 224. But it will be said, this hypothesis lays a ferment for frequent rebellion. To which I answer, First, No more than any other hypothesis: for when the people are made miserable, and find themselves exposed to the ill usage of arbitrary power, cry up their governors, as much as you will, for sons of Jupiter; let them be sacred and divine, descended, or authorized from heaven; give them out for whom or what you please, the same will happen. The people generally ill treated, and contrary to right, will be ready upon any occasion to ease themselves of a burden that sits heavy upon them. They will wish, and seek for the opportunity, which in the change, weakness and accidents of human affairs, seldom delays long to offer itself. He must have lived but a little while in the world, who has not seen examples of this in his time; and he must have read very little, who cannot produce examples of it in all sorts of governments in the world.

Sec. 225. Secondly, I answer, such revolutions happen not upon every little mismanagement in public affairs. Great mistakes in the ruling part, many wrong and inconvenient laws, and all the slips of human frailty, will be born by the people without mutiny or murmur. But if a long train of abuses, prevarications and artifices, all tending the same way, make the design visible to the people, and they cannot but feel what they lie under, and see whither they are going; it is not to be wondered, that they should then rouze themselves, and endeavour to put the rule into such hands which may secure to them the ends for which government was at first erected; and without which, ancient names, and specious forms, are so far from being better, that they are much worse, than the state of nature, or pure anarchy; the inconveniencies being all as great and as near, but the remedy farther off and more difficult.

Sec. 226. Thirdly, I answer, that this doctrine of a power in the people of providing for their safety a-new, by a new legislative, when their legislators have acted contrary to their trust, by invading their property, is the best fence against rebellion, and the probablest means to hinder it: for rebellion being an opposition, not to persons, but authority, which is founded only in the constitutions and laws of the government; those, whoever they be, who by force break through, and by force justify their violation of them, are truly and properly rebels: for when men, by entering into society and civil-government, have excluded force, and introduced laws for the preservation of property, peace, and unity amongst themselves, those who set up force again in opposition to the laws, do rebellare, that is, bring back again the state of war, and are properly rebels: which they who are in power, (by the pretence they have to authority, the temptation of force they have in their hands, and the flattery of those about them) being likeliest to do; the properest way to prevent the evil, is to shew them the danger and injustice of it, who are under the greatest temptation to run into it.

Sec. 227. In both the fore-mentioned cases, when either the legislative is changed, or the legislators act contrary to the end for which they were constituted; those who are guilty are guilty of rebellion: for if any one by force takes away the established legislative of any society, and the laws by them made, pursuant to their trust, he thereby takes away the umpirage, which every one had consented to, for a peaceable decision of all their controversies, and a bar to the state of war amongst them. They, who remove, or change the legislative, take away this decisive power, which no body can have, but by the appointment and consent of the people; and so destroying the authority which the people did, and no body else can set up, and introducing a power which the people hath not authorized, they actually introduce a state of war, which is that of force without authority: and thus, by removing the legislative established by the society, (in whose decisions the people acquiesced and united, as to that of their own will) they untie the knot, and expose the people a-new to the state of war, And if those, who by force take away the legislative, are rebels, the legislators themselves, as has been shewn, can be no less esteemed so; when they, who were set up for the protection, and preservation of the people, their liberties and properties, shall by force invade and endeavour to take

them away; and so they putting themselves into a state of war with those who made them the protectors and guardians of their peace, are properly, and with the greatest aggravation, rebellantes, rebels.

Sec. 228. But if they, who say it lays a foundation for rebellion, mean that it may occasion civil wars, or intestine broils, to tell the people they are absolved from obedience when illegal attempts are made upon their liberties or properties, and may oppose the unlawful violence of those who were their magistrates, when they invade their properties contrary to the trust put in them; and that therefore this doctrine is not to be allowed, being so destructive to the peace of the world: they may as well say, upon the same ground, that honest men may not oppose robbers or pirates, because this may occasion disorder or bloodshed. If any mischief come in such cases, it is not to be charged upon him who defends his own right, but on him that invades his neighbours. If the innocent honest man must quietly quit all he has, for peace sake, to him who will lay violent hands upon it, I desire it may be considered, what a kind of peace there will be in the world, which consists only in violence and rapine; and which is to be maintained only for the benefit of robbers and oppressors. VVho would not think it an admirable peace betwix the mighty and the mean, when the lamb, without resistance, yielded his throat to be torn by the imperious wolf? Polyphemus's den gives us a perfect pattern of such a peace, and such a government, wherein Ulysses and his companions had nothing to do, but quietly to suffer themselves to be devoured. And no doubt Ulysses, who was a prudent man, preached up passive obedience, and exhorted them to a quiet submission, by representing to them of what concernment peace was to mankind; and by shewing the inconveniences might happen, if they should offer to resist Polyphemus, who had now the power over them.

Sec. 229. The end of government is the good of mankind; and which is best for mankind, that the people should be always exposed to the boundless will of tyranny, or that the rulers should be sometimes liable to be opposed, when they grow exorbitant in the use of their power, and employ it for the destruction, and not the preservation of the properties of their people?

Sec. 230. Nor let any one say, that mischief can arise from hence, as often as it shall please a busy head, or turbulent spirit, to desire the alteration of the government. It is true, such men may stir, whenever they please; but it will be only to their own just ruin and perdition: for till the mischief be grown general, and the ill designs of the rulers become visible, or their attempts sensible to the greater part, the people, who are more disposed to suffer than right themselves by resistance, are not apt to stir. The examples of particular injustice, or oppression of here and there an unfortunate man, moves them not. But if they universally have a persuation, grounded upon manifest evidence, that designs are carrying on against their liberties, and the general course and tendency of things cannot but give them strong suspicions of the evil intention of their governors, who is to be blamed for it? Who can help it, if they, who might avoid it, bring themselves into this suspicion? Are the people to be blamed, if they have the sense of rational creatures, and can think of things no otherwise than as they find and feel them? And is it not rather their fault, who put things into such a posture, that they would not have them thought to be as they are? I grant, that the pride, ambition, and turbulency of private men have sometimes caused great disorders in commonwealths, and factions have been fatal to states and kingdoms. But whether the mischief hath oftener begun in the peoples wantonness, and a desire to cast off the lawful authority of their rulers, or in the rulers insolence, and endeavours to get and exercise an arbitrary power over their people; whether oppression, or disobedience, gave the first rise to the disorder, I leave it to impartial history to determine. This I am sure, whoever, either ruler or subject, by force goes about to invade the rights of either prince or people, and lays the foundation for overturning the constitution and frame of any just government, is highly guilty of the greatest crime, I think, a man is capable of, being to answer for all those mischiefs of blood, rapine, and

desolation, which the breaking to pieces of governments bring on a country. And he who does it, is justly to be esteemed the common enemy and pest of mankind, and is to be treated accordingly.

Sec. 231. That subjects or foreigners, attempting by force on the properties of any people, may be resisted with force, is agreed on all hands. But that magistrates, doing the same thing, may be resisted, hath of late been denied: as if those who had the greatest privileges and advantages by the law, had thereby a power to break those laws, by which alone they were set in a better place than their brethren: whereas their offence is thereby the greater, both as being ungrateful for the greater share they have by the law, and breaking also that trust, which is put into their hands by their brethren.

Sec. 232. Whosoever uses force without right, as every one does in society, who does it without law, puts himself into a state of war with those against whom he so uses it; and in that state all former ties are cancelled, all other rights cease, and every one has a right to defend himself, and to resist the aggressor. This is so evident, that Barclay himself, that great assertor of the power and sacredness of kings, is forced to confess, That it is lawful for the people, in some cases, to resist their king; and that too in a chapter, wherein he pretends to shew, that the divine law shuts up the people from all manner of rebellion. Whereby it is evident, even by his own doctrine, that, since they may in some cases resist, all resisting of princes is not rebellion. His words are these.

Sec. 233. But if any one should ask, Must the people then always lay themselves open to the cruelty and rage of tyranny? Must they see their cities pillaged, and laid in ashes, their wives and children exposed to the tyrant's lust and fury, and themselves and families reduced by their king to ruin, and all the miseries of want and oppression, and yet sit still? Must men alone be debarred the common privilege of opposing force with force, which nature allows so freely to all other creatures for their preservation from injury? I answer: Self-defence is a part of the law of nature; nor can it be denied the community, even against the king himself: but to revenge themselves upon him, must by no means be allowed them; it being not agreeable to that law. Wherefore if the king shall shew an hatred, not only to some particular persons, but sets himself against the body of the common- wealth, whereof he is the head, and shall, with intolerable ill usage, cruelly tyrannize over the whole, or a considerable part of the people, in this case the people have a right to resist and defend themselves from injury: but it must be with this caution, that they only defend themselves, but do not attack their prince: they may repair the damages received, but must not for any provocation exceed the bounds of due reverence and respect. They may repulse the present attempt, but must not revenge past violences: for it is natural for us to defend life and limb, but that an inferior should punish a superior, is against nature. The mischief which is designed them, the people may prevent before it be done; but when it is done, they must not revenge it on the king, though author of the villany. This therefore is the privilege of the people in general, above what any private person hath; that particular men are allowed by our adversaries themselves (Buchanan only excepted) to have no other remedy but patience; but the body of the people may with respect resist intolerable tyranny; for when it is but moderate, they ought to endure it.

Sec. 234. Thus far that great advocate of monarchical power allows of resistance.

Sec. 235. It is true, he has annexed two limitations to it, to no purpose: First, He says, it must be with reverence. Secondly, It must be without retribution, or punishment; and the reason he gives is, because an inferior cannot punish a superior. First, How to resist force without striking again, or how to strike with reverence, will need some skill to make intelligible. He that shall oppose an assault only with a shield to receive the blows, or in any more respectful posture, without a sword in his hand, to abate the confidence and force of the assailant, will quickly be at an end of his

resistance, and will find such a defence serve only to draw on himself the worse usage. This is as ridiculous a way of resisting, as juvenal thought it of fighting; ubi tu pulsas, ego vapulo tantum. And the success of the combat will be unavoidably the same he there describes it: — Libertas pauperis haec est: Pulsatus rogat, & pugnis concisus, adorat, Ut liceat paucis cum dentibus inde reverti. This will always be the event of such an imaginary resistance, where men may not strike again. He therefore who may resist, must be allowed to strike. And then let our author, or any body else, join a knock on the head, or a cut on the face, with as much reverence and respect as he thinks fit. He that can reconcile blows and reverence, may, for aught I know, desire for his pains, a civil, respectful cudgeling where-ever he can meet with it. Secondly, As to his second, An inferior cannot punish a superior; that is true, generally speaking, whilst he is his superior. But to resist force with force, being the state of war that levels the parties, cancels all former relation of reverence, respect, and superiority: and then the odds that remains, is, that he, who opposes the unjust agressor, has this superiority over him, that he has a right, when he prevails, to punish the offender, both for the breach of the peace, and all the evils that followed upon it. 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,

Sec. 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 wisht 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 common-wealth; and consequently forfeits the power of governing his subjects, as a master does the dominion over his slaves whom he hath abandoned.

Sec. 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.

Sec. 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 he instances in, 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. This farther I desire may be taken notice of out of Barclay, that he says, The mischief that is designed them, the people may prevent before it be clone: whereby he allows resistance when tyranny is but in design. Such designs as these (says he) when any king harbours in his thoughts and seriously promotes, he immediately gives up all care and thought of the common-wealth; so that, according to him, the neglect of the public good is to be taken as an evidence of such design, or at least for a sufficient cause of resistance. And the reason of all, he gives in these words, Because he betrayed or forced his people, whose liberty he ought carefully to have preserved. What he adds, into the power and dominion of a foreign nation, signifies nothing, the fault and forfeiture lying in the loss of their liberty, which he ought to have preserved, and not in any distinction of the persons to whose dominion they were subjected. The peoples right is equally invaded, and their liberty lost, whether they are made slaves to any of their own, or a foreign nation; and in this lies the injury, and against this only have they the right of defence. And there are instances to be found in all countries, which shew, that it is not the change of nations in the persons of their governors, but the change of government, that gives the offence. 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 Mirrour, 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-task-masters, 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.

Sec. 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?

Sec. 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 leptha did.

Sec. 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 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 no where 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.

Sec. 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 common-wealth, 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, 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 erect a new form, or under the old form place it in new hands, as they think good.
FINIS.

In the Matter of Baby “M” (1988)

Superior Court of New Jersey

February 3, 1988

The opinion of the Court was delivered by Willentz, C. J.:

In this matter the Court is asked to determine the validity of a contract that purports to provide a new way of bringing children into a family. For a fee of $10,000, a woman agrees to be artificially inseminated with the semen of another woman’s husband; she is to conceive a child, carry it to term, and after its birth surrender it to the natural father and his wife. The intent of the contract is that the child’s natural mother will thereafter be forever separated from her child. The wife is to adopt the child, and she and the natural father are to be regarded as its parents for all purposes. The contract providing for this is called a “surrogacy contract,” the natural mother inappropriately called the “surrogate mother.”

We invalidate the surrogacy contract because it conflicts with the law and public policy of this State. While we recognize the depth of the yearning of infertile couples to have their own children, we find the payment of money to a “sur¬rogate” mother illegal, perhaps criminal, and potentially degrading to women. Although in this case we grant custody to the natural father, the evidence having clearly proved such custody to be in the best interests of the infant, we void both the termination of the surrogate mother’s parental rights and the adoption of the child by the wife/stepparent. We thus restore the “surrogate” as the mother of the child. We remand the issue of the natural mother’s visitation rights to the trial court, since that issue was not reached below and the record before us is not sufficient to permit us to decide it de novo.

We find no offense to our present laws where a woman voluntarily and without payment agrees to act as a “surrogate” mother, provided that she is not subject to a binding agreement to surrender her child. Moreover, our holding today does not preclude the Legislature from altering the current statutory scheme, within constitutional limits, so as to permit surrogacy contracts. Under current law, however, the surrogacy agreement before us is illegal and invalid….

Under the contract, the natural mother is irrev¬ocably committed before she knows the strength of her bond with her child. She never makes a totally voluntary, informed decision, for quite clearly any decision prior to the baby’s birth is, in the most important sense, uninformed, and any decision after that, compelled by a pre-existing contractual commitment, the threat of a lawsuit, and the inducement of a $10,000 payment, is less than totally voluntary. Her interests are of little concern to those who controlled this transaction.

Although the interest of the natural father and adoptive mother is certainly the predominant interest, realistically the only interest served, even they are left with less than what public policy requires. They know little about the natural mother, her genetic makeup, and her psychologi¬cal and medical history. Moreover, not even a superficial attempt is made to determine their awareness of their responsibilities as parents.

Worst of all, however, is the contract’s total dis¬regard of the best interests of the child. There is not the slightest suggestion that any inquiry will be made at any time to determine the fitness of the Sterns as custodial parents, of Mrs. Stern as an adoptive parent, their superiority to Mrs. Whitehead, or the effect on the child of not living with her natural mother.

This is the sale of a child, or, at the very least, the sale of a mother's right to her child, the only mitigating factor being that one of the purchasers is the father. Almost every evil that prompted the prohibition on the payment of money in connec¬tion with adoptions exists here.

The differences between an adoption and a surrogacy contract should be noted, since it is asserted that the use of money in connection with surrogacy does not pose the risks found where money buys an adoption.
First, and perhaps most important, all parties concede that it is unlikely that surrogacy will survive without money. Despite the alleged selfless motivation of surrogate mothers, if there is no payment, there will be no surrogates, or very few. That conclusion contrasts with adoption; for obvious reasons, there remains a steady supply, albeit insufficient, despite the prohibitions against payment. The adoption itself, relieving the natural mother of the financial burden of supporting an infant, is in some sense the equivalent of payment.

Second, the use of money in adoptions does not produce the problem—conception occurs, and usually the birth itself, before illicit funds are offered. With surrogacy, the "problem," if one views it as such, consisting of the purchase of a woman's procreative capacity, at the risk of her life, is caused by and originates with the offer of money. Third, with the law prohibiting the use of money in connection with adoptions, the built-in financial pressure of the unwanted pregnancy and the consequent support obligation do not lead the mother to the highest paying, ill-suited, adoptive parents. She is just as well-off surrender¬ing the child to an approved agency. In surrogacy the highest bidders will presumably become the adoptive parents regardless of suitability, so long as payment of money is permitted.

Fourth, the mother's consent to surrender her child in adoptions is revocable, even after surrender of the child, unless it be to an approved agency, where by regulation there are protections against an ill-advised surrender. In surrogacy, consent occurs so early that no amount of advice would satisfy the potential mother's need, yet the consent is irrevocable.

The main difference, that the unwanted pregnancy is unintended while the situation of the surrogate mother is voluntary and intended, is really not significant. Initially, it produces stronger reactions of sympathy for the mother whose pregnancy was unwanted than for the surrogate mother, who "went into this with her eyes wide open." On reflection, however, it appears that the essential evil is the same, taking advantage of a woman's circumstances (the unwanted pregnancy or the need for money) in order to take away her child, the difference being one of degree.
In the scheme contemplated by the surrogacy contract in this case, a middle man, propelled by profit, promotes the sale. Whatever idealism may have motivated any of the participants, the profit motive predominates, permeates, and ultimately governs the transaction. The demand for children is great and the supply small. The availability of contraception, abortion, and the greater willingness of single mothers to bring up their children has led to a shortage of babies offered for adoption. The situation is ripe for the entry of the middleman who will bring some equilibrium into the market by increasing the supply through the use of money.

Intimated, but disputed, is the assertion that surrogacy will be used for the benefit of the rich at the expense of the poor. In response it is noted that the Sterns are not rich and the Whiteheads not poor. Nevertheless, it is clear to us that it is unlikely that surrogate mothers will be as proportionately nurnerous among those women in the top twenty percent income bracket as among those in the bottom twenty percent. Put differently, we doubt that infertile couples in the low-income bracket will find upper income surrogates.

In any event, even in this case one should not pretend that disparate wealth does not play a part simply because the contrast is not the dramatic “rich versus poor.” At the time of trial, the Whiteheads’ net assets were probably negative—Mrs. Whitehead’s own sister was foreclosing on a second mortgage. Their income derived from Mr. Whitehead’s labors. Mrs. Whitehead is a homemaker, having previously held part-time jobs. The Sterns are both professionals, she a medical doctor, he a biochemist. Their combined income when both were working was about $89,000 a year and their assets sufficient to pay for the surrogacy contract arrangements.

The point is made that Mrs. Whitehead agreed to the surrogacy arrangement, supposedly fully understanding the consequences. Putting aside the issue of how compelling her need for money may have been, and how significant her understanding of the consequences, we suggest that her consent is irrelevant. There are, in a civilized society, some things that money cannot buy. In America, we decided long ago that merely because conduct purchased by money was “voluntary” did not mean that it was good or beyond regulation and prohibition. West Coast Hotel Co. v. Parrish, 300 U.S. 379 (1937). Employers can no longer buy labor at the lowest price they can bargain for, even though that labor is “voluntary,” 29 U.S.C. §206 (1982), or buy women’s labor for less money than paid to men for the same job, 29 U.S.C. §206(d), or purchase the agreement of children to perform oppressive labor, 29 U.S.C. § 212, or purchase the agreement of workers to subject themselves to unsafe or unhealthful working conditions, 29 U.S.C. §§ 651 to 678. (Occupational Safety and Health Act of 1970). There are, in short, values that society deems more important than granting to wealth whatever it can buy, be it labor, love, or life. Whether this principle recommends prohibition of surrogacy, which presumably sometimes results in great satisfaction to all of the parties, is not for us to say. We note here only that, under existing law, the fact that Mrs. Whitehead “agreed” to the arrangement is not dispositive.

The long-term effects of surrogacy contracts are not known, but feared—the impact on the child who learns her life was bought, that she is the offspring of someone who gave birth to her only to obtain money; the impact on the natural mother as the full weight of her isolation is felt along with the full reality of the sale of her body and her child; the impact on the natural father and adoptive mother once they realize the consequences of their conduct. Literature in related areas suggests these are substantial considerations, although, given the newness of surrogacy, there is little information.

The surrogacy contract is based on principles that are directly contrary to the objectives of our laws. It guarantees the separation of a child from its mother: it looks to adoption regardless of suitability; it totally ignores the child; it takes the child from the mother regardless of her wishes and her maternal fitness; and it does all of this, it accomplishes all of its goals, through the use of money.

Beyond that is the potential degradation of some women that may result from this arrangement. In many cases, of course, surrogacy may bring satisfaction, not only to the infertile couple, but to the surrogate mother herself. The fact, however, that many women may not perceive surrogacy negatively but rather see it as an opportunity does not diminish its potential for devastation to other women.

In sum, the harmful consequences of this surrogacy arrangement appear to us all too palpable. In New Jersey the surrogate mother’s agreement to sell her child is void. Its irrevocability infects the entire contract, as does the money that purports to buy it.

Immanuel Kant, Groundwork for the Metaphysics of Morals (1785)

A brief overview of the reading: *The Groundwork for the Metaphysics of Morals (1785) by Immanuel Kant (1724-1804) is one of the most important works of moral philosophy ever written. In the Groundwork, Kant argues that morality is based neither on the principle of utility, nor on a law of nature, but on human reason. According to Kant, reason tells us what we ought to do, and when we obey our own reason, only then are we truly free.*

Groundwork for the Metaphysics of Morals (1785)

By Immanuel Kant

Translated by Thomas Kingsmill Abbott

PREFACE

Ancient Greek philosophy was divided into three sciences: physics, ethics, and logic. This division is perfectly suitable to the nature of the thing; and the only improvement that can be made in it is to add the principle on which it is based, so that we may both satisfy ourselves of its completeness, and also be able to determine correctly the necessary subdivisions.

All rational knowledge is either material or formal: the former considers some object, the latter is concerned only with the form of the understanding and of the reason itself, and with the universal laws of thought in general without distinction of its objects. Formal philosophy is called logic. Material philosophy, however, has to do with determinate objects and the laws to which they are subject, is again twofold; for these laws are either laws of nature or

of freedom. The science of the former is physics, that of the latter, ethics; they are also called natural philosophy and moral philosophy respectively.

Logic cannot have any empirical part; that is, a part in which the universal and necessary laws of thought should rest on grounds taken from experience; otherwise it would not be logic, i.e., a canon for the understanding or the reason, valid for all thought, and capable of demonstration. Natural and moral philosophy, on the contrary, can each have their empirical part, since the former has to determine the laws of nature as an object of experience; the latter the laws of the human will, so far as it is affected by nature: the former, however, being laws according to which everything does happen; the latter, laws according to which everything ought to happen. Ethics, however, must also consider the conditions under which what ought to happen frequently does not.

We may call all philosophy empirical, so far as it is based on grounds of experience: on the other band, that which delivers its doctrines from a priori principles alone we may call pure philosophy. When the latter is merely formal it is logic; if it is restricted to definite objects of the understanding it is metaphysic.

In this way there arises the idea of a twofold metaphysic- a metaphysic of nature and a metaphysic of morals. Physics will thus have an empirical and also a rational part. It is the same with Ethics; but here the empirical part might have the special name of practical anthropology, the name morality being appropriated to the rational part.

All trades, arts, and handiworks have gained by division of labour, namely, when, instead of one man doing everything, each confines himself to a certain kind of work distinct from others in the treatment it requires, so as to be able to perform it with greater facility and in the greatest perfection. Where the different kinds of work are not distinguished and divided, where everyone is a jack-of-all-trades, there manufactures remain still in the greatest barbarism. It might deserve to be considered whether pure philosophy in all its parts does not require a man specially devoted to it, and whether it would not be better for the whole business of science if those who, to please the tastes of the public, are wont to blend the rational and empirical elements together, mixed in all sorts of proportions unknown to themselves, and who call themselves independent thinkers, giving the name of minute philosophers to those who apply themselves to the rational part only- if these, I say, were warned not to carry on two employments together which differ widely in the treatment they demand, for each of which perhaps a special talent is required, and the combination of which in one person only produces bunglers. But I only ask here whether the nature of science does not require that we should always carefully separate the empirical from the rational part, and prefix to Physics proper (or empirical physics) a metaphysic of nature, and to practical anthropology a metaphysic of morals, which must be carefully cleared of everything empirical, so that we may know how much can be accomplished by pure reason in both cases, and from what sources it draws this its a priori teaching, and that whether the latter inquiry is conducted by all moralists (whose name is legion), or only by some who feel a calling thereto.

As my concern here is with moral philosophy, I limit the question suggested to this: Whether it is not of the utmost necessity to construct a pure thing which is only empirical and which belongs to anthropology? for that such a philosophy must be possible is evident from the common idea of duty and of the moral laws. Everyone must admit that if a law is to have moral force, i.e., to be the basis of an obligation, it must carry with it absolute necessity; that, for example, the precept, “Thou shalt not lie,” is not valid for men alone, as if other rational beings had no need to observe it; and so with all the other moral laws properly so called; that, therefore, the basis of obligation must not be sought in the nature of man, or in the circumstances in the world in which he is placed, but a priori simply in the conception of pure reason; and although any other precept which is founded on principles of mere experience may be

in certain respects universal, yet in as far as it rests even in the least degree on an empirical basis, perhaps only as to a motive, such a precept, while it may be a practical rule, can never be called a moral law.

Thus not only are moral laws with their principles essentially distinguished from every other kind of practical knowledge in which there is anything empirical, but all moral philosophy rests wholly on its pure part. When applied to man, it does not borrow the least thing from the knowledge of man himself (anthropology), but gives laws a priori to him as a rational being. No doubt these laws require a judgement sharpened by experience, in order on the one hand to distinguish in what cases they are applicable, and on the other to procure for them access to the will of the man and effectual influence on conduct; since man is acted on by so many inclinations that, though capable of the idea of a practical pure reason, he is not so easily able to make it effective in concreto in his life.

A metaphysic of morals is therefore indispensably necessary, not merely for speculative reasons, in order to investigate the sources of the practical principles which are to be found a priori in our reason, but also because morals themselves are liable to all sorts of corruption, as long as we are without that clue and supreme canon by which to estimate them correctly. For in order that an action should be morally good, it is not enough that it conform to the moral law, but it must also be done for the sake of the law, otherwise that conformity is only very contingent and uncertain; since a principle which is not moral, although it may now and then produce actions conformable to the law, will also often produce actions which contradict it. Now it is only a pure philosophy that we can look for the moral law in its purity and genuineness (and, in a practical matter, this is of the utmost consequence): we must, therefore, begin with pure philosophy (metaphysic), and without it there cannot be any moral philosophy at all. That which mingles these pure principles with the empirical does not deserve the name of philosophy (for what distinguishes philosophy from common rational knowledge is that it treats in separate sciences what the latter only comprehends confusedly); much less does it deserve that of moral philosophy, since by this confusion it even spoils the purity of morals themselves, and counteracts its own end.

Let it not be thought, however, that what is here demanded is already extant in the propaedeutic prefixed by the celebrated Wolf to his moral philosophy, namely, his so-called general practical philosophy, and that, therefore, we have not to strike into an entirely new field. just because it was to be a general practical philosophy, it has not taken into consideration a will of any particular kind- say one which should be determined solely from a priori principles without any empirical motives, and which we might call a pure will, but volition in general, with all the actions and conditions which belong to it in this general signification. By this it is distinguished from a metaphysic of morals, just as general logic, which treats of the acts and canons of thought in general, is distinguished from transcendental philosophy, which treats of the particular acts and canons of pure thought, i.e., that whose cognitions are altogether a priori. For the metaphysic of morals has to examine the idea and the principles of a possible pure will, and not the acts and conditions of human volition generally, which for the most part are drawn from psychology. It is true that moral laws and duty are spoken of in the general moral philosophy (contrary indeed to all fitness). But this is no objection, for in this respect also the authors of that science remain true to their idea of it; they do not distinguish the motives which are prescribed as such by reason alone altogether a priori, and which are properly moral, from the empirical motives which the understanding raises to general conceptions merely by comparison of experiences; but, without noticing the difference of their sources, and looking on them all as homogeneous, they consider only their greater or less amount. It is in this way they frame their notion of obligation, which, though anything but moral, is all that can be attained in a philosophy which passes no judgement at all on the origin of all possible practical concepts, whether they are a priori, or only a posteriori.

Intending to publish hereafter a metaphysic of morals, I issue in the first instance these fundamental principles. Indeed there is properly no other foundation for it than the critical examination of a pure practical Reason; just as that of metaphysics is the critical examination of the pure speculative reason, already published. But in the first place the former is not so absolutely necessary as the latter, because in moral concerns human reason can easily be brought to a high degree of correctness and completeness, even in the commonest understanding, while on the contrary in its theoretic but pure use it is wholly dialectical; and in the second place if the critique of a pure practical reason is to be complete, it must be possible at the same time to show its identity with the speculative reason in a common principle, for it can ultimately be only one and the same reason which has to be distinguished merely in its application. I could not, however, bring it to such completeness here, without introducing considerations of a wholly different kind, which would be perplexing to the reader. On this account I have adopted the title of Fundamental Principles of the Metaphysic of Morals instead of that of a Critical Examination of the pure practical reason.

But in the third place, since a metaphysic of morals, in spite of the discouraging title, is yet capable of being presented in popular form, and one adapted to the common understanding, I find it useful to separate from it this preliminary treatise on its fundamental principles, in order that I may not hereafter have need to introduce these necessarily subtle discussions into a book of a more simple character.

The present treatise is, however, nothing more than the investigation and establishment of the supreme principle of morality, and this alone constitutes a study complete in itself and one which ought to be kept apart from every other moral investigation. No doubt my conclusions on this weighty question, which has hitherto been very unsatisfactorily examined, would receive much light from the application of the same principle to the whole system, and would be greatly confirmed by the adequacy which it exhibits throughout; but I must forego this advantage, which indeed would be after all more gratifying than useful, since the easy applicability of a principle and its apparent adequacy give no very certain proof of its soundness, but rather inspire a certain partiality, which prevents us from examining and estimating it strictly in itself and without regard to consequences.

I have adopted in this work the method which I think most suitable, proceeding analytically from common knowledge to the determination of its ultimate principle, and again descending synthetically from the examination of this principle and its sources to the common knowledge in which we find it employed. The division will, therefore, be as follows:

FIRST SECTION

TRANSITION FROM THE COMMON RATIONAL KNOWLEDGE OF MORALITY TO THE PHILOSOPHICAL

Nothing can possibly be conceived in the world, or even out of it, which can be called good, without qualification, except a good will. Intelligence, wit, judgement, and the other talents of the mind, however they may be named, or courage, resolution, perseverance, as qualities of temperament, are undoubtedly good and desirable in many respects; but these gifts of nature may also become extremely bad and mischievous if the will which is to make use of them, and which, therefore, constitutes what is called character, is not good. It is the same with the gifts of fortune. Power, riches, honour, even health, and the general well-being and contentment with one’s condition which is called happiness, inspire pride, and often presumption, if there is not a good will to correct the influence of these on the mind, and with this also to rectify the whole principle of acting and adapt it to its end. The sight of a being who is not adorned with a single feature of a pure and good will, enjoying unbroken prosperity, can never give pleasure to an impartial rational spectator. Thus a good will appears to constitute the indispensable condition even of being worthy of happiness. There are even some qualities which are of service to this good will itself and may facilitate its action, yet

which have no intrinsic unconditional value, but always presuppose a good will, and this qualifies the esteem that we justly have for them and does not permit us to regard them as absolutely good.

Moderation in the affections and passions, self-control, and calm deliberation are not only good in many respects, but even seem to constitute part of the intrinsic worth of the person; but they are far from deserving to be called good without qualification, although they have been so unconditionally praised by the ancients. For without the principles of a good will, they may become extremely bad, and the coolness of a villain not only makes him far more dangerous, but also directly makes him more abominable in our eyes than he would have been without it. A good will is good not because of what it performs or effects, not by its aptness for the attainment of some proposed end, but simply by virtue of the volition; that is, it is good in itself, and considered by itself is to be esteemed much higher than all that can be brought about by it in favour of any inclination, nay even of the sum total of all inclinations.

Even if it should happen that, owing to special disfavour of fortune, or the niggardly provision of a step-motherly nature, this will should wholly lack power to accomplish its purpose, if with its greatest efforts it should yet achieve nothing, and there should remain only the good will (not, to be sure, a mere wish, but the summoning of all means in our power), then, like a jewel, it would still shine by its own light, as a thing which has its whole value in itself. Its usefulness or fruitfulness can neither add nor take away anything from this value. It would be, as it were, only the setting to enable us to handle it the more conveniently in common commerce, or to attract to it the attention of those who are not yet connoisseurs, but not to recommend it to true connoisseurs, or to determine its value. There is, however, something so strange in this idea of the absolute value of the mere will, in which no account is taken of its utility, that notwithstanding the thorough assent of even common reason to the idea, yet a suspicion must arise that it may perhaps really be the product of mere high-flown fancy, and that we may have misunderstood the purpose of nature in assigning reason as the governor of our will. Therefore we will examine this idea from this point of view. In the physical constitution of an organized being, that is, a being adapted suitably to the purposes of life, we assume it as a fundamental principle that no organ for any purpose will be found but what is also the fittest and best adapted for that purpose. Now in a being which has reason and a will, if the proper object of nature were its conservation, its welfare, in a word, its happiness, then nature would have hit upon a very bad arrangement in selecting the reason of the creature to carry out this purpose. For all the actions which the creature has to perform with a view to this purpose, and the whole rule of its conduct, would be far more surely prescribed to it by instinct, and that end would have been attained thereby much more certainly than it ever can be by reason.

Should reason have been communicated to this favoured creature over and above, it must only have served it to contemplate the happy constitution of its nature, to admire it, to congratulate itself thereon, and to feel thankful for it to the beneficent cause, but not that it should subject its desires to that weak and delusive guidance and meddle bunglingly with the purpose of nature. In a word, nature would have taken care that reason should not break forth into practical exercise, nor have the presumption, with its weak insight, to think out for itself the plan of happiness, and of the means of attaining it. Nature would not only have taken on herself the choice of the ends, but also of the means, and with wise foresight would have entrusted both to instinct. And, in fact, we find that the more a cultivated reason applies itself with deliberate purpose to the enjoyment of life and happiness, so much the more does the man fail of true satisfaction.

And from this circumstance there arises in many, if they are candid enough to confess it, a certain degree of misology, that is, hatred of reason, especially in the case of those who are most experienced in the use of it, because after calculating all the advantages they derive, I do not say from the invention of all the arts of common luxury, but

even from the sciences (which seem to them to be after all only a luxury of the understanding), they find that they have, in fact, only brought more trouble on their shoulders. rather than gained in happiness; and they end by envying, rather than despising, the more common stamp of men who keep closer to the guidance of mere instinct and do not allow their reason much influence on their conduct. And this we must admit, that the judgement of those who would very much lower the lofty eulogies of the advantages which reason gives us in regard to the happiness and satisfaction of life, or who would even reduce them below zero, is by no means morose or ungrateful to the goodness with which the world is governed, but that there lies at the root of these judgements the idea that our existence has a different and far nobler end, for which, and not for happiness, reason is properly intended, and which must, therefore, be regarded as the supreme condition to which the private ends of man must, for the most part, be postponed.
For as reason is not competent to guide the will with certainty in regard to its objects and the satisfaction of all our wants (which it to some extent even multiplies), this being an end to which an implanted instinct would have led with much greater certainty; and since, nevertheless, reason is imparted to us as a practical faculty, i. e., as one which is to have influence on the will, therefore, admitting that nature generally in the distribution of her capacities has adapted the means to the end, its true destination must be to produce a will, not merely good as a means to something else, but good in itself, for which reason was absolutely necessary. This will then, though not indeed the sole and complete good, must be the supreme good and the condition of every other, even of the desire of happiness.

Under these circumstances, there is nothing inconsistent with the wisdom of nature in the fact that the cultivation of the reason, which is requisite for the first and unconditional purpose, does in many ways interfere, at least in this life, with the attainment of the second, which is always conditional, namely, happiness. Nay, it may even reduce it to nothing, without nature thereby failing of her purpose. For reason recognizes the establishment of a good will as its highest practical destination, and in attaining this purpose is capable only of a satisfaction of its own proper kind, namely that from the attainment of an end, which end again is determined by reason only, notwithstanding that this may involve many a disappointment to the ends of inclination. We have then to develop the notion of a will which deserves to be highly esteemed for itself and is good without a view to anything further, a notion which exists already in the sound natural understanding, requiring rather to be cleared up than to be taught, and which in estimating the value of our actions always takes the first place and constitutes the condition of all the rest. In order to do this, we will take the notion of duty, which includes that of a good will, although implying certain subjective restrictions and hindrances.

These, however, far from concealing it, or rendering it unrecognizable, rather bring it out by contrast and make it shine forth so much the brighter. I omit here all actions which are already recognized as inconsistent with duty, although they may be useful for this or that purpose, for with these the question whether they are done from duty cannot arise at all, since they even conflict with it. I also set aside those actions which really conform to duty, but to which men have no direct inclination, performing them because they are impelled thereto by some other inclination. For in this case we can readily distinguish whether the action which agrees with duty is done from duty, or from a selfish view. It is much harder to make this distinction when the action accords with duty and the subject has besides a direct inclination to it. For example, it is always a matter of duty that a dealer should not over charge an inexperienced purchaser; and wherever there is much commerce the prudent tradesman does not overcharge, but keeps a fixed price for everyone, so that a child buys of him as well as any other. Men are thus honestly served; but this is not enough to make us believe that the tradesman has so acted from duty and from principles of honesty: his own advantage required it; it is out of the question in this case to suppose that he might besides have a direct inclination in favour of the buyers, so that, as it were, from love he should give no advantage to one over another.

Accordingly the action was done neither from duty nor from direct inclination, but merely with a selfish view. On the other hand, it is a duty to maintain one's life; and, in addition, everyone has also a direct inclination to do so. But on this account the of anxious care which most men take for it has no intrinsic worth, and their maxim has no moral import. They preserve their life as duty requires, no doubt, but not because duty requires. On the other band, if adversity and hopeless sorrow have completely taken away the relish for life; if the unfortunate one, strong in mind, indignant at his fate rather than desponding or dejected, wishes for death, and yet preserves his life without loving it- not from inclination or fear, but from duty- then his maxim has a moral worth. To be beneficent when we can is a duty; and besides this, there are many minds so sympathetically constituted that, without any other motive of vanity or self-interest, they find a pleasure in spreading joy around them and can take delight in the satisfaction of others so far as it is their own work. But I maintain that in such a case an action of this kind, however proper, however amiable it may be, bas nevertheless no true moral worth, but is on a level with other inclinations, e. g., the inclination to honour, which, if it is happily directed to that which is in fact of public utility and accordant with duty and consequently honourable, deserves praise and encouragement, but not esteem.

For the maxim lacks the moral import, namely, that such actions be done from duty, not from inclination. Put the case that the mind of that philanthropist were clouded by sorrow of his own, extinguishing all sympathy with the lot of others, and that, while he still has the power to benefit others in distress, he is not touched by their trouble because he is absorbed with his own; and now suppose that he tears himself out of this dead insensibility, and performs the action without any inclination to it, but simply from duty, then first has his action its genuine moral worth. Further still; if nature bas put little sympathy in the heart of this or that man; if he, supposed to be an upright man, is by temperament cold and indifferent to the sufferings of others, perhaps because in respect of his own he is provided with the special gift of patience and fortitude and supposes, or even requires, that others should have the same- and such a man would certainly not be the meanest product of nature- but if nature had not specially framed him for a philanthropist, would he not still find in himself a source from whence to give himself a far higher worth than that of a good-natured temperament could be? Unquestionably. It is just in this that the moral worth of the character is brought out which is incomparably the highest of all, namely, that he is beneficent, not from inclination, but from duty.

To secure one's own happiness is a duty, at least indirectly; for discontent with one's condition, under a pressure of many anxieties and amidst unsatisfied wants, might easily become a great temptation to transgression of duty. But here again, without looking to duty, all men have already the strongest and most intimate inclination to happiness, because it is just in this idea that all inclinations are combined in one total. But the precept of happiness is often of such a sort that it greatly interferes with some inclinations, and yet a man cannot form any definite and certain conception of the sum of satisfaction of all of them which is called happiness. It is not then to be wondered at that a single inclination, definite both as to what it promises and as to the time within which it can be gratified, is often able to overcome such a fluctuating idea, and that a gouty patient, for instance, can choose to enjoy what he likes, and to suffer what he may, since, according to his calculation, on this occasion at least, be has not sacrificed the enjoyment of the present moment to a possibly mistaken expectation of a happiness which is supposed to be found in health.

But even in this case, if the general desire for happiness did not influence his will, and supposing that in his particular case health was not a necessary element in this calculation, there yet remains in this, as in all other cases, this law, namely, that he should promote his happiness not from inclination but from duty, and by this would his conduct first acquire true moral worth. It is in this manner, undoubtedly, that we are to understand those passages of Scripture also in which we are commanded to love our neighbour, even our enemy. For love, as an affection, cannot be commanded, but beneficence for duty's sake may; even though we are not impelled to it by any inclination- nay,

are even repelled by a natural and unconquerable aversion. This is practical love and not pathological- a love which is seated in the will, and not in the propensions of sense- in principles of action and not of tender sympathy; and it is this love alone which can be commanded. The second proposition is: That an action done from duty derives its moral worth, not from the purpose which is to be attained by it, but from the maxim by which it is determined, and therefore does not depend on the realization of the object of the action, but merely on the principle of volition by which the action has taken place, without regard to any object of desire. It is clear from what precedes that the purposes which we may have in view in our actions, or their effects regarded as ends and springs of the will, cannot give to actions any unconditional or moral worth. In what, then, can their worth lie, if it is not to consist in the will and in reference to its expected effect? It cannot lie anywhere but in the principle of the will without regard to the ends which can be attained by the action. For the will stands between its a priori principle, which is formal, and its a posteriori spring, which is material, as between two roads, and as it must be determined by something, it that it must be determined by the formal principle of volition when an action is done from duty, in which case every material principle has been withdrawn from it.

The third proposition, which is a consequence of the two preceding, I would express thus Duty is the necessity of acting from respect for the law. I may have inclination for an object as the effect of my proposed action, but I cannot have respect for it, just for this reason, that it is an effect and not an energy of will. Similarly I cannot have respect for inclination, whether my own or another's; I can at most, if my own, approve it; if another's, sometimes even love it; i. e., look on it as favourable to my own interest. It is only what is connected with my will as a principle, by no means as an effect- what does not subserve my inclination, but overpowers it, or at least in case of choice excludes it from its calculation- in other words, simply the law of itself, which can be an object of respect, and hence a command. Now an action done from duty must wholly exclude the influence of inclination and with it every object of the will, so that nothing remains which can determine the will except objectively the law, and subjectively pure respect for this practical law, and consequently the maxim* that I should follow this law even to the thwarting of all my inclinations. *A maxim is the subjective principle of volition. The objective principle (i. e., that which would also serve subjectively as a practical principle to all rational beings if reason had full power over the faculty of desire) is the practical law.

Thus the moral worth of an action does not lie in the effect expected from it, nor in any principle of action which requires to borrow its motive from this expected effect. For all these effects- agreeableness of one's condition and even the promotion of the happiness of others- could have been also brought about by other causes, so that for this there would have been no need of the will of a rational being; whereas it is in this alone that the supreme and unconditional good can be found. The pre-eminent good which we call moral can therefore consist in nothing else than the conception of law in itself, which certainly is only possible in a rational being, in so far as this conception, and not the expected effect, determines the will. This is a good which is already present in the person who acts accordingly, and we have not to wait for it to appear first in the result.*

*It might be here objected to me that I take refuge behind the word respect in an obscure feeling, instead of giving a distinct solution of the question by a concept of the reason. But although respect is a feeling, it is not a feeling received through influence, but is self-wrought by a rational concept, and, therefore, is specifically distinct from all feelings of the former kind, which may be referred either to inclination or fear, What I recognise immediately as a law for me, I recognise with respect. This merely signifies the consciousness that my will is subordinate to a law, without the intervention of other influences on my sense. The immediate determination of the will by the law, and the consciousness of this, is called respect, so that this is regarded as an effect of the law on the subject, and not as the cause of it. Respect is properly the conception of a worth which thwarts my self-love. Accordingly it is something

which is considered neither as an object of inclination nor of fear, although it has something analogous to both. The object of respect is the law only, and that the law which we impose on ourselves and yet recognise as necessary in itself. As a law, we are subjected too it without consulting self-love; as imposed by us on ourselves, it is a result of our will. In the former aspect it has an analogy to fear, in the latter to inclination. Respect for a person is properly only respect for the law (of honesty, etc.) of which he gives us an example. Since we also look on the improvement of our talents as a duty, we consider that we see in a person of talents, as it were, the example of a law (viz., to become like him in this by exercise), and this constitutes our respect. All so-called moral interest consists simply in respect for the law.

But what sort of law can that be, the conception of which must determine the will, even without paying any regard to the effect expected from it, in order that this will may be called good absolutely and without qualification? As I have deprived the will of every impulse which could arise to it from obedience to any law, there remains nothing but the universal conformity of its actions to law in general, which alone is to serve the will as a principle, i. e., I am never to act otherwise than so that I could also will that my maxim should become a universal law. Here, now, it is the simple conformity to law in general, without assuming any particular law applicable to certain actions, that serves the will as its principle and must so serve it, if duty is not to be a vain delusion and a chimerical notion. The common reason of men in its practical judgements perfectly coincides with this and always has in view the principle here suggested. Let the question be, for example: May I when in distress make a promise with the intention not to keep it? I readily distinguish here between the two significations which the question may have: Whether it is prudent, or whether it is right, to make a false promise? The former may undoubtedly of be the case. I see clearly indeed that it is not enough to extricate myself from a present difficulty by means of this subterfuge, but it must be well considered whether there may not hereafter spring from this lie much greater inconvenience than that from which I now free myself, and as, with all my supposed cunning, the consequences cannot be so easily foreseen but that credit once lost may be much more injurious to me than any mischief which I seek to avoid at present, it should be considered whether it would not be more prudent to act herein according to a universal maxim and to make it a habit to promise nothing except with the intention of keeping it. But it is soon clear to me that such a maxim will still only be based on the fear of consequences.

Now it is a wholly different thing to be truthful from duty and to be so from apprehension of injurious consequences. In the first case, the very notion of the action already implies a law for me; in the second case, I must first look about elsewhere to see what results may be combined with it which would affect myself. For to deviate from the principle of duty is beyond all doubt wicked; but to be unfaithful to my maxim of prudence may often be very advantageous to me, although to abide by it is certainly safer. The shortest way, however, and an unerring one, to discover the answer to this question whether a lying promise is consistent with duty, is to ask myself, “Should I be content that my maxim (to extricate myself from difficulty by a false promise) should hold good as a universal law, for myself as well as for others? and should I be able to say to myself, “Every one may make a deceitful promise when he finds himself in a difficulty from which he cannot otherwise extricate himself?” Then I presently become aware that while I can will the lie, I can by no means will that lying should be a universal law. For with such a law there would be no promises at all, since it would be in vain to allege my intention in regard to my future actions to those who would not believe this allegation, or if they over hastily did so would pay me back in my own coin. Hence my maxim, as soon as it should be made a universal law, would necessarily destroy itself. I do not, therefore, need any far-reaching penetration to discern what I have to do in order that my will may be morally good. Inexperienced in the course of the world, incapable of being prepared for all its contingencies, I only ask myself: Canst thou also will that thy maxim should be a universal law? If not, then it must be rejected, and that not because of a disadvantage accruing from it to

myself or even to others, but because it cannot enter as a principle into a possible universal legislation, and reason extorts from me immediate respect for such legislation.

I do not indeed as yet discern on what this respect is based (this the philosopher may inquire), but at least I understand this, that it is an estimation of the worth which far outweighs all worth of what is recommended by inclination, and that the necessity of acting from pure respect for the practical law is what constitutes duty, to which every other motive must give place, because it is the condition of a will being good in itself, and the worth of such a will is above everything. Thus, then, without quitting the moral knowledge of common human reason, we have arrived at its principle. And although, no doubt, common men do not conceive it in such an abstract and universal form, yet they always have it really before their eyes and use it as the standard of their decision. Here it would be easy to show how, with this compass in hand, men are well able to distinguish, in every case that occurs, what is good, what bad, conformably to duty or inconsistent with it, if, without in the least teaching them anything new, we only, like Socrates, direct their attention to the principle they themselves employ; and that, therefore, we do not need science and philosophy to know what we should do to be honest and good, yea, even wise and virtuous. Indeed we might well have conjectured beforehand that the knowledge of what every man is bound to do, and therefore also to know, would be within the reach of every man, even the commonest.

Here we cannot forbear admiration when we see how great an advantage the practical judgement has over the theoretical in the common understanding of men. In the latter, if common reason ventures to depart from the laws of experience and from the perceptions of the senses, it falls into mere inconceivabilities and self-contradictions, at least into a chaos of uncertainty, obscurity, and instability. But in the practical sphere it is just when the common understanding excludes all sensible springs from practical laws that its power of judgement begins to show itself to advantage. It then becomes even subtle, whether it be that it chicanes with its own conscience or with other claims respecting what is to be called right, or whether it desires for its own instruction to determine honestly the worth of actions; and, in the latter case, it may even have as good a hope of hitting the mark as any philosopher whatever can promise himself. Nay, it is almost more sure of doing so, because the philosopher cannot have any other principle, while he may easily perplex his judgement by a multitude of considerations foreign to the matter, and so turn aside from the right way.

Would it not therefore be wiser in moral concerns to acquiesce in the judgement of common reason, or at most only to call in philosophy for the purpose of rendering the system of morals more complete and intelligible, and its rules more convenient for use (especially for disputation), but not so as to draw off the common understanding from its happy simplicity, or to bring it by means of philosophy into a new path of inquiry and instruction? Innocence is indeed a glorious thing; only, on the other hand, it is very sad that it cannot well maintain itself and is easily seduced. On this account even wisdom- which otherwise consists more in conduct than in knowledge- yet has need of science, not in order to learn from it, but to secure for its precepts admission and permanence.

Against all the commands of duty which reason represents to man as so deserving of respect, he feels in himself a powerful counterpoise in his wants and inclinations, the entire satisfaction of which he sums up under the name of happiness. Now reason issues its commands unyieldingly, without promising anything to the inclinations, and, as it were, with disregard and contempt for these claims, which are so impetuous, and at the same time so plausible, and which will not allow themselves to be suppressed by any command. Hence there arises a natural dialectic, i. e., a disposition, to argue against these strict laws of duty and to question their validity, or at least their purity and strictness; and, if possible, to make them more accordant with our wishes and inclinations, that is to say, to

corrupt them at their very source, and entirely to destroy their worth- a thing which even common practical reason cannot ultimately call good. Thus is the common reason of man compelled to go out of its sphere, and to take a step into the field of a practical philosophy, not to satisfy any speculative want (which never occurs to it as long as it is content to be mere sound reason), but even on practical grounds, in order to attain in it information and clear instruction respecting the source of its principle, and the correct determination of it in opposition to the maxims which are based on wants and inclinations, so that it may escape from the perplexity of opposite claims and not run the risk of losing all genuine moral principles through the equivocation into which it easily falls. Thus, when practical reason cultivates itself, there insensibly arises in it a dialetic which forces it to seek aid in philosophy, just as happens to it in its theoretic use; and in this case, therefore, as well as in the other, it will find rest nowhere but in a thorough critical examination of our reason.

SECOND SECTION
TRANSITION FROM POPULAR MORAL PHILOSOPHY TO THE METAPHYSIC OF MORALS

If we have hitherto drawn our notion of duty from the common use of our practical reason, it is by no means to be inferred that we have treated it as an empirical notion. On the contrary, if we attend to the experience of men's conduct, we meet frequent and, as we ourselves allow, just complaints that one cannot find a single certain example of the disposition to act from pure duty. Although many things are done in conformity with what duty prescribes, it is nevertheless always doubtful whether they are done strictly from duty, so as to have a moral worth. Hence there have at all times been philosophers who have altogether denied that this disposition actually exists at all in human actions, and have ascribed everything to a more or less refined self-love. Not that they have on that account questioned the soundness of the conception of morality; on the contrary, they spoke with sincere regret of the frailty and corruption of human nature, which, though noble enough to take its rule an idea so worthy of respect, is yet weak to follow it and employs reason which ought to give it the law only for the purpose of providing for the interest of the inclinations, whether singly or at the best in the greatest possible harmony with one another. In fact, it is absolutely impossible to make out by experience with complete certainty a single case in which the maxim of an action, however right in itself, rested simply on moral grounds and on the conception of duty. Sometimes it happens that with the sharpest self-examination we can find nothing beside the moral principle of duty which could have been powerful enough to move us to this or that action and to so great a sacrifice; yet we cannot from this infer with certainty that it was not really some secret impulse of self-love, under the false appearance of duty, that was the actual determining cause of the will. We like them to flatter ourselves by falsely taking credit for a more noble motive; whereas in fact we can never, even by the strictest examination, get completely behind the secret springs of action; since, when the question is of moral worth, it is not with the actions which we see that we are concerned, but with those inward principles of them which we do not see.

Moreover, we cannot better serve the wishes of those who ridicule all morality as a mere chimera of human imagination over stepping itself from vanity, than by conceding to them that notions of duty must be drawn only from experience (as from indolence, people are ready to think is also the case with all other notions); for or is to prepare for them a certain triumph. I am willing to admit out of love of humanity that even most of our actions are correct, but if we look closer at them we everywhere come upon the dear self which is always prominent, and it is this they have in view and not the strict command of duty which would often require self-denial. Without being an enemy of virtue, a cool observer, one that does not mistake the wish for good, however lively, for its reality, may sometimes doubt whether true virtue is actually found anywhere in the world, and this especially as years increase and the judgement is partly made wiser by experience and partly, also, more acute in observation.

This being so, nothing can secure us from falling away altogether from our ideas of duty, or maintain in the soul a well-grounded respect for its law, but the clear conviction that although there should never have been actions which really sprang from such pure sources, yet whether this or that takes place is not at all the question; but that reason of itself, independent on all experience, ordains what ought to take place, that accordingly actions of which perhaps the world has hitherto never given an example, the feasibility even of which might be very much doubted by one who founds everything on experience, are nevertheless inflexibly commanded by reason; that, e. g., even though there might never yet have been a sincere friend, yet not a whit the less is pure sincerity in friendship required of every man, because, prior to all experience, this duty is involved as duty in the idea of a reason determining the will by a priori principles. When we add further that, unless we deny that the notion of morality has any truth or reference to any possible object, we must admit that its law must be valid, not merely for men but for all rational creatures generally, not merely under certain contingent conditions or with exceptions but with absolute necessity, then it is clear that no experience could enable us to infer even the possibility of such apodeictic laws.

For with what right could we bring into unbounded respect as a universal precept for every rational nature that which perhaps holds only under the contingent conditions of humanity? Or how could laws of the determination of our will be regarded as laws of the determination of the will of rational beings generally, and for us only as such, if they were merely empirical and did not take their origin wholly a priori from pure but practical reason? Nor could anything be more fatal to morality than that we should wish to derive it from examples. For every example of it that is set before me must be first itself tested by principles of morality, whether it is worthy to serve as an original example, i. e., as a pattern; but by no means can it authoritatively furnish the conception of morality.

Even the Holy One of the Gospels must first be compared with our ideal of moral perfection before we can recognise Him as such; and so He says of Himself, “Why call ye Me (whom you see) good; none is good (the model of good) but God only (whom ye do not see)?” But whence have we the conception of God as the supreme good? Simply from the idea of moral perfection, which reason frames a priori and connects inseparably with the notion of a free will. Imitation finds no place at all in morality, and examples serve only for encouragement, i. e., they put beyond doubt the feasibility of what the law commands, they make visible that which the practical rule expresses more generally, but they can never authorize us to set aside the true original which lies in reason and to guide ourselves by examples. If then there is no genuine supreme principle of morality but what must rest simply on pure reason, independent of all experience, I think it is not necessary even to put the question whether it is good to exhibit these concepts in their generality (in abstracto) as they are established a priori along with the principles belonging to them, if our knowledge is to be distinguished from the vulgar and to be called philosophical. In our times indeed this might perhaps be necessary; for if we collected votes whether pure rational knowledge separated from everything empirical, that is to say, metaphysic of morals, or whether popular practical philosophy is to be preferred, it is easy to guess which side would preponderate.

This descending to popular notions is certainly very commendable, if the ascent to the principles of pure reason has first taken place and been satisfactorily accomplished. This implies that we first found ethics on metaphysics, and then, when it is firmly established, procure a hearing for it by giving it a popular character. But it is quite absurd to try to be popular in the first inquiry, on which the soundness of the principles depends. It is not only that this proceeding can never lay claim to the very rare merit of a true philosophical popularity, since there is no art in being intelligible if one renounces all thoroughness of insight; but also it produces a disgusting medley of compiled observations and half-reasoned principles. Shallow pates enjoy this because it can be used for every-day chat, but the

sagacious find in it only confusion, and being unsatisfied and unable to help themselves, they turn away their eyes, while philosophers, who see quite well through this delusion, are little listened to when they call men off for a time from this pretended popularity, in order that they might be rightfully popular after they have attained a definite insight. We need only look at the attempts of moralists in that favourite fashion, and we shall find at one time the special constitution of human nature (including, however, the idea of a rational nature generally), at one time perfection, at another happiness, here moral sense, there fear of God. a little of this, and a little of that, in marvellous mixture, without its occurring to them to ask whether the principles of morality are to be sought in the knowledge of human nature at all (which we can have only from experience); or, if this is not so, if these principles are to be found altogether a priori, free from everything empirical, in pure rational concepts only and nowhere else, not even in the smallest degree; then rather to adopt the method of making this a separate inquiry, as pure practical philosophy, or (if one may use a name so decried) as metaphysic of morals,* to bring it by itself to completeness, and to require the public, which wishes for popular treatment, to await the issue of this undertaking.

*Just as pure mathematics are distinguished from applied, pure logic from applied, so if we choose we may also distinguish pure philosophy of morals (metaphysic) from applied (viz., applied to human nature). By this designation we are also at once reminded that moral principles are not based on properties of human nature, but must subsist a priori of themselves, while from such principles practical rules must be capable of being deduced for every rational nature, and accordingly for that of man.

Such a metaphysic of morals, completely isolated, not mixed with any anthropology, theology, physics, or hyperphysics, and still less with occult qualities (which we might call hypophysical), is not only an indispensable substratum of all sound theoretical knowledge of duties, but is at the same time a desideratum of the highest importance to the actual fulfilment of their precepts. For the pure conception of duty, unmixed with any foreign addition of empirical attractions, and, in a word, the conception of the moral law, exercises on the human heart, by way of reason alone (which first becomes aware with this that it can of itself be practical), an influence so much more powerful than all other springs* which may be derived from the field of experience, that, in the consciousness of its worth, it despises the latter, and can by degrees become their master; whereas a mixed ethics, compounded partly of motives drawn from feelings and inclinations, and partly also of conceptions of reason, must make the mind waver between motives which cannot be brought under any principle, which lead to good only by mere accident and very often also to evil.

*I have a letter from the late excellent Sulzer, in which he asks me what can be the reason that moral instruction, although containing much that is convincing for the reason, yet accomplishes so little? My answer was postponed in order that I might make it complete. But it is simply this: that the teachers themselves have not got their own notions clear, and when they endeavour to make up for this by raking up motives of moral goodness from every quarter, trying to make their physic right strong, they spoil it. For the commonest understanding shows that if we imagine, on the one hand, an act of honesty done with steadfast mind, apart from every view to advantage of any kind in this world or another, and even under the greatest temptations of necessity or allurement, and, on the other hand, a similar act which was affected, in however low a degree, by a foreign motive, the former leaves far behind and eclipses the second; it elevates the soul and inspires the wish to be able to act in like manner oneself. Even moderately young children feel this impression, ana one should never represent duties to them in any other light.

From what has been said, it is clear that all moral conceptions have their seat and origin completely a priori in the reason, and that, moreover, in the commonest reason just as truly as in that which is in the highest degree speculative; that they cannot be obtained by abstraction from any empirical, and therefore merely contingent,

knowledge; that it is just this purity of their origin that makes them worthy to serve as our supreme practical principle, and that just in proportion as we add anything empirical, we detract from their genuine influence and from the absolute value of actions; that it is not only of the greatest necessity, in a purely speculative point of view, but is also of the greatest practical importance, to derive these notions and laws from pure reason, to present them pure and unmixed, and even to determine the compass of this practical or pure rational knowledge, i. e., to determine the whole faculty of pure practical reason; and, in doing so, we must not make its principles dependent on the particular nature of human reason, though in speculative philosophy this may be permitted, or may even at times be necessary; but since moral laws ought to hold good for every rational creature, we must derive them from the general concept of a rational being. In this way, although for its application to man morality has need of anthropology, yet, in the first instance, we must treat it independently as pure philosophy, i. e., as metaphysic, complete in itself (a thing which in such distinct branches of science is easily done); knowing well that unless we are in possession of this, it would not only be vain to determine the moral element of duty in right actions for purposes of speculative criticism, but it would be impossible to base morals on their genuine principles, even for common practical purposes, especially of moral instruction, so as to produce pure moral dispositions, and to engraft them on men's minds to the promotion of the greatest possible good in the world. But in order that in this study we may not merely advance by the natural steps from the common moral judgement (in this case very worthy of respect) to the philosophical, as has been already done, but also from a popular philosophy, which goes no further than it can reach by groping with the help of examples, to metaphysic (which does allow itself to be checked by anything empirical and, as it must measure the whole extent of this kind of rational knowledge, goes as far as ideal conceptions, where even examples fail us), we must follow and clearly describe the practical faculty of reason, from the general rules of its determination to the point where the notion of duty springs from it.

Everything in nature works according to laws. Rational beings alone have the faculty of acting according to the conception of laws, that is according to principles, i. e., have a will. Since the deduction of actions from principles requires reason, the will is nothing but practical reason. If reason infallibly determines the will, then the actions of such a being which are recognised as objectively necessary are subjectively necessary also, i. e., the will is a faculty to choose that only which reason independent of inclination recognises as practically necessary, i. e., as good. But if reason of itself does not sufficiently determine the will, if the latter is subject also to subjective conditions (particular impulses) which do not always coincide with the objective conditions; in a word, if the will does not in itself completely accord with reason (which is actually the case with men), then the actions which objectively are recognised as necessary are subjectively contingent, and the determination of such a will according to objective laws is obligation, that is to say, the relation of the objective laws to a will that is not thoroughly good is conceived as the determination of the will of a rational being by principles of reason, but which the will from its nature does not of necessity follow.

The conception of an objective principle, in so far as it is obligatory for a will, is called a command (of reason), and the formula of the command is called an imperative. All imperatives are expressed by the word ought [or shall], and thereby indicate the relation of an objective law of reason to a will, which from its subjective constitution is not necessarily determined by it (an obligation). They say that something would be good to do or to forbear, but they say it to a will which does not always do a thing because it is conceived to be good to do it. That is practically good, however, which determines the will by means of the conceptions of reason, and consequently not from subjective causes, but objectively, that is on principles which are valid for every rational being as such. It is distinguished from the pleasant, as that which influences the will only by means of sensation from merely subjective causes, valid only for the sense of this or that one, and not as a principle of reason, which holds for every one.*

*The dependence of the desires on sensations is called inclination, and this accordingly always indicates a want. The dependence of a contingently determinable will on principles of reason is called an interest. This therefore, is found only in the case of a dependent will which does not always of itself conform to reason; in the Divine will we cannot conceive any interest. But the human will can also take an interest in a thing without therefore acting from interest. The former signifies the practical interest in the action, the latter the pathological in the object of the action. The former indicates only dependence of the will on principles of reason in themselves; the second, dependence on principles of reason for the sake of inclination, reason supplying only the practical rules how the requirement of the inclination may be satisfied. In the first case the action interests me; in the second the object of the action (because it is pleasant to me). We have seen in the first section that in an action done from duty we must look not to the interest in the object, but only to that in the action itself, and in its rational principle (viz., the law).

A perfectly good will would therefore be equally subject to objective laws (viz., laws of good), but could not be conceived as obliged thereby to act lawfully, because of itself from its subjective constitution it can only be determined by the conception of good. Therefore no imperatives hold for the Divine will, or in general for a holy will; ought is here out of place, because the volition is already of itself necessarily in unison with the law. Therefore imperatives are only formulae to express the relation of objective laws of all volition to the subjective imperfection of the will of this or that rational being, e. g., the human will. Now all imperatives command either hypothetically or categorically. The former represent the practical necessity of a possible action as means to something else that is willed (or at least which one might possibly will). The categorical imperative would be that which represented an action as necessary of itself without reference to another end, i. e., as objectively necessary.

Since every practical law represents a possible action as good and, on this account, for a subject who is practically determinable by reason, necessary, all imperatives are formulae determining an action which is necessary according to the principle of a will good in some respects. If now the action is good only as a means to something else, then the imperative is hypothetical; if it is conceived as good in itself and consequently as being necessarily the principle of a will which of itself conforms to reason, then it is categorical. Thus the imperative declares what action possible by me would be good and presents the practical rule in relation to a will which does not forthwith perform an action simply because it is good, whether because the subject does not always know that it is good, or because, even if it know this, yet its maxims might be opposed to the objective principles of practical reason.

Accordingly the hypothetical imperative only says that the action is good for some purpose, possible or actual. In the first case it is a problematical, in the second an assertorial practical principle. The categorical imperative which declares an action to be objectively necessary in itself without reference to any purpose, i. e., without any other end, is valid as an apodeictic (practical) principle. Whatever is possible only by the power of some rational being may also be conceived as a possible purpose of some will; and therefore the principles of action as regards the means necessary to attain some possible purpose are in fact infinitely numerous. All sciences have a practical part, consisting of problems expressing that some end is possible for us and of imperatives directing how it may be attained. These may, therefore, be called in general imperatives of skill. Here there is no question whether the end is rational and good, but only what one must do in order to attain it.

The precepts for the physician to make his patient thoroughly healthy, and for a poisoner to ensure certain death, are of equal value in this respect, that each serves to effect its purpose perfectly. Since in early youth it cannot be known what ends are likely to occur to us in the course of life, parents seek to have their children taught a great

many things, and provide for their skill in the use of means for all sorts of arbitrary ends, of none of which can they determine whether it may not perhaps hereafter be an object to their pupil, but which it is at all events possible that he might aim at; and this anxiety is so great that they commonly neglect to form and correct their judgement on the value of the things which may be chosen as ends. There is one end, however, which may be assumed to be actually such to all rational beings (so far as imperatives apply to them, viz., as dependent beings), and, therefore, one purpose which they not merely may have, but which we may with certainty assume that they all actually have by a natural necessity, and this is happiness.

The hypothetical imperative which expresses the practical necessity of an action as means to the advancement of happiness is assertorial. We are not to present it as necessary for an uncertain and merely possible purpose, but for a purpose which we may presuppose with certainty and a priori in every man, because it belongs to his being. Now skill in the choice of means to his own greatest well-being may be called prudence,* in the narrowest sense. And thus the imperative which refers to the choice of means to one's own happiness, i. e., the precept of prudence, is still always hypothetical; the action is not commanded absolutely, but only as means to another purpose.

*The word prudence is taken in two senses: in the one it may bear the name of knowledge of the world, in the other that of private prudence. The former is a man's ability to influence others so as to use them for his own purposes. The latter is the sagacity to combine all these purposes for his own lasting benefit. This latter is properly that to which the value even of the former is reduced, and when a man is prudent in the former sense, but not in the latter, we might better say of him that he is clever and cunning, but, on the whole, imprudent.

Finally, there is an imperative which commands a certain conduct immediately, without having as its condition any other purpose to be attained by it. This imperative is categorical. It concerns not the matter of the action, or its intended result, but its form and the principle of which it is itself a result; and what is essentially good in it consists in the mental disposition, let the consequence be what it may. This imperative may be called that of morality. There is a marked distinction also between the volitions on these three sorts of principles in the dissimilarity of the obligation of the will. In order to mark this difference more clearly, I think they would be most suitably named in their order if we said they are either rules of skill, or counsels of prudence, or commands (laws) of morality. For it is law only that involves the conception of an unconditional and objective necessity, which is consequently universally valid; and commands are laws which must be obeyed, that is, must be followed, even in opposition to inclination. Counsels, indeed, involve necessity, but one which can only hold under a contingent subjective condition, viz., they depend on whether this or that man reckons this or that as part of his happiness; the categorical imperative, on the contrary, is not limited by any condition, and as being absolutely, although practically, necessary, may be quite properly called a command. We might also call the first kind of imperatives technical (belonging to art), the second pragmatic* (to welfare), the third moral (belonging to free conduct generally, that is, to morals).

*It seems to me that the proper signification of the word pragmatic may be most accurately defined in this way. For sanctions are called pragmatic which flow properly not from the law of the states as necessary enactments, but from precaution for the general welfare. A history is composed pragmatically when it teaches prudence, i. e., instructs the world how it can provide for its interests better, or at least as well as, the men of former time.

Now arises the question, how are all these imperatives possible? This question does not seek to know how we can conceive the accomplishment of the action which the imperative ordains, but merely how we can conceive the obligation of the will which the imperative expresses. No special explanation is needed to show how an imperative of

skill is possible. Whoever wills the end, wills also (so far as reason decides his conduct) the means in his power which are indispensably necessary thereto.

This proposition is, as regards the volition, analytical; for, in willing an object as my effect, there is already thought the causality of myself as an acting cause, that is to say, the use of the means; and the imperative educes from the conception of volition of an end the conception of actions necessary to this end. Synthetical propositions must no doubt be employed in defining the means to a proposed end; but they do not concern the principle, the act of the will, but the object and its realization. E. g., that in order to bisect a line on an unerring principle I must draw from its extremities two intersecting arcs; this no doubt is taught by mathematics only in synthetical propositions; but if I know that it is only by this process that the intended operation can be performed, then to say that, if I fully will the operation, I also will the action required for it, is an analytical proposition; for it is one and the same thing to conceive something as an effect which I can produce in a certain way, and to conceive myself as acting in this way. If it were only equally easy to give a definite conception of happiness, the imperatives of prudence would correspond exactly with those of skill, and would likewise be analytical. For in this case as in that, it could be said: “Whoever wills the end, wills also (according to the dictate of reason necessarily) the indispensable means thereto which are in his power.” But, unfortunately, the notion of happiness is so indefinite that although every man wishes to at. it, yet he never can say definitely and consistently what it is that he really wishes and wills. The reason of this is that all the elements which belong to the notion of happiness are altogether empirical, i. e., they must be borrowed from experience, and nevertheless the idea of happiness requires an absolute whole, a maximum of welfare in my present and all future circumstances.

Now it is impossible that the most clear-sighted and at the same time most powerful being (supposed finite) should frame to himself a definite conception of what he really wills in this. Does he will riches, how much anxiety, envy, and snares might he not thereby draw upon his shoulders? Does he will knowledge and discernment, perhaps it might prove to be only an eye so much the sharper to show him so much the more fearfully the evils that are now concealed from him, and that cannot be avoided, or to impose more wants on his desires, which already give him concern enough. Would he have long life? who guarantees to him that it would not be a long misery? would he at least have health? how often has uneasiness of the body restrained from excesses into which perfect health would have allowed one to fall? and so on. In short, he is unable, on any principle, to determine with certainty what would make him truly happy; because to do so he would need to be omniscient.

We cannot therefore act on any definite principles to secure happiness, but only on empirical counsels, e. g. of regimen, frugality, courtesy, reserve, etc., which experience teaches do, on the average, most promote well-being. Hence it follows that the imperatives of prudence do not, strictly speaking, command at all, that is, they cannot present actions objectively as practically necessary; that they are rather to be regarded as counsels (consilia) than precepts precepts of reason, that the problem to determine certainly and universally what action would promote the happiness of a rational being is completely insoluble, and consequently no imperative respecting it is possible which should, in the strict sense, command to do what makes happy; because happiness is not an ideal of reason but of imagination, resting solely on empirical grounds, and it is vain to expect that these should define an action by which one could attain the totality of a series of consequences which is really endless. This imperative of prudence would however be an analytical proposition if we assume that the means to happiness could be certainly assigned; for it is distinguished from the imperative of skill only by this, that in the latter the end is merely possible, in the former it is given; as however both only ordain the means to that which we suppose to be willed as an end, it follows that the imperative

which ordains the willing of the means to him who wills the end is in both cases analytical. Thus there is no difficulty in regard to the possibility of an imperative of this kind either.

On the other hand, the question how the imperative of morality is possible, is undoubtedly one, the only one, demanding a solution, as this is not at all hypothetical, and the objective necessity which it presents cannot rest on any hypothesis, as is the case with the hypothetical imperatives. Only here we must never leave out of consideration that we cannot make out by any example, in other words empirically, whether there is such an imperative at all, but it is rather to be feared that all those which seem to be categorical may yet be at bottom hypothetical. For instance, when the precept is: “Thou shalt not promise deceitfully”; and it is assumed that the necessity of this is not a mere counsel to avoid some other evil, so that it should mean: “Thou shalt not make a lying promise, lest if it become known thou shouldst destroy thy credit,” but that an action of this kind must be regarded as evil in itself, so that the imperative of the prohibition is categorical; then we cannot show with certainty in any example that the will was determined merely by the law, without any other spring of action, although it may appear to be so. For it is always possible that fear of disgrace, perhaps also obscure dread of other dangers, may have a secret influence on the will.

Who can prove by experience the non-existence of a cause when all that experience tells us is that we do not perceive it? But in such a case the so-called moral imperative, which as such appears to be categorical and unconditional, would in reality be only a pragmatic precept, drawing our attention to our own interests and merely teaching us to take these into consideration. We shall therefore have to investigate a priori the possibility of a categorical imperative, as we have not in this case the advantage of its reality being given in experience, so that [the elucidation of] its possibility should be requisite only for its explanation, not for its establishment. In the meantime it may be discerned beforehand that the categorical imperative alone has the purport of a practical law; all the rest may indeed be called principles of the will but not laws, since whatever is only necessary for the attainment of some arbitrary purpose may be considered as in itself contingent, and we can at any time be free from the precept if we give up the purpose; on the contrary, the unconditional command leaves the will no liberty to choose the opposite; consequently it alone carries with it that necessity which we require in a law. Secondly, in the case of this categorical imperative or law of morality, the difficulty (of discerning its possibility) is a very profound one.

It is an a priori synthetical practical proposition;* and as there is so much difficulty in discerning the possibility of speculative propositions of this kind, it may readily be supposed that the difficulty will be no less with the practical. *I connect the act with the will without presupposing any condition resulting from any inclination, but a priori, and therefore necessarily (though only objectively, i. e., assuming the idea of a reason possessing full power over all subjective motives). This is accordingly a practical proposition which does not deduce the willing of an action by mere analysis from another already presupposed (for we have not such a perfect will), but connects it immediately with the conception of the will of a rational being, as something not contained in it.

In this problem we will first inquire whether the mere conception of a categorical imperative may not perhaps supply us also with the formula of it, containing the proposition which alone can be a categorical imperative; for even if we know the tenor of such an absolute command, yet how it is possible will require further special and laborious study, which we postpone to the last section. When I conceive a hypothetical imperative, in general I do not know beforehand what it will contain until I am given the condition. But when I conceive a categorical imperative, I know at once what it contains. For as the imperative contains besides the law only the necessity that the maxims* shall conform to this law, while the law contains no conditions restricting it, there remains nothing but the general statement

that the maxim of the action should conform to a universal law, and it is this conformity alone that the imperative properly represents as necessary.

*A maxim is a subjective principle of action, and must be distinguished from the objective principle, namely, practical law. The former contains the practical rule set by reason according to the conditions of the subject (often its ignorance or its inclinations), so that it is the principle on which the subject acts; but the law is the objective principle valid for every rational being, and is the principle on which it ought to act that is an imperative.

There is therefore but one categorical imperative, namely, this: Act only on that maxim whereby thou canst at the same time will that it should become a universal law. Now if all imperatives of duty can be deduced from this one imperative as from their principle, then, although it should remain undecided what is called duty is not merely a vain notion, yet at least we shall be able to show what we understand by it and what this notion means. Since the universality of the law according to which effects are produced constitutes what is properly called nature in the most general sense (as to form), that is the existence of things so far as it is determined by general laws, the imperative of duty may be expressed thus: Act as if the maxim of thy action were to become by thy will a universal law of nature. We will now enumerate a few duties, adopting the usual division of them into duties to ourselves and ourselves and to others, and into perfect and imperfect duties.*

*It must be noted here that I reserve the division of duties for a future metaphysic of morals; so that I give it here only as an arbitrary one (in order to arrange my examples). For the rest, I understand by a perfect duty one that admits no exception in favour of inclination and then I have not merely external but also internal perfect duties. This is contrary to the use of the word adopted in the schools; but I do not intend to justify there, as it is all one for my purpose whether it is admitted or not.

1. A man reduced to despair by a series of misfortunes feels wearied of life, but is still so far in possession of his reason that he can ask himself whether it would not be contrary to his duty to himself to take his own life. Now he inquires whether the maxim of his action could become a universal law of nature. His maxim is: “From self-love I adopt it as a principle to shorten my life when its longer duration is likely to bring more evil than satisfaction.” It is asked then simply whether this principle founded on self-love can become a universal law of nature. Now we see at once that a system of nature of which it should be a law to destroy life by means of the very feeling whose special nature it is to impel to the improvement of life would contradict itself and, therefore, could not exist as a system of nature; hence that maxim cannot possibly exist as a universal law of nature and, consequently, would be wholly inconsistent with the supreme principle of all duty.

2. Another finds himself forced by necessity to borrow money. He knows that he will not be able to repay it, but sees also that nothing will be lent to him unless he promises stoutly to repay it in a definite time. He desires to make this promise, but he has still so much conscience as to ask himself: “Is it not unlawful and inconsistent with duty to get out of a difficulty in this way?” Suppose however that he resolves to do so: then the maxim of his action would be expressed thus: “When I think myself in want of money, I will borrow money and promise to repay it, although I know that I never can do so.” Now this principle of self-love or of one’s own advantage may perhaps be consistent with my whole future welfare; but the question now is, “Is it right?” I change then the suggestion of self-love into a universal law, and state the question thus: “How would it be if my maxim were a universal law?” Then I see at once that it could never hold as a universal law of nature, but would necessarily contradict itself. For supposing it to be a universal law that everyone when he thinks himself in a difficulty should be able to promise whatever he pleases, with the purpose of not keeping his promise, the promise itself would become impossible, as well as the end that one might have in

view in it, since no one would consider that anything was promised to him, but would ridicule all such statements as vain pretences.

3. A third finds in himself a talent which with the help of some culture might make him a useful man in many respects. But he finds himself in comfortable circumstances and prefers to indulge in pleasure rather than to take pains in enlarging and improving his happy natural capacities. He asks, however, whether his maxim of neglect of his natural gifts, besides agreeing with his inclination to indulgence, agrees also with what is called duty. He sees then that a system of nature could indeed subsist with such a universal law although men (like the South Sea islanders) should let their talents rest and resolve to devote their lives merely to idleness, amusement, and propagation of their species- in a word, to enjoyment; but he cannot possibly will that this should be a universal law of nature, or be implanted in us as such by a natural instinct. For, as a rational being, he necessarily wills that his faculties be developed, since they serve him and have been given him, for all sorts of possible purposes.

4. A fourth, who is in prosperity, while he sees that others have to contend with great wretchedness and that he could help them, thinks: “What concern is it of mine? Let everyone be as happy as Heaven pleases, or as be can make himself; I will take nothing from him nor even envy him, only I do not wish to contribute anything to his welfare or to his assistance in distress!” Now no doubt if such a mode of thinking were a universal law, the human race might very well subsist and doubtless even better than in a state in which everyone talks of sympathy and good-will, or even takes care occasionally to put it into practice, but, on the other side, also cheats when he can, betrays the rights of men, or otherwise violates them. But although it is possible that a universal law of nature might exist in accordance with that maxim, it is impossible to will that such a principle should have the universal validity of a law of nature. For a will which resolved this would contradict itself, inasmuch as many cases might occur in which one would have need of the love and sympathy of others, and in which, by such a law of nature, sprung from his own will, he would deprive himself of all hope of the aid he desires. These are a few of the many actual duties, or at least what we regard as such, which obviously fall into two classes on the one principle that we have laid down.

We must be able to will that a maxim of our action should be a universal law. This is the canon of the moral appreciation of the action generally. Some actions are of such a character that their maxim cannot without contradiction be even conceived as a universal law of nature, far from it being possible that we should will that it should be so. In others this intrinsic impossibility is not found, but still it is impossible to will that their maxim should be raised to the universality of a law of nature, since such a will would contradict itself It is easily seen that the former violate strict or rigorous (inflexible) duty; the latter only laxer (meritorious) duty. Thus it has been completely shown how all duties depend as regards the nature of the obligation (not the object of the action) on the same principle. If now we attend to ourselves on occasion of any transgression of duty, we shall find that we in fact do not will that our maxim should be a universal law, for that is impossible for us; on the contrary, we will that the opposite should remain a universal law, only we assume the liberty of making an exception in our own favour or (just for this time only) in favour of our inclination.

Consequently if we considered all cases from one and the same point of view, namely, that of reason, we should find a contradiction in our own will, namely, that a certain principle should be objectively necessary as a universal law, and yet subjectively should not be universal, but admit of exceptions. As however we at one moment regard our action from the point of view of a will wholly conformed to reason, and then again look at the same action from the point of view of a will affected by inclination, there is not really any contradiction, but an antagonism of inclination to the precept of reason, whereby the universality of the principle is changed into a mere generality, so that

the practical principle of reason shall meet the maxim half way. Now, although this cannot be justified in our own impartial judgement, yet it proves that we do really recognise the validity of the categorical imperative and (with all respect for it) only allow ourselves a few exceptions, which we think unimportant and forced from us. We have thus established at least this much, that if duty is a conception which is to have any import and real legislative authority for our actions, it can only be expressed in categorical and not at all in hypothetical imperatives. We have also, which is of great importance, exhibited clearly and definitely for every practical application the content of the categorical imperative, which must contain the principle of all duty if there is such a thing at all.

We have not yet, however, advanced so far as to prove a priori that there actually is such an imperative, that there is a practical law which commands absolutely of itself and without any other impulse, and that the following of this law is duty. With the view of attaining to this, it is of extreme importance to remember that we must not allow ourselves to think of deducing the reality of this principle from the particular attributes of human nature. For duty is to be a practical, unconditional necessity of action; it must therefore hold for all rational beings (to whom an imperative can apply at all), and for this reason only be also a law for all human wills. On the contrary, whatever is deduced from the particular natural characteristics of humanity, from certain feelings and propensions, nay, even, if possible, from any particular tendency proper to human reason, and which need not necessarily hold for the will of every rational being; this may indeed supply us with a maxim, but not with a law; with a subjective principle on which we may have a propension and inclination to act, but not with an objective principle on which we should be enjoined to act, even though all our propensions, inclinations, and natural dispositions were opposed to it. In fact, the sublimity and intrinsic dignity of the command in duty are so much the more evident, the less the subjective impulses favour it and the more they oppose it, without being able in the slightest degree to weaken the obligation of the law or to diminish its validity. Here then we see philosophy brought to a critical position, since it has to be firmly fixed, notwithstanding that it has nothing to support it in heaven or earth. Here it must show its purity as absolute director of its own laws, not the herald of those which are whispered to it by an implanted sense or who knows what tutelary nature.

Although these may be better than nothing, yet they can never afford principles dictated by reason, which must have their source wholly a priori and thence their commanding authority, expecting everything from the supremacy of the law and the due respect for it, nothing from inclination, or else condemning the man to self-contempt and inward abhorrence. Thus every empirical element is not only quite incapable of being an aid to the principle of morality, but is even highly prejudicial to the purity of morals, for the proper and inestimable worth of an absolutely good will consists just in this, that the principle of action is free from all influence of contingent grounds, which alone experience can furnish. We cannot too much or too often repeat our warning against this lax and even mean habit of thought which seeks for its principle amongst empirical motives and laws; for human reason in its weariness is glad to rest on this pillow, and in a dream of sweet illusions (in which, instead of Juno, it embraces a cloud) it substitutes for morality a bastard patched up from limbs of various derivation, which looks like anything one chooses to see in it, only not like virtue to one who has once beheld her in her true form.*

*To behold virtue in her proper form is nothing else but to contemplate morality stripped of all admixture of sensible things and of every spurious ornament of reward or self-love. How much she then eclipses everything else that appears charming to the affections, every one may readily perceive with the least exertion of his reason, if it be not wholly spoiled for abstraction.

The question then is this: “Is it a necessary law for all rational beings that they should always judge of their actions by maxims of which they can themselves will that they should serve as universal laws?” If it is so, then it must be connected (altogether a priori) with the very conception of the will of a rational being generally. But in order to

discover this connexion we must, however reluctantly, take a step into metaphysic, although into a domain of it which is distinct from speculative philosophy, namely, the metaphysic of morals. In a practical philosophy, where it is not the reasons of what happens that we have to ascertain, but the laws of what ought to happen, even although it never does, i. e., objective practical laws, there it is not necessary to inquire into the reasons why anything pleases or displeases, how the pleasure of mere sensation differs from taste, and whether the latter is distinct from a general satisfaction of reason; on what the feeling of pleasure or pain rests, and how from it desires and inclinations arise, and from these again maxims by the co-operation of reason: for all this belongs to an empirical psychology, which would constitute the second part of physics, if we regard physics as the philosophy of nature, so far as it is based on empirical laws.

But here we are concerned with objective practical laws and, consequently, with the relation of the will to itself so far as it is determined by reason alone, in which case whatever has reference to anything empirical is necessarily excluded; since if reason of itself alone determines the conduct (and it is the possibility of this that we are now investigating), it must necessarily do so a priori. The will is conceived as a faculty of determining oneself to action in accordance with the conception of certain laws. And such a faculty can be found only in rational beings. Now that which serves the will as the objective ground of its self-determination is the end, and, if this is assigned by reason alone, it must hold for all rational beings. On the other hand, that which merely contains the ground of possibility of the action of which the effect is the end, this is called the means. The subjective ground of the desire is the spring, the objective ground of the volition is the motive; hence the distinction between subjective ends which rest on springs, and objective ends which depend on motives valid for every rational being. Practical principles are formal when they abstract from all subjective ends; they are material when they assume these, and therefore particular springs of action.

The ends which a rational being proposes to himself at pleasure as effects of his actions (material ends) are all only relative, for it is only their relation to the particular desires of the subject that gives them their worth, which therefore cannot furnish principles universal and necessary for all rational beings and for every volition, that is to say practical laws. Hence all these relative ends can give rise only to hypothetical imperatives. Supposing, however, that there were something whose existence has in itself an absolute worth, something which, being an end in itself, could be a source of definite laws; then in this and this alone would lie the source of a possible categorical imperative, i. e., a practical law. Now I say: man and generally any rational being exists as an end in himself, not merely as a means to be arbitrarily used by this or that will, but in all his actions, whether they concern himself or other rational beings, must be always regarded at the same time as an end.

All objects of the inclinations have only a conditional worth, for if the inclinations and the wants founded on them did not exist, then their object would be without value. But the inclinations, themselves being sources of want, are so far from having an absolute worth for which they should be desired that on the contrary it must be the universal wish of every rational being to be wholly free from them. Thus the worth of any object which is to be acquired by our action is always conditional. Beings whose existence depends not on our will but on nature's, have nevertheless, if they are irrational beings, only a relative value as means, and are therefore called things; rational beings, on the contrary, are called persons, because their very nature points them out as ends in themselves, that is as something which must not be used merely as means, and so far therefore restricts freedom of action (and is an object of respect). These, therefore, are not merely subjective ends whose existence has a worth for us as an effect of our action, but objective ends, that is, things whose existence is an end in itself; an end moreover for which no other can be substituted, which they should subserve merely as means, for otherwise nothing whatever would possess absolute

worth; but if all worth were conditioned and therefore contingent, then there would be no supreme practical principle of reason whatever. If then there is a supreme practical principle or, in respect of the human will, a categorical imperative, it must be one which, being drawn from the conception of that which is necessarily an end for everyone because it is an end in itself, constitutes an objective principle of will, and can therefore serve as a universal practical law.

The foundation of this principle is: rational nature exists as an end in itself. Man necessarily conceives his own existence as being so; so far then this is a subjective principle of human actions. But every other rational being regards its existence similarly, just on the same rational principle that holds for me:* so that it is at the same time an objective principle, from which as a supreme practical law all laws of the will must be capable of being deduced. Accordingly the practical imperative will be as follows: So act as to treat humanity, whether in thine own person or in that of any other, in every case as an end withal, never as means only. We will now inquire whether this can be practically carried out.

*This proposition is here stated as a postulate. The ground of it will be found in the concluding section.

To abide by the previous examples: Firstly, under the head of necessary duty to oneself: He who contemplates suicide should ask himself whether his action can be consistent with the idea of humanity as an end in itself. If he destroys himself in order to escape from painful circumstances, he uses a person merely as a mean to maintain a tolerable condition up to the end of life. But a man is not a thing, that is to say, something which can be used merely as means, but must in all his actions be always considered as an end in himself. I cannot, therefore, dispose in any way of a man in my own person so as to mutilate him, to damage or kill him. (It belongs to ethics proper to define this principle more precisely, so as to avoid all misunderstanding, e. g., as to the amputation of the limbs in order to preserve myself, as to exposing my life to danger with a view to preserve it, etc.

This question is therefore omitted here.) Secondly, as regards necessary duties, or those of strict obligation, towards others: He who is thinking of making a lying promise to others will see at once that he would be using another man merely as a mean, without the latter containing at the same time the end in himself. For he whom I propose by such a promise to use for my own purposes cannot possibly assent to my mode of acting towards him and, therefore, cannot himself contain the end of this action. This violation of the principle of humanity in other men is more obvious if we take in examples of attacks on the freedom and property of others. For then it is clear that he who transgresses the rights of men intends to use the person of others merely as a means, without considering that as rational beings they ought always to be esteemed also as ends, that is, as beings who must be capable of containing in themselves the end of the very same action.*

*Let it not be thought that the common “quod tibi non vis fieri, etc.” could serve here as the rule or principle. For it is only a deduction from the former, though with several limitations; it cannot be a universal law, for it does not contain the principle of duties to oneself, nor of the duties of benevolence to others (for many a one would gladly consent that others should not benefit him, provided only that he might be excused from showing benevolence to them), nor finally that of duties of strict obligation to one another, for on this principle the criminal might argue against the judge who punishes him, and so on.

Thirdly, as regards contingent (meritorious) duties to oneself: It is not enough that the action does not violate humanity in our own person as an end in itself, it must also harmonize with it. Now there are in humanity capacities of greater perfection, which belong to the end that nature has in view in regard to humanity in ourselves as the subject: to neglect these might perhaps be consistent with the maintenance of humanity as an end in itself, but not with the advancement of this end. Fourthly, as regards meritorious duties towards others: The natural end which all men have

is their own happiness. Now humanity might indeed subsist, although no one should contribute anything to the happiness of others, provided he did not intentionally withdraw anything from it; but after all this would only harmonize negatively not positively with humanity as an end in itself, if every one does not also endeavour, as far as in him lies, to forward the ends of others.

For the ends of any subject which is an end in himself ought as far as possible to be my ends also, if that conception is to have its full effect with me. This principle, that humanity and generally every rational nature is an end in itself (which is the supreme limiting condition of every man's freedom of action), is not borrowed from experience, firstly, because it is universal, applying as it does to all rational beings whatever, and experience is not capable of determining anything about them; secondly, because it does not present humanity as an end to men (subjectively), that is as an object which men do of themselves actually adopt as an end; but as an objective end, which must as a law constitute the supreme limiting condition of all our subjective ends, let them be what we will; it must therefore spring from pure reason. In fact the objective principle of all practical legislation lies (according to the first principle) in the rule and its form of universality which makes it capable of being a law (say, e. g., a law of nature); but the subjective principle is in the end; now by the second principle the subject of all ends is each rational being, inasmuch as it is an end in itself. Hence follows the third practical principle of the will, which is the ultimate condition of its harmony with universal practical reason, viz.: the idea of the will of every rational being as a universally legislative will.

On this principle all maxims are rejected which are inconsistent with the will being itself universal legislator. Thus the will is not subject simply to the law, but so subject that it must be regarded as itself giving the law and, on this ground only, subject to the law (of which it can regard itself as the author). In the previous imperatives, namely, that based on the conception of the conformity of actions to general laws, as in a physical system of nature, and that based on the universal prerogative of rational beings as ends in themselves- these imperatives, just because they were conceived as categorical, excluded from any share in their authority all admixture of any interest as a spring of action; they were, however, only assumed to be categorical, because such an assumption was necessary to explain the conception of duty. But we could not prove independently that there are practical propositions which command categorically, nor can it be proved in this section; one thing, however, could be done, namely, to indicate in the imperative itself, by some determinate expression, that in the case of volition from duty all interest is renounced, which is the specific criterion of categorical as distinguished from hypothetical imperatives.

This is done in the present (third) formula of the principle, namely, in the idea of the will of every rational being as a universally legislating will. For although a will which is subject to laws may be attached to this law by means of an interest, yet a will which is itself a supreme lawgiver so far as it is such cannot possibly depend on any interest, since a will so dependent would itself still need another law restricting the interest of its self-love by the condition that it should be valid as universal law. Thus the principle that every human will is a will which in all its maxims gives universal laws,* provided it be otherwise justified, would be very well adapted to be the categorical imperative, in this respect, namely, that just because of the idea of universal legislation it is not based on interest, and therefore it alone among all possible imperatives can be unconditional. Or still better, converting the proposition, if there is a categorical imperative (i. e., a law for the will of every rational being), it can only command that everything be done from maxims of one's will regarded as a will which could at the same time will that it should itself give universal laws, for in that case only the practical principle and the imperative which it obeys are unconditional, since they cannot be based on any interest.

*I may be excused from adducing examples to elucidate this principle, as those which have already been used to elucidate the categorical imperative and its formula would all serve for the like purpose here.

Looking back now on all previous attempts to discover the principle of morality, we need not wonder why they all failed. It was seen that man was bound to laws by duty, but it was not observed that the laws to which he is subject are only those of his own giving, though at the same time they are universal, and that he is only bound to act in conformity with his own will; a will, however, which is designed by nature to give universal laws. For when one has conceived man only as subject to a law (no matter what), then this law required some interest, either by way of attraction or constraint, since it did not originate as a law from his own will, but this will was according to a law obliged by something else to act in a certain manner. Now by this necessary consequence all the labour spent in finding a supreme principle of duty was irrevocably lost. For men never elicited duty, but only a necessity of acting from a certain interest. Whether this interest was private or otherwise, in any case the imperative must be conditional and could not by any means be capable of being a moral command.

I will therefore call this the principle of autonomy of the will, in contrast with every other which I accordingly reckon as heteronomy. The conception of the will of every rational being as one which must consider itself as giving in all the maxims of its will universal laws, so as to judge itself and its actions from this point of view- this conception leads to another which depends on it and is very fruitful, namely that of a kingdom of ends. By a kingdom I understand the union of different rational beings in a system by common laws. Now since it is by laws that ends are determined as regards their universal validity, hence, if we abstract from the personal differences of rational beings and likewise from all the content of their private ends, we shall be able to conceive all ends combined in a systematic whole (including both rational beings as ends in themselves, and also the special ends which each may propose to himself), that is to say, we can conceive a kingdom of ends, which on the preceding principles is possible. For all rational beings come under the law that each of them must treat itself and all others never merely as means, but in every case at the same time as ends in themselves. Hence results a systematic union of rational being by common objective laws, i. e., a kingdom which may be called a kingdom of ends, since what these laws have in view is just the relation of these beings to one another as ends and means. It is certainly only an ideal.

A rational being belongs as a member to the kingdom of ends when, although giving universal laws in it, he is also himself subject to these laws. He belongs to it as sovereign when, while giving laws, he is not subject to the will of any other. A rational being must always regard himself as giving laws either as member or as sovereign in a kingdom of ends which is rendered possible by the freedom of will. He cannot, however, maintain the latter position merely by the maxims of his will, but only in case he is a completely independent being without wants and with unrestricted power adequate to his will. Morality consists then in the reference of all action to the legislation which alone can render a kingdom of ends possible. This legislation must be capable of existing in every rational being and of emanating from his will, so that the principle of this will is never to act on any maxim which could not without contradiction be also a universal law and, accordingly, always so to act that the will could at the same time regard itself as giving in its maxims universal laws. If now the maxims of rational beings are not by their own nature coincident with this objective principle, then the necessity of acting on it is called practical necessitation, i. e., duty. Duty does not apply to the sovereign in the kingdom of ends, but it does to every member of it and to all in the same degree.

The practical necessity of acting on this principle, i. e., duty, does not rest at all on feelings, impulses, or inclinations, but solely on the relation of rational beings to one another, a relation in which the will of a rational being must always be regarded as legislative, since otherwise it could not be conceived as an end in itself. Reason then refers every maxim of the will, regarding it as legislating universally, to every other will and also to every action towards oneself; and this not on account of any other practical motive or any future advantage, but from the idea of

the dignity of a rational being, obeying no law but that which he himself also gives. In the kingdom of ends everything has either value or dignity. Whatever has a value can be replaced by something else which is equivalent; whatever, on the other hand, is above all value, and therefore admits of no equivalent, has a dignity. Whatever has reference to the general inclinations and wants of mankind has a market value; whatever, without presupposing a want, corresponds to a certain taste, that is to a satisfaction in the mere purposeless play of our faculties, has a fancy value; but that which constitutes the condition under which alone anything can be an end in itself, this has not merely a relative worth, i. e., value, but an intrinsic worth, that is, dignity. Now morality is the condition under which alone a rational being can be an end in himself, since by this alone is it possible that he should be a legislating member in the kingdom of ends.

Thus morality, and humanity as capable of it, is that which alone has dignity. Skill and diligence in labour have a market value; wit, lively imagination, and humour, have fancy value; on the other hand, fidelity to promises, benevolence from principle (not from instinct), have an intrinsic worth. Neither nature nor art contains anything which in default of these it could put in their place, for their worth consists not in the effects which spring from them, not in the use and advantage which they secure, but in the disposition of mind, that is, the maxims of the will which are ready to manifest themselves in such actions, even though they should not have the desired effect. These actions also need no recommendation from any subjective taste or sentiment, that they may be looked on with immediate favour and satisfaction: they need no immediate propension or feeling for them; they exhibit the will that performs them as an object of an immediate respect, and nothing but reason is required to impose them on the will; not to flatter it into them, which, in the case of duties, would be a contradiction.

This estimation therefore shows that the worth of such a disposition is dignity, and places it infinitely above all value, with which it cannot for a moment be brought into comparison or competition without as it were violating its sanctity. What then is it which justifies virtue or the morally good disposition, in making such lofty claims? It is nothing less than the privilege it secures to the rational being of participating in the giving of universal laws, by which it qualifies him to be a member of a possible kingdom of ends, a privilege to which he was already destined by his own nature as being an end in himself and, on that account, legislating in the kingdom of ends; free as regards all laws of physical nature, and obeying those only which he himself gives, and by which his maxims can belong to a system of universal law, to which at the same time he submits himself. For nothing has any worth except what the law assigns it. Now the legislation itself which assigns the worth of everything must for that very reason possess dignity, that is an unconditional incomparable worth; and the word respect alone supplies a becoming expression for the esteem which a rational being must have for it.

Autonomy then is the basis of the dignity of human and of every rational nature. The three modes of presenting the principle of morality that have been adduced are at bottom only so many formulae of the very same law, and each of itself involves the other two. There is, however, a difference in them, but it is rather subjectively than objectively practical, intended namely to bring an idea of the reason nearer to intuition (by means of a certain analogy) and thereby nearer to feeling. All maxims, in fact, have:
1. A form, consisting in universality; and in this view the formula of the moral imperative is expressed thus, that the maxims must be so chosen as if they were to serve as universal laws of nature.

2. A matter, namely, an end, and here the formula says that the rational being, as it is an end by its own nature and therefore an end in itself, must in every maxim serve as the condition limiting all merely relative and arbitrary ends.

3. A complete characterization of all maxims by means of that formula, namely, that all maxims ought by their own legislation to harmonize with a possible kingdom of ends as with a kingdom of nature.* There is a progress here in the order of the categories of unity of the form of the will (its universality), plurality of the matter (the objects, i. e., the ends), and totality of the system of these. In forming our moral judgement of actions, it is better to proceed always on the strict method and start from the general formula of the categorical imperative: Act according to a maxim which can at the same time make itself a universal law. If, however, we wish to gain an entrance for the moral law, it is very useful to bring one and the same action under the three specified conceptions, and thereby as far as possible to bring it nearer to intuition.

*Teleology considers nature as a kingdom of ends; ethics regards a possible kingdom of ends as a kingdom nature. In the first case, the kingdom of ends is a theoretical idea, adopted to explain what actually is. In the latter it is a practical idea, adopted to bring about that which is not yet, but which can be realized by our conduct, namely, if it conforms to this idea.

We can now end where we started at the beginning, namely, with the conception of a will unconditionally good. That will is absolutely good which cannot be evil- in other words, whose maxim, if made a universal law, could never contradict itself. This principle, then, is its supreme law: “Act always on such a maxim as thou canst at the same time will to be a universal law”; this is the sole condition under which a will can never contradict itself; and such an imperative is categorical. Since the validity of the will as a universal law for possible actions is analogous to the universal connexion of the existence of things by general laws, which is the formal notion of nature in general, the categorical imperative can also be expressed thus: Act on maxims which can at the same time have for their object themselves as universal laws of nature. Such then is the formula of an absolutely good will. Rational nature is distinguished from the rest of nature by this, that it sets before itself an end. This end would be the matter of every good will. But since in the idea of a will that is absolutely good without being limited by any condition (of attaining this or that end) we must abstract wholly from every end to be effected (since this would make every will only relatively good), it follows that in this case the end must be conceived, not as an end to be effected, but as an independently existing end.

Consequently it is conceived only negatively, i. e., as that which we must never act against and which, therefore, must never be regarded merely as means, but must in every volition be esteemed as an end likewise. Now this end can be nothing but the subject of all possible ends, since this is also the subject of a possible absolutely good will; for such a will cannot without contradiction be postponed to any other object. The principle: “So act in regard to every rational being (thyself and others), that he may always have place in thy maxim as an end in himself,” is accordingly essentially identical with this other: “Act upon a maxim which, at the same time, involves its own universal validity for every rational being.” For that in using means for every end I should limit my maxim by the condition of its holding good as a law for every subject, this comes to the same thing as that the fundamental principle of all maxims of action must be that the subject of all ends, i. e., the rational being himself, be never employed merely as means, but as the supreme condition restricting the use of all means, that is in every case as an end likewise. It follows incontestably that, to whatever laws any rational being may be subject, he being an end in himself must be able to regard himself as also legislating universally in respect of these same laws, since it is just this fitness of his maxims for universal legislation that distinguishes him as an end in himself; also it follows that this implies his dignity (prerogative) above all mere physical beings, that he must always take his maxims from the point of view which regards himself and, likewise, every other rational being as law-giving beings (on which account they are called persons). In this way a world of rational beings (mundus intelligibilis) is possible as a kingdom of ends, and this by

virtue of the legislation proper to all persons as members. Therefore every rational being must so act as if he were by his maxims in every case a legislating member in the universal kingdom of ends.

The formal principle of these maxims is: “So act as if thy maxim were to serve likewise as the universal law (of all rational beings).” A kingdom of ends is thus only possible on the analogy of a kingdom of nature, the former however only by maxims, that is self-imposed rules, the latter only by the laws of efficient causes acting under necessitation from without. Nevertheless, although the system of nature is looked upon as a machine, yet so far as it has reference to rational beings as its ends, it is given on this account the name of a kingdom of nature. Now such a kingdom of ends would be actually realized by means of maxims conforming to the canon which the categorical imperative prescribes to all rational beings, if they were universally followed.

But although a rational being, even if he punctually follows this maxim himself, cannot reckon upon all others being therefore true to the same, nor expect that the kingdom of nature and its orderly arrangements shall be in harmony with him as a fitting member, so as to form a kingdom of ends to which he himself contributes, that is to say, that it shall favour his expectation of happiness, still that law: “Act according to the maxims of a member of a merely possible kingdom of ends legislating in it universally,” remains in its full force, inasmuch as it commands categorically. And it is just in this that the paradox lies; that the mere dignity of man as a rational creature, without any other end or advantage to be attained thereby, in other words, respect for a mere idea, should yet serve as an inflexible precept of the will, and that it is precisely in this independence of the maxim on all such springs of action that its sublimity consists; and it is this that makes every rational subject worthy to be a legislative member in the kingdom of ends: for otherwise he would have to be conceived only as subject to the physical law of his wants. And although we should suppose the kingdom of nature and the kingdom of ends to be united under one sovereign, so that the latter kingdom thereby ceased to be a mere idea and acquired true reality, then it would no doubt gain the accession of a strong spring, but by no means any increase of its intrinsic worth. For this sole absolute lawgiver must, notwithstanding this, be always conceived as estimating the worth of rational beings only by their disinterested behaviour, as prescribed to themselves from that idea [the dignity of man] alone.

The essence of things is not altered by their external relations, and that which, abstracting from these, alone constitutes the absolute worth of man, is also that by which he must be judged, whoever the judge may be, and even by the Supreme Being. Morality, then, is the relation of actions to the relation of actions will, that is, to the autonomy of potential universal legislation by its maxims. An action that is consistent with the autonomy of the will is permitted; one that does not agree therewith is forbidden.

A will whose maxims necessarily coincide with the laws of autonomy is a holy will, good absolutely. The dependence of a will not absolutely good on the principle of autonomy (moral necessitation) is obligation. This, then, cannot be applied to a holy being. The objective necessity of actions from obligation is called duty. From what has just been said, it is easy to see how it happens that, although the conception of duty implies subjection to the law, we yet ascribe a certain dignity and sublimity to the person who fulfils all his duties. There is not, indeed, any sublimity in him, so far as he is subject to the moral law; but inasmuch as in regard to that very law he is likewise a legislator, and on that account alone subject to it, he has sublimity. We have also shown above that neither fear nor inclination, but simply respect for the law, is the spring which can give actions a moral worth. Our own will, so far as we suppose it to act only under the condition that its maxims are potentially universal laws, this ideal will which is possible to us is the proper object of respect; and the dignity of humanity consists just in this capacity of being universally legislative, though with the condition that it is itself subject to this same legislation.

The Autonomy of the Will as the Supreme Principle of Morality Autonomy of the will is that property of it by which it is a law to itself (independently of any property of the objects of volition). The principle of autonomy then is: “Always so to choose that the same volition shall comprehend the maxims of our choice as a universal law.”

We cannot prove that this practical rule is an imperative, i. e., that the will of every rational being is necessarily bound to it as a condition, by a mere analysis of the conceptions which occur in it, since it is a synthetical proposition; we must advance beyond the cognition of the objects to a critical examination of the subject, that is, of the pure practical reason, for this synthetic proposition which commands apodeictically must be capable of being cognized wholly a priori. This matter, however, does not belong to the present section. But that the principle of autonomy in question is the sole principle of morals can be readily shown by mere analysis of the conceptions of morality. For by this analysis we find that its principle must be a categorical imperative and that what this commands is neither more nor less than this very autonomy.

Heteronomy of the Will as the Source of all spurious Principles of Morality If the will seeks the law which is to determine it anywhere else than in the fitness of its maxims to be universal laws of its own dictation, consequently if it goes out of itself and seeks this law in the character of any of its objects, there always results heteronomy. The will in that case does not give itself the law, but it is given by the object through its relation to the will. This relation, whether it rests on inclination or on conceptions of reason, only admits of hypothetical imperatives: “I ought to do something because I wish for something else.” On the contrary, the moral, and therefore categorical, imperative says: “I ought to do so and so, even though I should not wish for anything else.” E. g., the former says: “I ought not to lie, if I would retain my reputation”; the latter says: “I ought not to lie, although it should not bring me the least discredit.”

The latter therefore must so far abstract from all objects that they shall have no influence on the will, in order that practical reason (will) may not be restricted to administering an interest not belonging to it, but may simply show its own commanding authority as the supreme legislation. Thus, e. g., I ought to endeavour to promote the happiness of others, not as if its realization involved any concern of mine (whether by immediate inclination or by any satisfaction indirectly gained through reason), but simply because a maxim which excludes it cannot be comprehended as a universal law in one and the same volition.

Classification of all Principles of Morality which can be founded on the Conception of Heteronomy Here as elsewhere human reason in its pure use, so long as it was not critically examined, has first tried all possible wrong ways before it succeeded in finding the one true way. All principles which can be taken from this point of view are either empirical or rational. The former, drawn from the principle of happiness, are built on physical or moral feelings; the latter, drawn from the principle of perfection, are built either on the rational conception of perfection as a possible effect, or on that of an independent perfection (the will of God) as the determining cause of our will. Empirical principles are wholly incapable of serving as a foundation for moral laws. For the universality with which these should hold for all rational beings without distinction, the unconditional practical necessity which is thereby imposed on them, is lost when their foundation is taken from the particular constitution of human nature, or the accidental circumstances in which it is placed. The principle of private happiness, however, is the most objectionable, not merely because it is false, and experience contradicts the supposition that prosperity is always proportioned to good conduct, nor yet merely because it contributes nothing to the establishment of morality- since it is quite a different thing to make a prosperous man and a good man, or to make one prudent and sharp-sighted for his own interests and to make him virtuous- but because the springs it provides for morality are such as rather undermine it and destroy its sublimity,

since they put the motives to virtue and to vice in the same class and only teach us to make a better calculation, the specific difference between virtue and vice being entirely extinguished.

On the other hand, as to moral feeling, this supposed special sense,* the appeal to it is indeed superficial when those who cannot think believe that feeling will help them out, even in what concerns general laws: and besides, feelings, which naturally differ infinitely in degree, cannot furnish a uniform standard of good and evil, nor has anyone a right to form judgements for others by his own feelings: nevertheless this moral feeling is nearer to morality and its dignity in this respect, that it pays virtue the honour of ascribing to her immediately the satisfaction and esteem we have for her and does not, as it were, tell her to her face that we are not attached to her by her beauty but by profit. *I class the principle of moral feeling under that of happiness, because every empirical interest promises to contribute to our well-being by the agreeableness that a thing affords, whether it be immediately and without a view to profit, or whether profit be regarded. We must likewise, with Hutcheson, class the principle of sympathy with the happiness of others under his assumed moral sense.

Amongst the rational principles of morality, the ontological conception of perfection, notwithstanding its defects, is better than the theological conception which derives morality from a Divine absolutely perfect will. The former is, no doubt, empty and indefinite and consequently useless for finding in the boundless field of possible reality the greatest amount suitable for us; moreover, in attempting to distinguish specifically the reality of which we are now speaking from every other, it inevitably tends to turn in a circle and cannot avoid tacitly presupposing the morality which it is to explain; it is nevertheless preferable to the theological view, first, because we have no intuition of the divine perfection and can only deduce it from our own conceptions, the most important of which is that of morality, and our explanation would thus be involved in a gross circle; and, in the next place, if we avoid this, the only notion of the Divine will remaining to us is a conception made up of the attributes of desire of glory and dominion, combined with the awful conceptions of might and vengeance, and any system of morals erected on this foundation would be directly opposed to morality. However, if I had to choose between the notion of the moral sense and that of perfection in general (two systems which at least do not weaken morality, although they are totally incapable of serving as its foundation), then I should decide for the latter, because it at least withdraws the decision of the question from the sensibility and brings it to the court of pure reason; and although even here it decides nothing, it at all events preserves the indefinite idea (of a will good in itself free from corruption, until it shall be more precisely defined.

For the rest I think I may be excused here from a detailed refutation of all these doctrines; that would only be superfluous labour, since it is so easy, and is probably so well seen even by those whose office requires them to decide for one of these theories (because their hearers would not tolerate suspension of judgement). But what interests us more here is to know that the prime foundation of morality laid down by all these principles is nothing but heteronomy of the will, and for this reason they must necessarily miss their aim. In every case where an object of the will has to be supposed, in order that the rule may be prescribed which is to determine the will, there the rule is simply heteronomy; the imperative is conditional, namely, if or because one wishes for this object, one should act so and so: hence it can never command morally, that is, categorically.

Whether the object determines the will by means of inclination, as in the principle of private happiness, or by means of reason directed to objects of our possible volition generally, as in the principle of perfection, in either case the will never determines itself immediately by the conception of the action, but only by the influence which the foreseen effect of the action has on the will; I ought to do something, on this account, because I wish for something else; and here there must be yet another law assumed in me as its subject, by which I necessarily will this other thing,

and this law again requires an imperative to restrict this maxim. For the influence which the conception of an object within the reach of our faculties can exercise on the will of the subject, in consequence of its natural properties, depends on the nature of the subject, either the sensibility (inclination and taste), or the understanding and reason, the employment of which is by the peculiar constitution of their nature attended with satisfaction. It follows that the law would be, properly speaking, given by nature, and, as such, it must be known and proved by experience and would consequently be contingent and therefore incapable of being an apodeictic practical rule, such as the moral rule must be. Not only so, but it is inevitably only heteronomy; the will does not give itself the law, but is given by a foreign impulse by means of a particular natural constitution of the subject adapted to receive it.

An absolutely good will, then, the principle of which must be a categorical imperative, will be indeterminate as regards all objects and will contain merely the form of volition generally, and that as autonomy, that is to say, the capability of the maxims of every good will to make themselves a universal law, is itself the only law which the will of every rational being imposes on itself, without needing to assume any spring or interest as a foundation. How such a synthetical practical a priori proposition is possible, and why it is necessary, is a problem whose solution does not lie within the bounds of the metaphysic of morals; and we have not here affirmed its truth, much less professed to have a proof of it in our power. We simply showed by the development of the universally received notion of morality that an autonomy of the will is inevitably connected with it, or rather is its foundation.

Whoever then holds morality to be anything real, and not a chimerical idea without any truth, must likewise admit the principle of it that is here assigned. This section then, like the first, was merely analytical. Now to prove that morality is no creation of the brain, which it cannot be if the categorical imperative and with it the autonomy of the will is true, and as an a priori principle absolutely necessary, this supposes the possibility of a synthetic use of pure practical reason, which however we cannot venture on without first giving a critical examination of this faculty of reason. In the concluding section we shall give the principal outlines of this critical examination as far as is sufficient for our purpose.

THIRD SECTION

TRANSITION FROM THE METAPHYSIC OF MORALS TO THE CRITIQUE OF PURE PRACTICAL REASON

The Concept of Freedom is the Key that explains the Autonomy of the Will.

The will is a kind of causality belonging to living beings in so far as they are rational, and freedom would be this property of such causality that it can be efficient, independently of foreign causes determining it; just as physical necessity is the property that the causality of all irrational beings has of being determined to activity by the influence of foreign causes.

The preceding definition of freedom is negative and therefore unfruitful for the discovery of its essence, but it leads to a positive conception which is so much the more full and fruitful.

Since the conception of causality involves that of laws, according to which, by something that we call cause, something else, namely the effect, must be produced; hence, although freedom is not a property of the will depending on physical laws, yet it is not for that reason lawless; on the contrary it must be a causality acting according to immutable laws, but of a peculiar kind; otherwise a free will would be an absurdity.

Physical necessity is a heteronomy of the efficient causes, for every effect is possible only according to this law, that something else determines the efficient cause to exert its causality. What else then can freedom of the will be but autonomy, that is, the property of the will to be a law to itself? But the proposition: “The will is in every action a law

to itself," only expresses the principle: "To act on no other maxim than that which can also have as an object itself as a universal law." Now this is precisely the formula of the categorical imperative and is the principle of morality, so that a free will and a will subject to moral laws are one and the same.

On the hypothesis, then, of freedom of the will, morality together with its principle follows from it by mere analysis of the conception. However, the latter is a synthetic proposition; viz., an absolutely good will is that whose maxim can always include itself regarded as a universal law; for this property of its maxim can never be discovered by analysing the conception of an absolutely good will.

Now such synthetic propositions are only possible in this way: that the two cognitions are connected together by their union with a third in which they are both to be found. The positive concept of freedom furnishes this third cognition, which cannot, as with physical causes, be the nature of the sensible world (in the concept of which we find conjoined the concept of something in relation as cause to something else as effect). We cannot now at once show what this third is to which freedom points us and of which we have an idea a priori, nor can we make intelligible how the concept of freedom is shown to be legitimate from principles of pure practical reason and with it the possibility of a categorical imperative; but some further preparation is required.

Freedom must be presupposed as a Property of the Will of all Rational Beings

It is not enough to predicate freedom of our own will, from Whatever reason, if we have not sufficient grounds for predicating the same of all rational beings. For as morality serves as a law for us only because we are rational beings, it must also hold for all rational beings; and as it must be deduced simply from the property of freedom, it must be shown that freedom also is a property of all rational beings. It is not enough, then, to prove it from certain supposed experiences of human nature (which indeed is quite impossible, and it can only be shown a priori), but we must show that it belongs to the activity of all rational beings endowed with a will. Now I say every being that cannot act except under the idea of freedom is just for that reason in a practical point of view really free, that is to say, all laws which are inseparably connected with freedom have the same force for him as if his will had been shown to be free in itself by a proof theoretically conclusive.*

Now I affirm that we must attribute to every rational being which has a will that it has also the idea of freedom and acts entirely under this idea. For in such a being we conceive a reason that is practical, that is, has causality in reference to its objects. Now we cannot possibly conceive a reason consciously receiving a bias from any other quarter with respect to its judgements, for then the subject would ascribe the determination of its judgement not to its own reason, but to an impulse. It must regard itself as the author of its principles independent of foreign influences. Consequently as practical reason or as the will of a rational being it must regard itself as free, that is to say, the will of such a being cannot be a will of its own except under the idea of freedom. This idea must therefore in a practical point of view be ascribed to every rational being.

*I adopt this method of assuming freedom merely as an idea which rational beings suppose in their actions, in order to avoid the necessity of proving it in its theoretical aspect also. The former is sufficient for my purpose; for even though the speculative proof should not be made out, yet a being that cannot act except with the idea of freedom is bound by the same laws that would oblige a being who was actually free. Thus we can escape here from the onus which presses on the theory.

Of the Interest attaching to the Ideas of Morality.

We have finally reduced the definite conception of morality to the idea of freedom. This latter, however, we could not prove to be actually a property of ourselves or of human nature; only we saw that it must be presupposed if we would conceive a being as rational and conscious of its causality in respect of its actions, i.e., as endowed with a will; and so we find that on just the same grounds we must ascribe to every being endowed with reason and will this attribute of determining itself to action under the idea of its freedom.

Now it resulted also from the presupposition of these ideas that we became aware of a law that the subjective principles of action, i.e., maxims, must always be so assumed that they can also hold as objective, that is, universal principles, and so serve as universal laws of our own dictation. But why then should I subject myself to this principle and that simply as a rational being, thus also subjecting to it all other being endowed with reason? I will allow that no interest urges me to this, for that would not give a categorical imperative, but I must take an interest in it and discern how this comes to pass; for this properly an “I ought” is properly an “I would,” valid for every rational being, provided only that reason determined his actions without any hindrance. But for beings that are in addition affected as we are by springs of a different kind, namely, sensibility, and in whose case that is not always done which reason alone would do, for these that necessity is expressed only as an “ought,” and the subjective necessity is different from the objective.

It seems then as if the moral law, that is, the principle of autonomy of the will, were properly speaking only presupposed in the idea of freedom, and as if we could not prove its reality and objective necessity independently. In that case we should still have gained something considerable by at least determining the true principle more exactly than had previously been done; but as regards its validity and the practical necessity of subjecting oneself to it, we should not have advanced a step. For if we were asked why the universal validity of our maxim as a law must be the condition restricting our actions, and on what we ground the worth which we assign to this manner of acting- a worth so great that there cannot be any higher interest; and if we were asked further how it happens that it is by this alone a man believes he feels his own personal worth, in comparison with which that of an agreeable or disagreeable condition is to be regarded as nothing, to these questions we could give no satisfactory answer.

We find indeed sometimes that we can take an interest in a personal quality which does not involve any interest of external condition, provided this quality makes us capable of participating in the condition in case reason were to effect the allotment; that is to say, the mere being worthy of happiness can interest of itself even without the motive of participating in this happiness. This judgement, however, is in fact only the effect of the importance of the moral law which we before presupposed (when by the idea of freedom we detach ourselves from every empirical interest); but that we ought to detach ourselves from these interests, i.e., to consider ourselves as free in action and yet as subject to certain laws, so as to find a worth simply in our own person which can compensate us for the loss of everything that gives worth to our condition; this we are not yet able to discern in this way, nor do we see how it is possible so to act- in other words, whence the moral law derives its obligation.

It must be freely admitted that there is a sort of circle here from which it seems impossible to escape. In the order of efficient causes we assume ourselves free, in order that in the order of ends we may conceive ourselves as subject to moral laws: and we afterwards conceive ourselves as subject to these laws, because we have attributed to ourselves freedom of will: for freedom and self-legislation of will are both autonomy and, therefore, are reciprocal conceptions, and for this very reason one must not be used to explain the other or give the reason of it, but at most

only logical purposes to reduce apparently different notions of the same object to one single concept (as we reduce different fractions of the same value to the lowest terms).

One resource remains to us, namely, to inquire whether we do not occupy different points of view when by means of freedom we think ourselves as causes efficient a priori, and when we form our conception of ourselves from our actions as effects which we see before our eyes.

It is a remark which needs no subtle reflection to make, but which we may assume that even the commonest understanding can make, although it be after its fashion by an obscure discernment of judgement which it calls feeling, that all the “ideas” that come to us involuntarily (as those of the senses) do not enable us to know objects otherwise than as they affect us; so that what they may be in themselves remains unknown to us, and consequently that as regards “ideas” of this kind even with the closest attention and clearness that the understanding can apply to them, we can by them only attain to the knowledge of appearances, never to that of things in themselves. As soon as this distinction has once been made (perhaps merely in consequence of the difference observed between the ideas given us from without, and in which we are passive, and those that we produce simply from ourselves, and in which we show our own activity), then it follows of itself that we must admit and assume behind the appearance something else that is not an appearance, namely, the things in themselves; although we must admit that as they can never be known to us except as they affect us, we can come no nearer to them, nor can we ever know what they are in themselves.

This must furnish a distinction, however crude, between a world of sense and the world of understanding, of which the former may be different according to the difference of the sensuous impressions in various observers, while the second which is its basis always remains the same, Even as to himself, a man cannot pretend to know what he is in himself from the knowledge he has by internal sensation. For as he does not as it were create himself, and does not come by the conception of himself a priori but empirically, it naturally follows that he can obtain his knowledge even of himself only by the inner sense and, consequently, only through the appearances of his nature and the way in which his consciousness is affected. At the same time beyond these characteristics of his own subject, made up of mere appearances, he must necessarily suppose something else as their basis, namely, his ego, whatever its characteristics in itself may be. Thus in respect to mere perception and receptivity of sensations he must reckon himself as belonging to the world of sense; but in respect of whatever there may be of pure activity in him (that which reaches consciousness immediately and not through affecting the senses), he must reckon himself as belonging to the intellectual world, of which, however, he has no further knowledge. To such a conclusion the reflecting man must come with respect to all the things which can be presented to him: it is probably to be met with even in persons of the commonest understanding, who, as is well known, are very much inclined to suppose behind the objects of the senses something else invisible and acting of itself. They spoil it, however, by presently sensualizing this invisible again; that is to say, wanting to make it an object of intuition, so that they do not become a whit the wiser.

Now man really finds in himself a faculty by which he distinguishes himself from everything else, even from himself as affected by objects, and that is reason. This being pure spontaneity is even elevated above the understanding. For although the latter is a spontaneity and does not, like sense, merely contain intuitions that arise when we are affected by things (and are therefore passive), yet it cannot produce from its activity any other conceptions than those which merely serve to bring the intuitions of sense under rules and, thereby, to unite them in one consciousness, and without this use of the sensibility it could not think at all; whereas, on the contrary, reason shows so pure a spontaneity in the case of what I call ideas [ideal conceptions] that it thereby far transcends

everything that the sensibility can give it, and exhibits its most important function in distinguishing the world of sense from that of understanding, and thereby prescribing the limits of the understanding itself.

For this reason a rational being must regard himself qua intelligence (not from the side of his lower faculties) as belonging not to the world of sense, but to that of understanding; hence he has two points of view from which he can regard himself, and recognise laws of the exercise of his faculties, and consequently of all his actions: first, so far as he belongs to the world of sense, he finds himself subject to laws of nature (heteronomy); secondly, as belonging to the intelligible world, under laws which being independent of nature have their foundation not in experience but in reason alone.

As a rational being, and consequently belonging to the intelligible world, man can never conceive the causality of his own will otherwise than on condition of the idea of freedom, for independence of the determinate causes of the sensible world (an independence which reason must always ascribe to itself) is freedom. Now the idea of freedom is inseparably connected with the conception of autonomy, and this again with the universal principle of morality which is ideally the foundation of all actions of rational beings, just as the law of nature is of all phenomena. Now the suspicion is removed which we raised above, that there was a latent circle involved in our reasoning from freedom to autonomy, and from this to the moral law, viz.: that we laid down the idea of freedom because of the moral law only that we might afterwards in turn infer the latter from freedom, and that consequently we could assign no reason at all for this law, but could only [present] it as a petitio principii which well disposed minds would gladly concede to us, but which we could never put forward as a provable proposition. For now we see that, when we conceive ourselves as free, we transfer ourselves into the world of understanding as members of it and recognise the autonomy of the will with its consequence, morality; whereas, if we conceive ourselves as under obligation, we consider ourselves as belonging to the world of sense and at the same time to the world of understanding.

How is a Categorical Imperative Possible?

Every rational being reckons himself qua intelligence as belonging to the world of understanding, and it is simply as an efficient cause belonging to that world that he calls his causality a will. On the other side he is also conscious of himself as a part of the world of sense in which his actions, which are mere appearances [phenomena] of that causality, are displayed; we cannot, however, discern how they are possible from this causality which we do not know; but instead of that, these actions as belonging to the sensible world must be viewed as determined by other phenomena, namely, desires and inclinations. If therefore I were only a member of the world of understanding, then all my actions would perfectly conform to the principle of autonomy of the pure will; if I were only a part of the world of sense, they would necessarily be assumed to conform wholly to the natural law of desires and inclinations, in other words, to the heteronomy of nature. (The former would rest on morality as the supreme principle, the latter on happiness.) Since, however, the world of understanding contains the foundation of the world of sense, and consequently of its laws also, and accordingly gives the law to my will (which belongs wholly to the world of understanding) directly, and must be conceived as doing so, it follows that, although on the one side I must regard myself as a being belonging to the world of sense, yet on the other side I must recognize myself as subject as an intelligence to the law of the world of understanding, i.e., to reason, which contains this law in the idea of freedom, and therefore as subject to the autonomy of the will: consequently I must regard the laws of the world of understanding as imperatives for me and the actions which conform to them as duties.

And thus what makes categorical imperatives possible is this, that the idea of freedom makes me a member of an intelligible world, in consequence of which, if I were nothing else, all my actions would always conform to the

autonomy of the will; but as I at the same time intuite myself as a member of the world of sense, they ought so to conform, and this categorical “ought” implies a synthetic a priori proposition, inasmuch as besides my will as affected by sensible desires there is added further the idea of the same will but as belonging to the world of the understanding, pure and practical of itself, which contains the supreme condition according to reason of the former will; precisely as to the intuitions of sense there are added concepts of the understanding which of themselves signify nothing but regular form in general and in this way synthetic a priori propositions become possible, on which all knowledge of physical nature rests.

The practical use of common human reason confirms this reasoning. There is no one, not even the most consummate villain, provided only that be is otherwise accustomed to the use of reason, who, when we set before him examples of honesty of purpose, of steadfastness in following good maxims, of sympathy and general benevolence (even combined with great sacrifices of advantages and comfort), does not wish that he might also possess these qualities.

Only on account of his inclinations and impulses he cannot attain this in himself, but at the same time he wishes to be free from such inclinations which are burdensome to himself. He proves by this that he transfers himself in thought with a will free from the impulses of the sensibility into an order of things wholly different from that of his desires in the field of the sensibility; since he cannot expect to obtain by that wish any gratification of his desires, nor any position which would satisfy any of his actual or supposable inclinations (for this would destroy the pre-eminence of the very idea which wrests that wish from him): he can only expect a greater intrinsic worth of his own person. This better person, however, he imagines himself to be when be transfers himself to the point of view of a member of the world of the understanding, to which he is involuntarily forced by the idea of freedom, i.e., of independence on determining causes of the world of sense; and from this point of view he is conscious of a good will, which by his own confession constitutes the law for the bad will that he possesses as a member of the world of sense- a law whose authority he recognizes while transgressing it. What he morally “ought” is then what he necessarily “would,” as a member of the world of the understanding, and is conceived by him as an “ought” only inasmuch as he likewise considers himself as a member of the world of sense. Of the Extreme Limits of all Practical Philosophy.

All men attribute to themselves freedom of will. Hence come all judgements upon actions as being such as ought to have been done, although they have not been done. However, this freedom is not a conception of experience, nor can it be so, since it still remains, even though experience shows the contrary of what on supposition of freedom are conceived as its necessary consequences. On the other side it is equally necessary that everything that takes place should be fixedly determined according to laws of nature. This necessity of nature is likewise not an empirical conception, just for this reason, that it involves the motion of necessity and consequently of a priori cognition. But this conception of a system of nature is confirmed by experience; and it must even be inevitably presupposed if experience itself is to be possible, that is, a connected knowledge of the objects of sense resting on general laws. Therefore freedom is only an idea of reason, and its objective reality in itself is doubtful; while nature is a concept of the understanding which proves, and must necessarily prove, its reality in examples of experience.
There arises from this a dialectic of reason, since the freedom attributed to the will appears to contradict the necessity of nature, and placed between these two ways reason for speculative purposes finds the road of physical necessity much more beaten and more appropriate than that of freedom; yet for practical purposes the narrow footpath of freedom is the only one on which it is possible to make use of reason in our conduct; hence it is just as impossible for the subtlest philosophy as for the commonest reason of men to argue away freedom. Philosophy must then assume

that no real contradiction will be found between freedom and physical necessity of the same human actions, for it cannot give up the conception of nature any more than that of freedom.

Nevertheless, even though we should never be able to comprehend how freedom is possible, we must at least remove this apparent contradiction in a convincing manner. For if the thought of freedom contradicts either itself or nature, which is equally necessary, it must in competition with physical necessity be entirely given up.
It would, however, be impossible to escape this contradiction if the thinking subject, which seems to itself free, conceived itself in the same sense or in the very same relation when it calls itself free as when in respect of the same action it assumes itself to be subject to the law of nature. Hence it is an indispensable problem of speculative philosophy to show that its illusion respecting the contradiction rests on this, that we think of man in a different sense and relation when we call him free and when we regard him as subject to the laws of nature as being part and parcel of nature. It must therefore show that not only can both these very well co-exist, but that both must be thought as necessarily united in the same subject, since otherwise no reason could be given why we should burden reason with an idea which, though it may possibly without contradiction be reconciled with another that is sufficiently established, yet entangles us in a perplexity which sorely embarrasses reason in its theoretic employment. This duty, however, belongs only to speculative philosophy.

The philosopher then has no option whether he will remove the apparent contradiction or leave it untouched; for in the latter case the theory respecting this would be bonum vacans, into the possession of which the fatalist would have a right to enter and chase all morality out of its supposed domain as occupying it without title.

We cannot however as yet say that we are touching the bounds of practical philosophy. For the settlement of that controversy does not belong to it; it only demands from speculative reason that it should put an end to the discord in which it entangles itself in theoretical questions, so that practical reason may have rest and security from external attacks which might make the ground debatable on which it desires to build.

The claims to freedom of will made even by common reason are founded on the consciousness and the admitted supposition that reason is independent of merely subjectively determined causes which together constitute what belongs to sensation only and which consequently come under the general designation of sensibility. Man considering himself in this way as an intelligence places himself thereby in a different order of things and in a relation to determining grounds of a wholly different kind when on the one hand he thinks of himself as an intelligence endowed with a will, and consequently with causality, and when on the other he perceives himself as a phenomenon in the world of sense (as he really is also), and affirms that his causality is subject to external determination according to laws of nature.

Now he soon becomes aware that both can hold good, nay, must hold good at the same time. For there is not the smallest contradiction in saying that a thing in appearance (belonging to the world of sense) is subject to certain laws, of which the very same as a thing or being in itself is independent, and that he must conceive and think of himself in this twofold way, rests as to the first on the consciousness of himself as an object affected through the senses, and as to the second on the consciousness of himself as an intelligence, i.e., as independent on sensible impressions in the employment of his reason (in other words as belonging to the world of understanding).

Hence it comes to pass that man claims the possession of a will which takes no account of anything that comes under the head of desires and inclinations and, on the contrary, conceives actions as possible to him, nay,

even as necessary which can only be done by disregarding all desires and sensible inclinations. The causality of such actions lies in him as an intelligence and in the laws of effects and actions [which depend] on the principles of an intelligible world, of which indeed he knows nothing more than that in it pure reason alone independent of sensibility gives the law; moreover since it is only in that world, as an intelligence, that he is his proper self (being as man only the appearance of himself), those laws apply to him directly and categorically, so that the incitements of inclinations and appetites (in other words the whole nature of the world of sense) cannot impair the laws of his volition as an intelligence.

Nay, he does not even hold himself responsible for the former or ascribe them to his proper self, i.e., his will: he only ascribes to his will any indulgence which he might yield them if he allowed them to influence his maxims to the prejudice of the rational laws of the will.

When practical reason thinks itself into a world of understanding, it does not thereby transcend its own limits, as it would if it tried to enter it by intuition or sensation. The former is only a negative thought in respect of the world of sense, which does not give any laws to reason in determining the will and is positive only in this single point that this freedom as a negative characteristic is at the same time conjoined with a (positive) faculty and even with a causality of reason, which we designate a will, namely a faculty of so acting that the principle of the actions shall conform to the essential character of a rational motive, i.e., the condition that the maxim have universal validity as a law. But were it to borrow an object of will, that is, a motive, from the world of understanding, then it would overstep its bounds and pretend to be acquainted with something of which it knows nothing.

The conception of a world of the understanding is then only a point of view which reason finds itself compelled to take outside the appearances in order to conceive itself as practical, which would not be possible if the influences of the sensibility had a determining power on man, but which is necessary unless he is to be denied the consciousness of himself as an intelligence and, consequently, as a rational cause, energizing by reason, that is, operating freely. This thought certainly involves the idea of an order and a system of laws different from that of the mechanism of nature which belongs to the sensible world; and it makes the conception of an intelligible world necessary (that is to say, the whole system of rational beings as things in themselves). But it does not in the least authorize us to think of it further than as to its formal condition only, that is, the universality of the maxims of the will as laws, and consequently the autonomy of the latter, which alone is consistent with its freedom; whereas, on the contrary, all laws that refer to a definite object give heteronomy, which only belongs to laws of nature and can only apply to the sensible world.

But reason would overstep all its bounds if it undertook to explain how pure reason can be practical, which would be exactly the same problem as to explain how freedom is possible.

For we can explain nothing but that which we can reduce to laws, the object of which can be given in some possible experience. But freedom is a mere idea, the objective reality of which can in no wise be shown according to laws of nature, and consequently not in any possible experience; and for this reason it can never be comprehended or understood, because we cannot support it by any sort of example or analogy. It holds good only as a necessary hypothesis of reason in a being that believes itself conscious of a will, that is, of a faculty distinct from mere desire (namely, a faculty of determining itself to action as an intelligence, in other words, by laws of reason independently on natural instincts). Now where determination according to laws of nature ceases, there all explanation ceases also, and

nothing remains but defence, i.e., the removal of the objections of those who pretend to have seen deeper into the nature of things, and thereupon boldly declare freedom impossible.

We can only point out to them that the supposed contradiction that they have discovered in it arises only from this, that in order to be able to apply the law of nature to human actions, they must necessarily consider man as an appearance: then when we demand of them that they should also think of him qua intelligence as a thing in itself, they still persist in considering him in this respect also as an appearance. In this view it would no doubt be a contradiction to suppose the causality of the same subject (that is, his will) to be withdrawn from all the natural laws of the sensible world. But this contradiction disappears, if they would only bethink themselves and admit, as is reasonable, that behind the appearances there must also lie at their root (although hidden) the things in themselves, and that we cannot expect the laws of these to be the same as those that govern their appearances.

The subjective impossibility of explaining the freedom of the will is identical with the impossibility of discovering and explaining an interest* which man can take in the moral law. Nevertheless he does actually take an interest in it, the basis of which in us we call the moral feeling, which some have falsely assigned as the standard of our moral judgement, whereas it must rather be viewed as the subjective effect that the law exercises on the will, the objective principle of which is furnished by reason alone.

*Interest is that by which reason becomes practical, i.e., a cause determining the will. Hence we say of rational beings only that they take an interest in a thing; irrational beings only feel sensual appetites. Reason takes a direct interest in action then only when the universal validity of its maxims is alone sufficient to determine the will. Such an interest alone is pure. But if it can determine the will only by means of another object of desire or on the suggestion of a particular feeling of the subject, then reason takes only an indirect interest in the action, and, as reason by itself without experience cannot discover either objects of the will or a special feeling actuating it, this latter interest would only be empirical and not a pure rational interest. The logical interest of reason (namely, to extend its insight) is never direct, but presupposes purposes for which reason is employed.

In order indeed that a rational being who is also affected through the senses should will what reason alone directs such beings that they ought to will, it is no doubt requisite that reason should have a power to infuse a feeling of pleasure or satisfaction in the fulfilment of duty, that is to say, that it should have a causality by which it determines the sensibility according to its own principles. But it is quite impossible to discern, i.e., to make it intelligible a priori, how a mere thought, which itself contains nothing sensible, can itself produce a sensation of pleasure or pain; for this is a particular kind of causality of which as of every other causality we can determine nothing whatever a priori; we must only consult experience about it. But as this cannot supply us with any relation of cause and effect except between two objects of experience, whereas in this case, although indeed the effect produced lies within experience, yet the cause is supposed to be pure reason acting through mere ideas which offer no object to experience, it follows that for us men it is quite impossible to explain how and why the universality of the maxim as a law, that is, morality, interests. This only is certain, that it is not because it interests us that it has validity for us (for that would be heteronomy and dependence of practical reason on sensibility, namely, on a feeling as its principle, in which case it could never give moral laws), but that it interests us because it is valid for us as men, inasmuch as it had its source in our will as intelligences, in other words, in our proper self, and what belongs to mere appearance is necessarily subordinated by reason to the nature of the thing in itself.

The question then, “How a categorical imperative is possible,” can be answered to this extent, that we can assign the only hypothesis on which it is possible, namely, the idea of freedom; and we can also discern the necessity

of this hypothesis, and this is sufficient for the practical exercise of reason, that is, for the conviction of the validity of this imperative, and hence of the moral law; but how this hypothesis itself is possible can never be discerned by any human reason. On the hypothesis, however, that the will of an intelligence is free, its autonomy, as the essential formal condition of its determination, is a necessary consequence. Moreover, this freedom of will is not merely quite possible as a hypothesis (not involving any contradiction to the principle of physical necessity in the connexion of the phenomena of the sensible world) as speculative philosophy can show: but further, a rational being who is conscious of causality through reason, that is to say, of a will (distinct from desires), must of necessity make it practically, that is, in idea, the condition of all his voluntary actions. But to explain how pure reason can be of itself practical without the aid of any spring of action that could be derived from any other source, i.e., how the mere principle of the universal validity of all its maxims as laws (which would certainly be the form of a pure practical reason) can of itself supply a spring, without any matter (object) of the will in which one could antecedently take any interest; and how it can produce an interest which would be called purely moral; or in other words, how pure reason can be practical- to explain this is beyond the power of human reason, and all the labour and pains of seeking an explanation of it are lost.

It is just the same as if I sought to find out how freedom itself is possible as the causality of a will. For then I quit the ground of philosophical explanation, and I have no other to go upon. I might indeed revel in the world of intelligences which still remains to me, but although I have an idea of it which is well founded, yet I have not the least knowledge of it, nor an I ever attain to such knowledge with all the efforts of my natural faculty of reason. It signifies only a something that remains over when I have eliminated everything belonging to the world of sense from the actuating principles of my will, serving merely to keep in bounds the principle of motives taken from the field of sensibility; fixing its limits and showing that it does not contain all in all within itself, but that there is more beyond it; but this something more I know no further. Of pure reason which frames this ideal, there remains after the abstraction of all matter, i.e., knowledge of objects, nothing but the form, namely, the practical law of the universality of the maxims, and in conformity with this conception of reason in reference to a pure world of understanding as a possible efficient cause, that is a cause determining the will. There must here be a total absence of springs; unless this idea of an intelligible world is itself the spring, or that in which reason primarily takes an interest; but to make this intelligible is precisely the problem that we cannot solve.

Here now is the extreme limit of all moral inquiry, and it is of great importance to determine it even on this account, in order that reason may not on the one band, to the prejudice of morals, seek about in the world of sense for the supreme motive and an interest comprehensible but empirical; and on the other hand, that it may not impotently flap its wings without being able to move in the (for it) empty space of transcendent concepts which we call the intelligible world, and so lose itself amidst chimeras. For the rest, the idea of a pure world of understanding as a system of all intelligences, and to which we ourselves as rational beings belong (although we are likewise on the other side members of the sensible world), this remains always a useful and legitimate idea for the purposes of rational belief, although all knowledge stops at its threshold, useful, namely, to produce in us a lively interest in the moral law by means of the noble ideal of a universal kingdom of ends in themselves (rational beings), to which we can belong as members then only when we carefully conduct ourselves according to the maxims of freedom as if they were laws of nature.

Concluding Remark

The speculative employment of reason with respect to nature leads to the absolute necessity of some supreme cause of the world: the practical employment of reason with a view to freedom leads also to absolute

necessity, but only of the laws of the actions of a rational being as such. Now it is an essential principle of reason, however employed, to push its knowledge to a consciousness of its necessity (without which it would not be rational knowledge). It is, however, an equally essential restriction of the same reason that it can neither discern the necessity of what is or what happens, nor of what ought to happen, unless a condition is supposed on which it is or happens or ought to happen. In this way, however, by the constant inquiry for the condition, the satisfaction of reason is only further and further postponed. Hence it unceasingly seeks the unconditionally necessary and finds itself forced to assume it, although without any means of making it comprehensible to itself, happy enough if only it can discover a conception which agrees with this assumption.

It is therefore no fault in our deduction of the supreme principle of morality, but an objection that should be made to human reason in general, that it cannot enable us to conceive the absolute necessity of an unconditional practical law (such as the categorical imperative must be). It cannot be blamed for refusing to explain this necessity by a condition, that is to say, by means of some interest assumed as a basis, since the law would then cease to be a supreme law of reason. And thus while we do not comprehend the practical unconditional necessity of the moral imperative, we yet comprehend its incomprehensibility, and this is all that can be fairly demanded of a philosophy which strives to carry its principles up to the very limit of human reason.

Aristotle, The Politics

A short overview of the reading; *Many rights-oriented philosophers believe that distributive justice is not a matter of rewarding virtue or moral desert, and that the measure of a just society is not whether it produces virtuous citizens, but whether it provides a fair framework of rights within which individuals can pursue their own values. Aristotle (384-322 BC) rejects both of these beliefs. He believes that justice consists in giving people what they deserve, and that a just society is one that enables human beings to realize their highest nature and to live the good life. For Aristotle, political activity is not merely a way to pursue our interests, but an essential part of the good life.*

Aristotle, *The Politics*

Translated by Benjamin Jowett

BOOK ONE

Part I

Every state is a community of some kind, and every community is established with a view to some good; for mankind always act in order to obtain that which they think good. But, if all communities aim at some good, the state or political community, which is the highest of all, and which embraces all the rest, aims at good in a greater degree than any other, and at the highest good.

Some people think that the qualifications of a statesman, king, householder, and master are the same, and that they differ, not in kind, but only in the number of their subjects. For example, the ruler over a few is called a master; over more, the manager of a household; over a still larger number, a statesman or king, as if there were no difference between a great household and a small state. The distinction which is made between the king and the statesman is as follows: When the government is personal, the ruler is a king; when, according to the rules of the political science, the citizens rule and are ruled in turn, then he is called a statesman.

But all this is a mistake; for governments differ in kind, as will be evident to any one who considers the matter according to the method which has hitherto guided us. As in other departments of science, so in politics, the compound should always be resolved into the simple elements or least parts of the whole. We must therefore look at the elements of which the state is composed, in order that we may see in what the different kinds of rule differ from one another, and whether any scientific result can be attained about each one of them.

Part II

He who thus considers things in their first growth and origin, whether a state or anything else, will obtain the clearest view of them. In the first place there must be a union of those who cannot exist without each other; namely, of male and female, that the race may continue (and this is a union which is formed, not of deliberate purpose, but because, in common with other animals and with plants, mankind have a natural desire to leave behind them an image of themselves), and of natural ruler and subject, that both may be preserved. For that which can foresee by the exercise of mind is by nature intended to be lord and master, and that which can with its body give effect to such foresight is a subject, and by nature a slave; hence master and slave have the same interest. Now nature has distinguished between the female and the slave. For she is not niggardly, like the smith who fashions the Delphian knife for many uses; she makes each thing for a single use, and every instrument is best made when intended for one and not for many uses. But among barbarians no distinction is made between women and slaves, because there is no

natural ruler among them: they are a community of slaves, male and female. Wherefore the poets say, “It is meet that Hellenes should rule over barbarians; ” as if they thought that the barbarian and the slave were by nature one.

Out of these two relationships between man and woman, master and slave, the first thing to arise is the family, and Hesiod is right when he says,

“First house and wife and an ox for the plough, ” for the ox is the poor man’s slave. The family is the association established by nature for the supply of men’s everyday wants, and the members of it are called by Charondas ‘companions of the cupboard,’ and by Epimenides the Cretan, ‘companions of the manger.’ But when several families are united, and the association aims at something more than the supply of daily needs, the first society to be formed is the village. And the most natural form of the village appears to be that of a colony from the family, composed of the children and grandchildren, who are said to be suckled ‘with the same milk.’ And this is the reason why Hellenic states were originally governed by kings; because the Hellenes were under royal rule before they came together, as the barbarians still are. Every family is ruled by the eldest, and therefore in the colonies of the family the kingly form of government prevailed because they were of the same blood. As Homer says: “Each one gives law to his children and to his wives. ”

For they lived dispersedly, as was the manner in ancient times. Wherefore men say that the Gods have a king, because they themselves either are or were in ancient times under the rule of a king. For they imagine, not only the forms of the Gods, but their ways of life to be like their own. When several villages are united in a single complete community, large enough to be nearly or quite self-sufficing, the state comes into existence, originating in the bare needs of life, and continuing in existence for the sake of a good life. And therefore, if the earlier forms of society are natural, so is the state, for it is the end of them, and the nature of a thing is its end. For what each thing is when fully developed, we call its nature, whether we are speaking of a man, a horse, or a family. Besides, the final cause and end of a thing is the best, and to be self-sufficing is the end and the best. Hence it is evident that the state is a creation of nature, and that man is by nature a political animal. And he who by nature and not by mere accident is without a state, is either a bad man or above humanity; he is like the “Tribeless, lawless, hearthless one, ” whom Homer denounces- the natural outcast is forthwith a lover of war; he may be compared to an isolated piece at draughts.

Now, that man is more of a political animal than bees or any other gregarious animals is evident. Nature, as we often say, makes nothing in vain, and man is the only animal whom she has endowed with the gift of speech. And whereas mere voice is but an indication of pleasure or pain, and is therefore found in other animals (for their nature attains to the perception of pleasure and pain and the intimation of them to one another, and no further), the power of speech is intended to set forth the expedient and inexpedient, and therefore likewise the just and the unjust. And it is a characteristic of man that he alone has any sense of good and evil, of just and unjust, and the like, and the association of living beings who have this sense makes a family and a state.

Further, the state is by nature clearly prior to the family and to the individual, since the whole is of necessity prior to the part; for example, if the whole body be destroyed, there will be no foot or hand,except in an equivocal sense, as we might speak of a stone hand; for when destroyed the hand will be no better than that. But things are defined by their working and power; and we ought not to say that they are the same when they no longer have their proper quality, but only that they have the same name. The proof that the state is a creation of nature and prior to the individual is that the individual, when isolated, is not self-sufficing; and therefore he is like a part in relation to the

whole. But he who is unable to live in society, or who has no need because he is sufficient for himself, must be either a beast or a god: he is no part of a state. A social instinct is implanted in all men by nature, and yet he who first founded the state was the greatest of benefactors. For man, when perfected, is the best of animals, but, when separated from law and justice, he is the worst of all; since armed injustice is the more dangerous, and he is equipped at birth with arms, meant to be used by intelligence and virtue, which he may use for the worst ends. Wherefore, if he have not virtue, he is the most unholy and the most savage of animals, and the most full of lust and gluttony. But justice is the bond of men in states, for the administration of justice, which is the determination of what is just,is the principle of order in political society.

Part III

Seeing then that the state is made up of households, before speaking of the state we must speak of the management of the household. The parts of household management correspond to the persons who compose the household, and a complete household consists of slaves and freemen. Now we should begin by examining everything in its fewest possible elements; and the first and fewest possible parts of a family are master and slave, husband and wife, father and children. We have therefore to consider what each of these three relations is and ought to be: I mean the relation of master and servant, the marriage relation (the conjunction of man and wife has no name of its own), and thirdly, the procreative relation (this also has no proper name). And there is another element of a household, the so-called art of getting wealth, which, according to some, is identical with householdmanagement, according to others, a principal part of it; the nature of this art will also have to be considered by us.

Let us first speak of master and slave, looking to the needs of practical life and also seeking to attain some better theory of their relation than exists at present. For some are of opinion that the rule of a master is a science, and that the management of a household, and the mastership of slaves, and the political and royal rule, as I was saying at the outset, are all the same. Others affirm that the rule of a master over slaves is contrary to nature, and that the distinction between slave and freeman exists by law only, and not by nature; and being an interference with nature is therefore unjust.

Part IV

Property is a part of the household, and the art of acquiring property is a part of the art of managing the household; for no man can live well, or indeed live at all, unless he be provided with necessaries. And as in the arts which have a definite sphere the workers must have their own proper instruments for the accomplishment of their work, so it is in the management of a household. Now instruments are of various sorts; some are living, others lifeless; in the rudder, the pilot of a ship has a lifeless, inthe look-out man, a living instrument; for in the arts the servant is a kind of instrument. Thus, too, a possession is an instrument for maintaining life. And so, in the arrangement of the family, a slave is a living possession, and property a number of such instruments; and the servant is himself aninstrument which takes precedence of all other instruments. For if every instrument could accomplish its own work, obeying or anticipating the will of others, like the statues of Daedalus, or the tripods of Hephaestus, which, says the poet, “of their own accord entered the assembly of the Gods; ” if, in like manner, the shuttle would weave and the plectrum touch the lyre without a hand to guide them, chief workmen would not want servants, nor masters slaves.

Here, however, another distinction must be drawn; the instruments commonly so called are instruments of production, whilst a possession is an instrument of action. The shuttle, for example, is not only of use; but something else is made by it, whereas of a garment or of a bed there is only the use. Further, as production and action are different in kind, and both require instruments, the instruments which they employ must likewise differ in kind. But life is action and not production, and therefore the slave is the minister of action. Again, a possession is spoken of as a

part is spoken of; for the part is not only a part of something else, but wholly belongs to it; and this is also true of a possession. The master is only the master of the slave; he does not belong to him, whereas the slave is not only the slave of his master, but wholly belongs to him. Hence we see what is the nature and office of a slave; he who is by nature not his own but another's man, is by nature a slave; and he may be said to be another's man who, being a human being, is also a possession. And a possession may be defined as an instrument of action, separable from the possessor.

Part V

But is there any one thus intended by nature to be a slave, and for whom such a condition is expedient and right, or rather is not all slavery a violation of nature? There is no difficulty in answering this question, on grounds both of reason and of fact. For that some should rule and others be ruled is a thing not only necessary, but expedient; from the hour of their birth, some are marked out for subjection, others for rule.

And there are many kinds both of rulers and subjects (and that rule is the better which is exercised over better subjects- for example, to rule over men is better than to rule over wild beasts; for the work is better which is executed by better workmen, and where one man rules and another is ruled, they may be said to have a work); for in all things which form a composite whole and which are made up of parts, whether continuous or discrete, a distinction between the ruling and the subject element comes to fight. Such a duality exists in living creatures, but not in them only; it originates in the constitution of the universe; even in things which have no life there is a ruling principle, as in a musical mode. But we are wandering from the subject. We will therefore restrict ourselves to the living creature, which, in the first place, consists of soul and body: and of these two, the one is by nature the ruler, and the other the subject. But then we must look for the intentions of nature in things which retain their nature, and not in things which are corrupted. And therefore we must study the man who is in the most perfect state both of body and soul, for in him we shall see the true relation of the two; although in bad or corrupted natures the body will often appear to rule over the soul, because they are in an evil and unnatural condition. At all events we may firstly observe in living creatures both a despotical and a constitutional rule; for the soul rules the body with a despotical rule, whereas the intellect rules the appetites with a constitutional and royal rule. And it is clear thatthe rule of the soul over the body, and of the mind and the rational element over the passionate, is natural and expedient; whereas the equality of the two or the rule of the inferior is always hurtful. The same holds good of animals in relation to men; for tame animals have a better nature than wild, and all tame animals are better off when they are ruled by man; for then they are preserved. Again, the male is by nature superior, and the female inferior; and the one rules, and the other is ruled; this principle, of necessity, extends to all mankind.

Where then there is such a difference as that between soul and body, or between men and animals (as in the case of those whose business is to use their body, and who can do nothing better), the lower sort are by nature slaves, and it is better for them as for all inferiors that they should be under the rule of a master. For he who can be, and therefore is, another's and he who participates in rational principle enough to apprehend, but not to have, such a principle, is a slave by nature. Whereas the lower animals cannot even apprehend a principle; they obey their instincts. And indeed the use made of slaves and of tame animals is not very different; for both with their bodies minister to the needs of life. Nature would like to distinguish between the bodies of freemen and slaves, making the one strong for servile labor, the other upright, and although useless for such services, useful for political life in the arts both of war and peace. But the opposite often happens- that some have the souls and others have the bodies of freemen. And doubtless if men differed from one another in the mere forms of their bodies as much as the statues of the Gods do from men, all would acknowledge that the inferior class should be slaves of the superior. And if this is

true of the body, how much more just that a similar distinction should exist in the soul? but the beauty of the body is seen, whereas the beauty of the soul is not seen. It is clear, then, that some men are by nature free, and others slaves, and that for these latter slavery is both expedient and right.

Part VI

But that those who take the opposite view have in a certain way right on their side, may be easily seen. For the words slavery and slave are used in two senses. There is a slave or slavery by law as well as by nature. The law of which I speak is a sort of convention- the law by which whatever is taken in war is supposed to belong to the victors. But this right many jurists impeach, as they would an orator who brought forward an unconstitutional measure: they detest the notion that, because one man has the power of doing violence and is superior in brute strength, another shall be his slave and subject. Even among philosophers there is a difference of opinion. The origin of the dispute, and what makes the views invade each other's territory, is as follows: in some sense virtue, when furnished with means, has actually the greatest power of exercising force; and as superior power is only found where there is superior excellence of some kind, power seems to imply virtue, and the dispute to be simply one about justice (for it is due to one party identifying justice with goodwill whilethe other identifies it with the mere rule of the stronger).

If these views are thus set out separately, the other views have no force or plausibility against the view that the superior in virtue ought to rule, or be master. Others, clinging, as they think, simply to a principle of justice (for law and custom are a sort of justice), assume that slavery in accordance with the custom of war is justified by law, but at the same moment they deny this. For what if the cause of the war be unjust? And again, no onewould ever say he is a slave who is unworthy to be a slave. Were this the case, men of the highest rank would be slaves and the children of slaves if they or their parents chance to have been taken captive and sold. Wherefore Hellenes do not like to call Hellenes slaves, but confine the term to barbarians. Yet, in using this language, they really mean the natural slave of whom we spoke at first; for it must be admitted that some are slaves everywhere, others nowhere. The same principle applies to nobility. Hellenes regard themselves as noble everywhere, and not only in their own country, but they deem the barbarians noble only when at home, thereby implying that there are two sorts of nobility and freedom, the one absolute, the other relative. The Helen of Theodectes says: "Who would presume to call me servant who am on both sides sprung from the stem of the Gods? "

What does this mean but that they distinguish freedom and slavery, noble and humble birth, by the two principles of good and evil? They think that as men and animals beget men and animals, so from good men a good man springs. But this is what nature, though she may intend it, cannot alwaysaccomplish. We see then that there is some foundation for this difference of opinion, and that all are not either slaves by nature or freemen by nature, and also that there is in some cases a marked distinction between the two classes, rendering it expedient and right for the one to be slaves and the others to be masters: the one practicing obedience, the others exercising the authority and lordship which nature intended them to have. The abuse of this authority is injurious to both; for the interests of part and whole, of body and soul, are the same, and the slave is a part of the master, a living but separated part of his bodily frame. Hence, where the relation of master and slave between them is natural they are friends and have a common interest, but where it rests merely on law and force the reverse is true.

Part VII

The previous remarks are quite enough to show that the rule of a master is not a constitutional rule, and that all the different kinds of rule are not, as some affirm, the same with each other. For there isone rule exercised over subjects who are by nature free, another over subjects who are by nature slaves. The rule of a household is a

monarchy, for every house is under one head: whereas constitutional rule is a government of freemen and equals. The master is not called a master because he has science, but because he is of a certain character, and the same remark applies tothe slave and the freeman. Still there may be a science for the master and science for the slave. The science of the slave would be such as the man of Syracuse taught, who made money by instructing slaves in their ordinary duties. And such a knowledge may be carried further, so as to include cookery and similar menial arts. For some duties are of the more necessary, others of the more honorable sort; as the proverb says, 'slave before slave, master before master.' But all such branches of knowledge are servile. There is likewise a science of the master, which teaches the use of slaves; for the master as such is concerned, not with the acquisition, but with the use of them. Yet this so-called science is not anything great or wonderful; for the master need only know how to order that which the slave must know how to execute. Hence those who are in a position which places them above toil have stewards who attend to their households while they occupy themselves with philosophy or with politics. But the art of acquiring slaves, I mean of justly acquiring them, differs both from the art of the master and the art of the slave, being a species of hunting or war. Enough of the distinction between master and slave.

Part VIII

Let us now inquire into property generally, and into the art of getting wealth, in accordance with our usual method, for a slave has been shown to be a part of property. The first question is whether the art of getting wealth is the same with the art of managing a household or a part of it, or instrumental to it; and if the last, whether in the way that the art of making shuttles is instrumental to the art of weaving, or in the way that the casting of bronze is instrumental to the art of the statuary, for they are not instrumental in the same way, but the one provides tools and the other material; and by material I mean the substratum out of which any work is made; thus wool is the material of the weaver, bronze of the statuary. Now it is easy to see that the art of household management is not identical with the art of getting wealth, for the one uses the material which the other provides. For the art which uses household stores can be no other than the art of household management. There is, however, a doubt whether the art of getting wealth is a part of household management or a distinct art. If the getter of wealth has to consider whence wealth and property can be procured, but there are many sorts of property and riches, then are husbandry, and the care and provision of food in general, partsof the wealth-getting art or distinct arts? Again, there are many sorts of food, and therefore there are many kinds of lives both of animals and men; they must all have food, and the differences in their food have made differences in their ways of life. For of beasts, some are gregarious, others are solitary; they live in the way which is best adapted to sustain them, accordingly as they are carnivorous or herbivorous or omnivorous: and their habits are determined for them by nature in such a manner that they may obtain with greater facility the food of their choice. But, as different species have different tastes, the same things are not naturally pleasant to all of them; and therefore the lives of carnivorous or herbivorous animals further differ among themselves. In the lives of men too there is a great difference. The laziest are shepherds, who lead an idle life, and get their subsistence without trouble from tame animals; their flocks having to wander from place to place in search of pasture, they are compelled to follow them, cultivating a sort of living farm. Others support themselves by hunting, which is of different kinds. Some, for example, are brigands, others, who dwell near lakes or marshes or rivers or a sea in which there are fish, are fishermen, and others live by the pursuit of birds or wild beasts. The greater number obtain a living from the cultivated fruits ofthe soil. Such are the modes of subsistence which prevail among those whose industry springs up of itself, and whose food is not acquired by exchange and retail trade- there is the shepherd, the husbandman, the brigand, the fisherman, the hunter. Some gain a comfortable maintenance out of two employments, eking out the deficiencies of one of them by another: thus the life of a shepherd may be combined with that of a brigand, the life of a farmer with that of a hunter. Other modes of life are similarly combined in any way which the needs of men may require. Property, in the sense of a bare livelihood, seems to be given by nature herself to all, both when they are first born, and when

they are grown up. For some animals bring forth, together with their offspring, so much food as will last until they are able to supply themselves; of this the vermiparous or oviparous animals are an instance; and the viviparous animals have up to a certain time a supply of food for their young in themselves, which is called milk. In like manner we may infer that, after the birth of animals, plants exist for their sake, and that the other animals exist for the sake of man, the tame for use and food, the wild, if not all at least the greater part of them, for food, and for the provision of clothing and various instruments. Now if nature makes nothing incomplete, and nothing in vain, the inference must be that she has made all animals for the sake of man. And so, in one point of view, the art of war is a natural art of acquisition, for the art of acquisition includes hunting, an art which we ought to practiceagainst wild beasts, and against men who, though intended by nature to be governed, will not submit; for war of such a kind is naturally just. Of the art of acquisition then there is one kind which by nature is a part of the management of a household, in so far as the art of household management must either find ready to hand, or itself provide, such things necessary to life, and useful for the community of the family or state, as can be stored. They are the elements of true riches; for the amount of property which is needed for a good life is not unlimited, although Solon in one of his poems says that "No bound to riches has been fixed for man. "

But there is a boundary fixed, just as there is in the other arts; for the instruments of any art are never unlimited, either in number or size, and riches may be defined as a number of instruments to be used in a household or in a state. And so we see that there is a natural art of acquisition which is practiced by managers of households and by statesmen, and what is the reason of this.

Part IX

There is another variety of the art of acquisition which is commonly and rightly called an art of wealth-getting, and has in fact suggested the notion that riches and property have no limit. Being nearly connected with the preceding, it is often identified with it. But though they are not very different, neither are they the same. The kind already described is given by nature, the other is gained by experience and art. Let us begin our discussion of the question with the following considerations:

> Of everything which we possess there are two uses: both belong to the thing as such, but not in the same manner, for one is the proper, and the other the improper or secondary use of it. For example, a shoe is used for wear, and is used for exchange; both are uses of the shoe. He who gives a shoe in exchange for money or food to him who wants one, does indeed use the shoe as a shoe, but this is not its proper or primary purpose, for a shoe is not made to be an object of barter. The same maybe said of all possessions, for the art of exchange extends to all of them, and it arises at first from what is natural, from the circumstance that some have too little, others too much. Hence we may infer that retail trade is not a natural part of the art of getting wealth; had it been so, men would have ceased to exchange when they had enough. In the first community, indeed, which is the family, this art is obviously of no use, but it begins to be useful when the society increases. For the members of the family originally had all things in common; later, when the family divided into parts, the parts shared in many things, and different parts in different things, which they had to give in exchange for what they wanted, a kind of barter which is still practiced among barbarous nations who exchangewith one another the necessaries of life and nothing more; giving and receiving wine, for example, in exchange for coin, and the like. This sort of barter is not part of the wealth-getting art and is not contrary to nature, but is needed for the satisfaction of men's natural wants. The other or morecomplex form of exchange grew, as might have been inferred, out of the simpler. When the inhabitants of one country became more dependent on those of another, and they imported what they needed, and exported what they had too much of, money necessarily came into use. For the various necessaries of life are not easily carried about, and

hence men agreed to employ in their dealings with each other something which was intrinsically useful and easily applicable to the purposes of life, for example, iron, silver, and the like. Of this the value was at first measured simply by size and weight, but in process of time they put a stamp upon it, to save the trouble of weighing and to mark the value.

When the use of coin had once been discovered, out of the barter of necessary articles arose the other art of wealth getting, namely, retail trade; which was at first probably a simple matter, but became more complicated as soon as men learned by experience whence and by what exchanges the greatest profit might be made. Originating in the use of coin, the art of getting wealth is generally thought to be chiefly concerned with it, and to be the art which produces riches and wealth; having to consider how they may be accumulated. Indeed, riches is assumed by many to be only a quantity of coin, because the arts of getting wealth and retail trade are concerned with coin. Others maintain that coined money is a mere sham, a thing not natural, but conventional only, because, if the users substitute another commodity for it, it is worthless, and because it is not useful as a means to any of the necessities of life, and, indeed, he who is rich in coin may often be in want of necessary food. But how can that be wealth of which a man may have a great abundance and yet perish with hunger, like Midas in the fable, whose insatiable prayer turned everything that was set before him into gold?

Hence men seek after a better notion of riches and of the art of getting wealth than the mere acquisition of coin, and they are right. For natural riches and the natural art of wealth-getting are a different thing; in their true form they are part of the management of a household; whereas retail trade is the art of producing wealth, not in every way, but by exchange. And it is thought to be concerned with coin; for coin is the unit of exchange and the measure or limit of it. And there is no bound to the riches which spring from this art of wealth getting. As in the art of medicine there is no limit to the pursuit of health, and as in the other arts there is no limit to the pursuit of their several ends, for they aim at accomplishing their ends to the uttermost (but of the means there is a limit, for the end is always the limit), so, too, in this art of wealth-getting there is no limit of the end, which is riches of the spurious kind, and the acquisition of wealth. But the art of wealth-getting which consists in household management, on the other hand, has a limit; the unlimited acquisition of wealth is not its business. And, therefore, in one point of view, all riches must have a limit; nevertheless, as a matter of fact, we find the opposite to be the case; for all getters of wealth increase their hoard of coin without limit. The source of the confusion is the near connection between the two kinds of wealth-getting; in either, the instrument is the same, although the use is different, and so they pass into one another; for each is a use of the same property, but with a difference: accumulation is the end in the one case, but there is a further end in the other. Hence some persons are led to believe that getting wealth is the object of household management, and the whole idea of their lives is that they ought either to increase their money without limit, or at any rate not to lose it. The origin of this disposition in men is that they are intent upon living only, and not upon living well; and, as their desires are unlimited they also desire that the means of gratifying them should be without limit. Those who doaim at a good life seek the means of obtaining bodily pleasures; and, since the enjoyment of these appears to depend on property, they are absorbed in getting wealth: and so there arises the second species of wealth-getting. For, as their enjoyment is in excess, they seek an art which produces theexcess of enjoyment; and, if they are not able to supply their pleasures by the art of getting wealth, they try other arts, using in turn every faculty in a manner contrary to nature. The quality of courage, for example, is not intended to make wealth, but to inspire confidence; neither is this the aim of the general's or of the physician's art; but the one aims at victory and the other at health. Nevertheless, some men turn every quality or art into a means of getting wealth; this they conceive to be the end,and to the promotion of the end they think all things must contribute.

Thus, then, we have considered the art of wealth-getting which is unnecessary, and why men want it; and also the necessary art of wealth-getting, which we have seen to be different from the other, and to be a natural part of the art of managing a household, concerned with the provision of food, not, however, like the former kind, unlimited, but having a limit.

Part X

And we have found the answer to our original question, Whether the art of getting wealth is the business of the manager of a household and of the statesman or not their business? viz., that wealth is presupposed by them. For as political science does not make men, but takes them from nature and uses them, so too nature provides them with earth or sea or the like as a source of food. At this stage begins the duty of the manager of a household, who has to order the things which nature supplies; he may be compared to the weaver who has not to make but to use wool, and to know, too, what sort of wool is good and serviceable or bad and unserviceable. Were this otherwise, it would be difficult to see why the art of getting wealth is a part of the management of a household and the art of medicine not; for surely the members of a household must have health just as they must have life or any other necessary. The answer is that as from one point of view the master of the house and the ruler of the state have to consider about health, from another point of view not they but the physician; so in one way the art of household management, in another way the subordinate art, has to consider about wealth. But, strictly speaking, as I have already said, the means of life must be provided beforehand by nature; for the business of nature is to furnish food to that which is born, and the foodof the offspring is always what remains over of that from which it is produced. Wherefore the art of getting wealth out of fruits and animals is always natural.

There are two sorts of wealth-getting, as I have said; one is a part of household management, the other is retail trade: the former necessary and honorable, while that which consists in exchange is justly censured; for it is unnatural, and a mode by which men gain from one another. The most hated sort, and with the greatest reason, is usury, which makes a gain out of money itself, and not from the natural object of it. For money was intended to be used in exchange, but not to increase at interest. And this term interest, which means the birth of money from money, is applied to the breeding of money because the offspring resembles the parent. Wherefore of an modes of getting wealth this is the most unnatural.

Part XI

Enough has been said about the theory of wealth-getting; we will now proceed to the practical part. The discussion of such matters is not unworthy of philosophy, but to be engaged in them practically is illiberal and irksome. The useful parts of wealth-getting are, first, the knowledge of livestock- which are most profitable, and where, and how- as, for example, what sort of horses or sheep or oxen or any other animals are most likely to give a return. A man ought to know which of these pay better than others, and which pay best in particular places, for some do better in one place and some in another. Secondly, husbandry, which may be either tillage or planting, and the keeping of bees and of fish, or fowl, or of any animals which may be useful to man. These are the divisions of the true or proper art of wealth-getting and come first. Of the other, which consists in exchange, the first and most important division is commerce (of which there are three kinds- the provision of a ship, the conveyance of goods, exposure for sale- these again differing as they are safer or more profitable), the second is usury, the third, service for hire- of this, one kind is employed in the mechanical arts, the other in unskilled and bodily labor. There is still a third sort of wealth getting intermediate between this and the first or natural mode which is partly natural, but is also concerned withexchange, viz., the industries that make their profit from the earth, and from things growing from the earth which, although they bear no fruit, are nevertheless profitable; for example, the cutting of timber and all mining. The art of

mining, by which minerals are obtained, itself has many branches, for there are various kinds of things dug out of the earth. Of the several divisions of wealth-getting I now speak generally; a minute consideration of them might be useful in practice, but it would be tiresome to dwell upon them at greater length now.

Those occupations are most truly arts in which there is the least element of chance; they are the meanest in which the body is most deteriorated, the most servile in which there is the greatest use of the body, and the most illiberal in which there is the least need of excellence.

Works have been written upon these subjects by various persons; for example, by Chares the Parian, and Apollodorus the Lemnian, who have treated of Tillage and Planting, while others have treated of other branches; any one who cares for such matters may refer to their writings. It would be well also to collect the scattered stories of the ways in which individuals have succeeded in amassing a fortune; for all this is useful to persons who value the art of getting wealth. There is the anecdote of Thales the Milesian and his financial device, which involves a principle of universal application, but is attributed to him on account of his reputation for wisdom. He was reproached for his poverty, which was supposed to show that philosophy was of no use. According to the story, he knew by his skill in the stars while it was yet winter that there would be a great harvest of olives in the coming year; so, having a little money, he gave deposits for the use of all the olive-presses in Chios and Miletus, which he hired at a low price because no one bid against him. When the harvest-time came, and many were wanted all at once and of a sudden, he let them out at any rate which he pleased, and made a quantity of money. Thus he showed the world that philosophers can easily be rich if they like, but that their ambition is of another sort. He is supposed to have given a striking proof of his wisdom, but, as I was saying, his device for getting wealth is of universal application, and is nothing but the creation of a monopoly. It is an art often practiced by cities when they are want of money; they make a monopoly of provisions.

There was a man of Sicily, who, having money deposited with him, bought up an the iron from the iron mines; afterwards, when the merchants from their various markets came to buy, he was the only seller, and without much increasing the price he gained 200 per cent. Which when Dionysius heard, he told him that he might take away his money, but that he must not remain at Syracuse, for he thought that the man had discovered a way of making money which was injurious to his own interests. He made the same discovery as Thales; they both contrived to create a monopoly for themselves. And statesmen as well ought to know these things; for a state is often as much in want of money and of such devices for obtaining it as a household, or even more so; hence some public men devote themselves entirely to finance.

Part XII

Of household management we have seen that there are three parts- one is the rule of a master over slaves, which has been discussed already, another of a father, and the third of a husband. A husband and father, we saw, rules over wife and children, both free, but the rule differs, the rule over his children being a royal, over his wife a constitutional rule. For although there may be exceptions to the order of nature, the male is by nature fitter for command than the female, just as the elder and full-grown is superior to the younger and more immature. But in most constitutional states the citizens rule and are ruled by turns, for the idea of a constitutional state implies that the natures of the citizens are equal, and do not differ at all. Nevertheless, when one rules and the other is ruled we endeavor to create a difference of outward forms and names and titles of respect, which may be illustrated by the saying of Amasis about his foot-pan. The relation of the male to the female is of this kind, but there the inequality is permanent. The rule of a father over his children is royal, for he rules by virtue both of love and of the respect due to

age, exercising a kind of royal power. And thereforeHomer has appropriately called Zeus ‘father of Gods and men,’ because he is the king of them all. For a king is the natural superior of his subjects, but he should be of the same kin or kind with them, and such is the relation of elder and younger, of father and son.

Part XIII

Thus it is clear that household management attends more to men than to the acquisition of inanimate things, and to human excellence more than to the excellence of property which we call wealth, and to the virtue of freemen more than to the virtue of slaves. A question may indeed be raised, whether there is any excellence at all in a slave beyond and higher than merely instrumental and ministerial qualities- whether he can have the virtues of temperance, courage, justice, and the like; or whether slaves possess only bodily and ministerial qualities. And, whichever way we answer the question, a difficulty arises; for, if they have virtue, in what will they differ from freemen? On the other hand, since they are men and share in rational principle, it seems absurd to say that they have no virtue. A similar question may be raised about women and children, whether they too have virtues: ought a woman to be temperate and brave and just, and is a child to be called temperate, and intemperate, or note So in general we may ask about the natural ruler, and the natural subject, whether they have the same or different virtues. For if a noble nature is equally required in both, why should one of them always rule, and the other always be ruled? Nor can we say that this is a question of degree, for the difference between ruler and subject is a difference of kind, which the difference of more and less never is. Yet how strange is the supposition that the one ought, and that the other ought not, to have virtue! For if the ruler is intemperate and unjust, how can he rule well? If the subject, how can he obey well? If he be licentious and cowardly, he will certainly not do his duty. It is evident, therefore, that both of them must have a share of virtue, but varying as natural subjects also vary among themselves. Here the very constitution of the soul has shown us the way; in it one part naturally rules, and the other is subject, and the virtue of the ruler we in maintain to be different from that of the subject; the one being the virtue of the rational, and the other of the irrational part. Now, it is obvious that the same principle applies generally, and therefore almost all things rule and are ruled according to nature. But the kind of rule differs; the freeman rules over the slave after another manner from that in which the male rules over the female, or the man over the child; although the parts of the soul are present in an of them, they are present in different degrees. For the slave has no deliberative faculty at all; the woman has, but it is without authority, and the child has, but it is immature. So it must necessarily be supposed to be with the moral virtues also; all should partake of them, but only in such manner and degree as is required by each for the fulfillment of his duty. Hence the ruler ought to have moral virtue in perfection, for his function, taken absolutely, demands a master artificer, and rational principle is such an artificer; the subjects, oil the other hand, require only that measure of virtue which is proper to each of them. Clearly, then, moral virtue belongs to all of them; but the temperance of a man and of a woman, or the courage and justice of a man and of a woman, are not, as Socrates maintained, the same; the courage of a man is shown in commanding,of a woman in obeying. And this holds of all other virtues, as will be more clearly seen if we look at them in detail, for those who say generally that virtue consists in a good disposition of the soul, or in doing rightly, or the like, only deceive themselves. Far better than such definitions is their mode of speaking, who, like Gorgias, enumerate the virtues. All classes must be deemed to have their special attributes; as the poet says of women, “Silence is a woman’s glory, ” but this is not equally the glory of man. The child is imperfect, and therefore obviously his virtue is not relative to himself alone, but to the perfect man and to his teacher, and in like manner the virtue of the slave is relative to a master. Now we determined that a slave is useful for the wants of life, and therefore he will obviously require only so much virtue as will prevent him from failing in his duty through cowardice or lack of self-control. Some one will ask whether, if what we are saying is true, virtue will not be required also in the artisans, for they often fail in their work through the lack of self control? But is there not a great difference in the two cases? For the slave shares in his master’s life; the artisan is less closely connected with him, and only attains

excellence in proportion as he becomes a slave. The meaner sort of mechanic has a special and separate slavery; and whereas the slave exists by nature, not so the shoemaker or other artisan. It is manifest, then, that the master ought to be the source of such excellence in the slave, and not a mere possessor of the art of mastership which trains the slave in his duties. Wherefore they are mistaken who forbid us to converse with slaves and say that we should employ command only, for slaves stand even more in need of admonition than children.

So much for this subject; the relations of husband and wife, parent and child, their several virtues, what in their intercourse with one another is good, and what is evil, and how we may pursue the good and good and escape the evil, will have to be discussed when we speak of the different forms of government. For, inasmuch as every family is a part of a state, and these relationships are the parts of a family, and the virtue of the part must have regard to the virtue of the whole, women and children must be trained by education with an eye to the constitution, if the virtues of either of them are supposed to make any difference in the virtues of the state. And they must make a difference: for the children grow up to be citizens, and half the free persons in a state are women.

Of these matters, enough has been said; of what remains, let us speak at another time. Regarding, then, our present inquiry as complete, we will make a new beginning. And, first, let us examine the various theories of a perfect state.

BOOK THREE

Part I

He who would inquire into the essence and attributes of various kinds of governments must first of all determine ‘What is a state?’ At present this is a disputed question. Some say that the state has done a certain act; others, no, not the state, but the oligarchy or the tyrant. And the legislator or statesman is concerned entirely with the state; a constitution or government being an arrangement of the inhabitants of a state. But a state is composite, like any other whole made up of many parts; these are the citizens, who compose it. It is evident, therefore, that we must begin by asking, Who is the citizen, and what is the meaning of the term? For here again there may be a difference of opinion. He who is a citizen in a democracy will often not be a citizen in an oligarchy.

Leaving out of consideration those who have been made citizens, or who have obtained the name of citizen anyother accidental manner, we may say, first, that a citizen is not a citizen because he lives in a certain place, for resident aliens and slaves share in the place; nor is he a citizen who has no legal right except that of suing and being sued; for this right may be enjoyed under the provisions of a treaty. Nay, resident aliens in many places do not possess even such rights completely, for they are obliged to have a patron, so that they do but imperfectly participate in citizenship, and we call them citizensonly in a qualified sense, as we might apply the term to children who are too young to be on the register, or to old men who have been relieved from state duties. Of these we do not say quite simply that they are citizens, but add in the one case that they are not of age, and in the other, that they are past the age, or something of that sort; the precise expression is immaterial, for our meaning is clear. Similar difficulties to those which I have mentioned may be raised and answered about deprived citizens and about exiles. But the citizen whom we are seeking to define is a citizen in the strictest sense, against whom no such exception can be taken, and his special characteristic is that he shares in the administration of justice, and in offices. Now of offices some are discontinuous, and the same persons are not allowed to hold them twice, or can only hold them after a fixed interval; others have no limit of time- for example, the office of a dicast or ecclesiast. It may, indeed, be argued that these are not magistrates at all, and that their functions give them no share in the government. But surely it is ridiculous to say that those who have the power do not govern. Let us not dwell further upon this, which is a purely verbal question; what we want is a common term including both dicast and ecclesiast. Let us, for the sake of distinction, call

it ‘indefinite office,’ and we will assume that those who share in such office are citizens. This is the most comprehensive definition of a citizen, and best suits all those who are generally so called.

But we must not forget that things of which the underlying principles differ in kind, one of them being first, another second, another third, have, when regarded in this relation, nothing, or hardly anything, worth mentioning in common. Now we see that governments differ in kind, and that some of them are prior and that others are posterior; those which are faulty or perverted are necessarily posterior to those which are perfect. (What we mean by perversion will be hereafter explained.) The citizen then of necessity differs under each form of government; and our definition is best adapted to the citizen of a democracy; but not necessarily to other states. For in some states the people are not acknowledged, nor have they any regular assembly, but only extraordinary ones; and suits are distributed by sections among the magistrates. At Lacedaemon, for instance, the Ephors determine suits about contracts, which they distribute among themselves, while the elders are judges of homicide, and other causes are decided by other magistrates. A similar principle prevails at Carthage; there certain magistrates decide all causes. We may, indeed, modify our definition of the citizen so as to include these states. In them it is the holder of a definite, not of an indefinite office, who legislates and judges, and to some or all such holders of definite offices is reserved the right ofdeliberating or judging about some things or about all things. The conception of the citizen now begins to clear up. He who has the power to take part in the deliberative or judicial administration of any state is said by us to be a citizens of that state; and, speaking generally, a state is a body of citizens sufficing for thepurposes of life.

Part II

But in practice a citizen is defined to be one of whom both the parents are citizens; others insist on going further back; say to two or three or more ancestors. This is a short and practical definition but there are some who raise the further question: How this third or fourth ancestor came to be a citizen? Gorgias of Leontini, partly because he was in a difficulty, partly in irony, said- ‘Mortars are what is made by the mortar-makers, and the citizens of Larissa are those who are made by the magistrates;for it is their trade to make Larissaeans.’ Yet the question is really simple, for, if according to the definition just given they shared in the government, they were citizens. This is a better definition than the other. For the words, ‘born of a father or mother who is a citizen,’ cannot possibly apply to the first inhabitants or founders of a state.

There is a greater difficulty in the case of those who have been made citizens after a revolution, as by Cleisthenes at Athens after the expulsion of the tyrants, for he enrolled in tribes many metics, both strangers and slaves. The doubt in these cases is, not who is, but whether he who is ought to be a citizen; and there will still be a furthering the state, whether a certain act is or is not an act of the state; for what ought not to be is what is false. Now, there are some who hold office, and yet ought not to hold office, whom we describe as ruling, but ruling unjustly. And the citizen was defined by the fact of his holding some kind of rule or office- he who holds a judicial or legislative office fulfills our definition of a citizen. It is evident, therefore, that the citizens about whom the doubt has arisen must be called citizens.

Part III

Whether they ought to be so or not is a question which is bound up with the previous inquiry. For a parallel question is raised respecting the state, whether a certain act is or is not an act of the state; for example, in the transition from an oligarchy or a tyranny to a democracy. In such cases persons refuse to fulfill their contracts or any other obligations, on the ground that the tyrant, and not the state, contracted them; they argue that some constitutions are established by force, and not for thesake of the common good. But this would apply equally to democracies, for they too may be founded on violence, and then the acts of the democracy will be neither more nor less acts of the

state in question than those of an oligarchy or of a tyranny. This question runs up into another: on what principle shall we ever say that the state is the same, or different? It would be a very superficial view which considered only the place and the inhabitants (for the soil and the population may be separated, and some of the inhabitants may live in one place and some in another). This, however, is not a very serious difficulty; we need only remark that the word ‘state’ is ambiguous.

It is further asked: When are men, living in the same place, to be regarded as a single city- what is the limit? Certainly not the wall of the city, for you might surround all Peloponnesus with a wall. Likethis, we may say, is Babylon, and every city that has the compass of a nation rather than a city; Babylon, they say, had been taken for three days before some part of the inhabitants became aware of the fact. This difficulty may, however, with advantage be deferred to another occasion; the statesman has to consider the size of the state, and whether it should consist of more than one nation or not.

Again, shall we say that while the race of inhabitants, as well as their place of abode, remain the same, the city is also the same, although the citizens are always dying and being born, as we call rivers and fountains the same, although the water is always flowing away and coming again Or shall we say that the generations of men, like the rivers, are the same, but that the state changes? For, since the state is a partnership, and is a partnership of citizens in a constitution, when the form of government changes, and becomes different, then it may be supposed that the state is no longer the same, just as a tragic differs from a comic chorus, although the members of both may be identical. And in this manner we speak of every union or composition of elements as different when the form of their composition alters; for example, a scale containing the same sounds is said to be different,accordingly as the Dorian or the Phrygian mode is employed. And if this is true it is evident that the sameness of the state consists chiefly in the sameness of the constitution, and it may be called or not called by the same name, whether the inhabitants are the same or entirely different. It is quite another question, whether a state ought or ought not to fulfill engagements when the form of government changes.

Part IV

There is a point nearly allied to the preceding: Whether the virtue of a good man and a good citizen is the same or not. But, before entering on this discussion, we must certainly first obtain some general notion of the virtue of the citizen. Like the sailor, the citizen is a member of a community. Now, sailors have different functions, for one of them is a rower, another a pilot, and a third a look-out man, a fourth is described by some similar term; and while the precise definition of each individual’s virtue applies exclusively to him, there is, at the same time, a common definition applicable to them all. For they have all of them a common object, which is safety in navigation. Similarly, one citizen differs from another, but the salvation of the community is the common business of them all. This community is the constitution; the virtue of the citizen must therefore be relative to the constitution of which he is a member. If, then, there are many forms of government, it is evident that there is not one single virtue of the good citizen which is perfect virtue. But we say that the good man is he who has one single virtue which is perfect virtue. Hence it is evident that the good citizen need not of necessity possess the virtue which makes a good man.

The same question may also be approached by another road, from a consideration of the best constitution. If the state cannot be entirely composed of good men, and yet each citizen is expected to do his own business well, and must therefore have virtue, still inasmuch as all the citizens cannot be alike, the virtue of the citizen and of the good man cannot coincide. All must have the virtue of the good citizen- thus, and thus only, can the state be perfect; but they will not have the virtue of a good man, unless we assume that in the good state all the citizens must be good.

Again, the state, as composed of unlikes, may be compared to the living being: as the first elements into which a living being is resolved are soul and body, as soul is made up of rational principle and appetite, the family of husband and wife, property of master and slave, so of all these, as well as other dissimilar elements, the state is composed; and, therefore, the virtue of all the citizens cannot possibly be the same, any more than the excellence of the leader of a chorus is the same as that of the performer who stands by his side. I have said enough to show why the two kinds of virtue cannot be absolutely and always the same.

But will there then be no case in which the virtue of the good citizen and the virtue of the good man coincide? To this we answer that the good ruler is a good and wise man, and that he who would be a statesman must be a wise man. And some persons say that even the education of the ruler should be of a special kind; for are not the children of kings instructed in riding and military exercises? As Euripides says: "No subtle arts for me, but what the state requires. "

As though there were a special education needed by a ruler. If then the virtue of a good ruler is the same as that of a good man, and we assume further that the subject is a citizen as well as the ruler, the virtue of the good citizen and the virtue of the good man cannot be absolutely the same, although in some cases they may; for the virtue of a ruler differs from that of a citizen. It was the sense of this difference which made Jason say that 'he felt hungry when he was not a tyrant,' meaning that he could not endure to live in a private station. But, on the other hand, it may be argued that men are praised for knowing both how to rule and how to obey, and he is said to be a citizen of approved virtue who is able to do both. Now if we suppose the virtue of a good man to be that which rules, and the virtue of the citizen to include ruling and obeying, it cannot be said that they are equally worthy of praise. Since, then, it is sometimes thought that the ruler and the ruled must learn different things and not the same, but that the citizen must know and share in them both, the inference is obvious. There is, indeed, the rule of a master, which is concerned with menial offices- the master need not know how to perform these, but may employ others in the execution of them: the other would be degrading; and by the other I mean the power actually to do menial duties, which vary much in character and are executed by various classes of slaves, such, for example, as handicraftsmen, who, as their name signifies, live by the labor of their hands: under these the mechanic is included. Hence in ancient times, and among some nations, the working classes had no share in the government- a privilege which they only acquired under the extreme democracy. Certainly the good man and the statesman and the good citizen ought not to learn the crafts of inferiors except for their own occasional use; if they habitually practice them, there will cease to be a distinction between master and slave.

This is not the rule of which we are speaking; but there is a rule of another kind, which is exercised over freemen and equals by birth -a constitutional rule, which the ruler must learn by obeying, as he would learn the duties of a general of cavalry by being under the orders of a general of cavalry, or the duties of a general of infantry by being under the orders of a general of infantry, and by having had the command of a regiment and of a company. It has been well said that 'he who has neverlearned to obey cannot be a good commander.' The two are not the same, but the good citizen ought to be capable of both; he should know how to govern like a freeman, and how to obey like a freeman- these are the virtues of a citizen. And, although the temperance and justice of a ruler are distinct from those of a subject, the virtue of a good man will include both; for the virtue of the good man who is free and also a subject, e.g., his justice, will not be one but will comprise distinct kinds, the one qualifying him to rule, the other to obey, and differing as the temperance and courage of men and women differ. For a man would be thought a coward if he had no more courage than a courageous woman, and a woman would be thought loquacious if she imposed no more restraint on her conversation than the good man; and indeed their part in the management of the household is

different, for the duty of the one is to acquire, and of the other to preserve. Practical wisdom only is characteristic of the ruler: it would seem that all other virtues must equally belong to ruler and subject. The virtue of the subject is certainly not wisdom, but only true opinion; he may be compared to the maker of the flute, while his master is like the flute-player or user of the flute.

From these considerations may be gathered the answer to the question, whether the virtue of the good man is the same as that of the good citizen, or different, and how far the same, and how far different.

Part V

There still remains one more question about the citizen: Is he only a true citizen who has a share of office, or is the mechanic to be included? If they who hold no office are to be deemed citizens, not every citizen can have this virtue of ruling and obeying; for this man is a citizen And if none of the lower class are citizens, in which part of the state are they to be placed? For they are not resident aliens, and they are not foreigners. May we not reply, that as far as this objection goes there is no more absurdity in excluding them than in excluding slaves and freedmen from any of the above-mentioned classes? It must be admitted that we cannot consider all those to be citizens who are necessary to the existence of the state; for example, children are not citizen equally with grown-upmen, who are citizens absolutely, but children, not being grown up, are only citizens on a certain assumption. Nay, in ancient times, and among some nations the artisan class were slaves or foreigners, and therefore the majority of them are so now. The best form of state will not admit them to citizenship; but if they are admitted, then our definition of the virtue of a citizen will not apply to every citizen nor to every free man as such, but only to those who are freed from necessary services. The necessary people are either slaves who minister to the wants of individuals, or mechanics and laborers who are the servants of the community. These reflections carried a little further will explain their position; and indeed what has been said already is of itself, when understood, explanationenough.

Since there are many forms of government there must be many varieties of citizen and especially of citizens who are subjects; so that under some governments the mechanic and the laborer will be citizens, but not in others, as, for example, in aristocracy or the so-called government of the best (if there be such an one), in which honors are given according to virtue and merit; for no man can practice virtue who is living the life of a mechanic or laborer. In oligarchies the qualification for office is high, and therefore no laborer can ever be a citizen; but a mechanic may, for an actual majority of them are rich. At Thebes there was a law that no man could hold office who had not retired from business for ten years. But in many states the law goes to the length of admitting aliens; for in some democracies a man is a citizen though his mother only be a citizen; and a similar principle is applied to illegitimate children; the law is relaxed when there is a dearth of population. But when the number of citizens increases, first the children of a male or a female slave are excluded; then those whosemothers only are citizens; and at last the right of citizenship is confined to those whose fathers and mothers are both citizens.

Hence, as is evident, there are different kinds of citizens; and he is a citizen in the highest sense who shares in the honors of the state. Compare Homer's words, 'like some dishonored stranger'; he who is excluded from the honors of the state is no better than an alien. But when his exclusion is concealed, then the object is that the privileged class may deceive their fellow inhabitants.

As to the question whether the virtue of the good man is the same as that of the good citizen, the considerations already adduced prove that in some states the good man and the good citizen are the same, and in

others different. When they are the same it is not every citizen who is a good man, but only the statesman and those who have or may have, alone or in conjunction with others, the conduct of public affairs.

Part VI

Having determined these questions, we have next to consider whether there is only one form of government or many, and if many, what they are, and how many, and what are the differences between them.

A constitution is the arrangement of magistracies in a state, especially of the highest of all. The government is everywhere sovereign in the state, and the constitution is in fact the government. For example, in democracies the people are supreme, but in oligarchies, the few; and, therefore, we say that these two forms of government also are different: and so in other cases.

First, let us consider what is the purpose of a state, and how many forms of government there are by which human society is regulated. We have already said, in the first part of this treatise, when discussing household management and the rule of a master, that man is by nature a political animal. And therefore, men, even when they do not require one another's help, desire to live together; not but that they are also brought together by their common interests in proportion as they severally attain to any measure of well-being. This is certainly the chief end, both of individuals and of states. And also for the sake of mere life (in which there is possibly some noble element so long as the evils of existence do not greatly overbalance the good) mankind meet together and maintain the political community. And we all see that men cling to life even at the cost of enduring great misfortune, seeming to find in life a natural sweetness and happiness.

There is no difficulty in distinguishing the various kinds of authority; they have been often defined already in discussions outside the school. The rule of a master, although the slave by nature and the master by nature have in reality the same interests, is nevertheless exercised primarily with a view to the interest of the master, but accidentally considers the slave, since, if the slave perish, the rule of the master perishes with him. On the other hand, the government of a wife and children and of ahousehold, which we have called household management, is exercised in the first instance for the good of the governed or for the common good of both parties, but essentially for the good of the governed, as we see to be the case in medicine, gymnastic, and the arts in general, which are onlyaccidentally concerned with the good of the artists themselves. For there is no reason why the trainer may not sometimes practice gymnastics, and the helmsman is always one of the crew. The trainer or the helmsman considers the good of those committed to his care. But, when he is one of the personstaken care of, he accidentally participates in the advantage, for the helmsman is also a sailor, and the trainer becomes one of those in training. And so in politics: when the state is framed upon the principle of equality and likeness, the citizens think that they ought to hold office by turns. Formerly, as is natural, every one would take his turn of service; and then again, somebody else would look after his interest, just as he, while in office, had looked after theirs. But nowadays, for the sake of the advantage which is to be gained from the public revenues and from office, men want to be always in office. One might imagine that the rulers, being sickly, were only kept in health while they continued in office; in that case we may be sure that they would be hunting after places. The conclusion isevident: that governments which have a regard to the common interest are constituted in accordance with strict principles of justice, and are therefore true forms; but those which regard only the interest of the rulers are all defective and perverted forms, for they are despotic, whereas a state is a community of freemen.

Part VII

Having determined these points, we have next to consider how many forms of government there are, and what they are; and in the first place what are the true forms, for when they are determined the perversions of them will

at once be apparent. The words constitution and government have the same meaning, and the government, which is the supreme authority in states, must be in the hands of one, or of a few, or of the many. The true forms of government, therefore, are those in which the one, or the few, or the many, govern with a view to the common interest; but governments which rule with a view to the private interest, whether of the one or of the few, or of the many, are perversions. For the members of a state, if they are truly citizens, ought to participate in its advantages. Of forms of government in which one rules, we call that which regards the common interests, kingship or royalty; that in which more than one, but not many, rule, aristocracy; and it is so called, either because the rulers are the best men, or because they have at heart the best interests of the state and of the citizens. But when the citizens at large administer the state for the common interest, the government is called by the generic name- a constitution. And there is a reason for this use of language. One man or a few may excel in virtue; but as the number increases it becomes more difficult for them to attain perfection in every kind of virtue, though they may in military virtue, for this is found in the masses. Hence in a constitutional government the fighting-men have the supreme power, and those who possess arms are the citizens.

Of the above-mentioned forms, the perversions are as follows: of royalty, tyranny; of aristocracy, oligarchy; of constitutional government, democracy. For tyranny is a kind of monarchy which has in view the interest of the monarch only; oligarchy has in view the interest of the wealthy; democracy, of the needy: none of them the common good of all.

Part VIII

But there are difficulties about these forms of government, and it will therefore be necessary to state a little more at length the nature of each of them. For he who would make a philosophical study of the various sciences, and does not regard practice only, ought not to overlook or omit anything, but to set forth the truth in every particular. Tyranny, as I was saying, is monarchy exercising the rule of a master over the political society; oligarchy is when men of property have the government in theirhands; democracy, the opposite, when the indigent, and not the men of property, are the rulers. And here arises the first of our difficulties, and it relates to the distinction drawn. For democracy is said to be the government of the many. But what if the many are men of property and have the power intheir hands? In like manner oligarchy is said to be the government of the few; but what if the poor are fewer than the rich, and have the power in their hands because they are stronger? In these cases the distinction which we have drawn between these different forms of government would no longerhold good.

Suppose, once more, that we add wealth to the few and poverty to the many, and name the governments accordingly- an oligarchy is said to be that in which the few and the wealthy, and a democracy that in which the many and the poor are the rulers- there will still be a difficulty. For, if the only forms of government are the ones already mentioned, how shall we describe those other governments also just mentioned by us, in which the rich are the more numerous and the poor are the fewer, and both govern in their respective states?

The argument seems to show that, whether in oligarchies or in democracies, the number of the governing body, whether the greater number, as in a democracy, or the smaller number, as in an oligarchy, is an accident due to the fact that the rich everywhere are few, and the poor numerous. But if so, there is a misapprehension of the causes of the difference between them. For the real difference between democracy and oligarchy is poverty and wealth. Wherever men rule by reason of their wealth, whether they be few or many, that is an oligarchy, and where the poor rule, that is a democracy. But as a fact the rich are few and the poor many; for few are well-to-do, whereasfreedom is enjoyed by an, and wealth and freedom are the grounds on which the oligarchical and democratical parties respectively claim power in the state.

Part IX

Let us begin by considering the common definitions of oligarchy and democracy, and what is justice oligarchical and democratical. For all men cling to justice of some kind, but their conceptions are imperfect and they do not express the whole idea. For example, justice is thought by them to be, and is, equality, not. however, for however, for but only for equals. And inequality is thought to be, and is, justice; neither is this for all, but only for unequals. When the persons are omitted, then men judge erroneously. The reason is that they are passing judgment on themselves, and most people are bad judges in their own case. And whereas justice implies a relation to persons as well as to things, and a just distribution, as I have already said in the Ethics, implies the same ratio between the persons and between the things, they agree about the equality of the things, but dispute about the equality of the persons, chiefly for the reason which I have just given- because they are bad judges in their own affairs; and secondly, because both the parties to the argument are speaking of a limited and partial justice, but imagine themselves to be speaking of absolute justice. For the one party, if they are unequal in one respect, for example wealth, consider themselves to be unequal in all; and the other party, if they are equal in one respect, for example free birth, consider themselves to be equal in all. But they leave out the capital point. For if men met and associated out of regard to wealth only, theirshare in the state would be proportioned to their property, and the oligarchical doctrine would then seem to carry the day. It would not be just that he who paid one mina should have the same share of a hundred minae, whether of the principal or of the profits, as he who paid the remaining ninety-nine.But a state exists for the sake of a good life, and not for the sake of life only: if life only were the object, slaves and brute animals might form a state, but they cannot, for they have no share in happiness or in a life of free choice.

Nor does a state exist for the sake of alliance and security from injustice, nor yet for the sake of exchange and mutual intercourse; for then the Tyrrhenians and the Carthaginians, and all who have commercial treaties with one another, would be the citizens of onestate. True, they have agreements about imports, and engagements that they will do no wrong to one another, and written articles of alliance. But there are no magistrates common to the contracting parties who will enforce their engagements; different states have each their own magistracies. Nordoes one state take care that the citizens of the other are such as they ought to be, nor see that those who come under the terms of the treaty do no wrong or wickedness at an, but only that they do no injustice to one another. Whereas, those who care for good government take into considerationvirtue and vice in states. Whence it may be further inferred that virtue must be the care of a state which is truly so called, and not merely enjoys the name: for without this end the community becomes a mere alliance which differs only in place from alliances of which the members live apart; and law is only a convention, ‘a surety to one another of justice,’ as the sophist Lycophron says, and has no real power to make the citizens

This is obvious; for suppose distinct places, such as Corinth and Megara, to be brought together so that their walls touched, still they would not be one city, not even if the citizens had the right to intermarry, which is one of the rights peculiarly characteristic of states. Again, if men dwelt at a distance from one another, but not so far off as to have no intercourse, and there were laws among them that they should not wrong each other in their exchanges, neither would this be a state. Let us suppose that one man is a carpenter, another a husbandman, another a shoemaker, and so on, and that their number is ten thousand: nevertheless, if they have nothing in common but exchange, alliance, and the like, that would not constitute a state. Why is this? Surely not because they are at a distance from one another: for even supposing that such a community were to meet in one place, but that each man had a house of his own, which was in a manner his state, and that they made alliance with one another, but only against evil-doers; still an accurate thinker would not deem this to be a state, if their intercourse with one another

was of the same character after as before their union. It is clear then that a state is not a mere society, having a common place, established for the prevention of mutual crime and for the sake of exchange. These are conditions without which a state cannot exist; but all of them together do not constitute a state, which is a community of families and aggregations of families in well-being, for the sake of a perfect and self-sufficing life. Such a community can only be established among those who live in the same place and intermarry. Hence arise in cities family connections, brotherhoods, common sacrifices, amusements which draw men together. But these are created by friendship, for the will to live together is friendship. The end of the state is the good life, and these are the means towards it. And the state is the union of families and villages in a perfect and self-sufficing life, by which we mean a happy and honorable life.

Our conclusion, then, is that political society exists for the sake of noble actions, and not of mere companionship. Hence they who contribute most to such a society have a greater share in it than those who have the same or a greater freedom or nobility of birth but are inferior to them in political virtue; or than those who exceed them in wealth but are surpassed by them in virtue.

From what has been said it will be clearly seen that all the partisans of different forms of government speak of a part of justice only.

Part X

There is also a doubt as to what is to be the supreme power in the state: Is it the multitude? Or the wealthy? Or the good? Or the one best man? Or a tyrant? Any of these alternatives seems to involve disagreeable consequences. If the poor, for example, because they are more in number, divide among themselves the property of the rich- is not this unjust? No, by heaven (will be the reply), for the supreme authority justly willed it. But if this is not injustice, pray what is? Again, when in the firstdivision all has been taken, and the majority divide anew the property of the minority, is it not evident, if this goes on, that they will ruin the state? Yet surely, virtue is not the ruin of those who possess her,nor is justice destructive of a state; and therefore this law of confiscation clearly cannot be just. If it were, all the acts of a tyrant must of necessity be just; for he only coerces other men by superior power, just as the multitude coerce the rich. But is it just then that the few and the wealthy should be the rulers? And what if they, in like manner, rob and plunder the people- is this just? if so, the other case will likewise be just. But there can be no doubt that all these things are wrong and unjust.

Then ought the good to rule and have supreme power? But in that case everybody else, being excluded from power, will be dishonored. For the offices of a state are posts of honor; and if one set of men always holds them, the rest must be deprived of them. Then will it be well that the one best man should rule? Nay, that is still more oligarchical, for the number of those who are dishonored is thereby increased. Some one may say that it is bad in any case for a man, subject as he is to all the accidents of human passion, to have the supreme power, rather than the law. But what if the law itself be democratical or oligarchical, how will that help us out of our difficulties? Not at all; the same consequences will follow.

Part XI

Most of these questions may be reserved for another occasion. The principle that the multitude ought to be supreme rather than the few best is one that is maintained, and, though not free from difficulty, yet seems to contain an element of truth. For the many, of whom each individual is but an ordinary person, when they meet together may very likely be better than the few good, if regarded not individually but collectively, just as a feast to which many

contribute is better than a dinner provided out of a single purse. For each individual among the many has a share of virtue and prudence, and when they meet together, they become in a manner one man, who has many feet, and hands, and senses; that is a figure of their mind and disposition. Hence the many are better judges than a single man of music and poetry; for some understand one part, and some another, and among them they understand the whole. There is a similar combination of qualities in good men, who differ from any individual of the many, as the beautiful are said to differ from those who are not beautiful, and worksof art from realities, because in them the scattered elements are combined, although, if taken separately, the eye of one person or some other feature in another person would be fairer than in the picture. Whether this principle can apply to every democracy, and to all bodies of men, is not clear. Or rather, by heaven, in some cases it is impossible of application; for the argument would equally hold about brutes; and wherein, it will be asked, do some men differ from brutes? But there may be bodies of men about whom our statement is nevertheless true. And if so, the difficulty which hasbeen already raised, and also another which is akin to it -viz., what power should be assigned to the mass of freemen and citizens, who are not rich and have no personal merit- are both solved. There is still a danger in aflowing them to share the great offices of state, for their folly will lead them into error, and their dishonesty into crime. But there is a danger also in not letting them share, for a state in which many poor men are excluded from office will necessarily be full of enemies. The only way of escape is to assign to them some deliberative and judicial functions. For this reason Solon and certain other legislators give them the power of electing to offices, and of calling the magistrates to account, but they do not allow them to hold office singly. When they meet together their perceptions are quite good enough, and combined with the better class they are useful to the state (just as impure food when mixed with what is pure sometimes makes the entire mass more wholesome than a small quantity of the pure would be), but each individual, left to himself, forms an imperfectjudgment. On the other hand, the popular form of government involves certain difficulties. In the first place, it might be objected that he who can judge of the healing of a sick man would be one who could himself heal his disease, and make him whole- that is, in other words, the physician; and so in all professions and arts. As, then, the physician ought to be called to account by physicians, so ought men in general to be called to account by their peers. But physicians are of three kinds: there is theordinary practitioner, and there is the physician of the higher class, and thirdly the intelligent man who has studied the art: in all arts there is such a class; and we attribute the power of judging to them quite as much as to professors of the art. Secondly, does not the same principle apply to elections? For a right election can only be made by those who have knowledge; those who know geometry, for example, will choose a geometrician rightly, and those who know how to steer, a pilot; and, even if there be some occupations and arts in which private persons share in the ability to choose, they certainly cannot choose better than those who know. So that, according to this argument, neither the election of magistrates, nor the calling of them to account, should be entrusted to the many. Yet possibly these objections are to a great extent met by our old answer, that if the people are not utterly degraded, although individually they may be worse judges than those who have special knowledge- as a body they are as good or better. Moreover, there are some arts whose products are not judged of solely, or best, by the artists themselves, namely those arts whose products are recognized even by those who do not possess the art; for example, the knowledge of the house is not limited to the builder only; the user, or, in other words, the master, of the house will be even a better judge than the builder, just as the pilot will judge better of a rudder than the carpenter, and the guest will judge better of a feast than the cook.

This difficulty seems now to be sufficiently answered, but there is another akin to it. That inferior persons should have authority in greater matters than the good would appear to be a strange thing, yet the election and calling to account of the magistrates is the greatest of all. And these, as I was saying, are functions which in some states are assigned to the people, for the assembly is supreme in all such matters. Yet persons of any age, and having but a small property qualification, sit in the assembly and deliberate and judge, although for the great officers of state,

such as treasurers and generals, a high qualification is required. This difficulty may be solved in the same manner as the preceding, and the present practice of democracies may be really defensible. For the power does not reside in the dicast, or senator, or ecclesiast, but in the court, and the senate, and the assembly, of which individual senators, or ecclesiasts, or dicasts, are only parts or members. And for this reason the many may claim to have a higher authority than the few; for the people, and the senate, and thecourts consist of many persons, and their property collectively is greater than the property of one or of a few individuals holding great offices. But enough of this.

The discussion of the first question shows nothing so clearly as that laws, when good, should be supreme; and that the magistrate or magistrates should regulate those matters only on which the laws are unable to speak with precision owing to the difficulty of any general principle embracing all particulars. But what are good laws has not yet been clearly explained; the old difficulty remains. The goodness or badness, justice or injustice, of laws varies of necessity with the constitutions of states. This, however, is clear, that the laws must be adapted to the constitutions. But if so, true forms of government will of necessity have just laws, and perverted forms of government will have unjust laws.

Part XII

In all sciences and arts the end is a good, and the greatest good and in the highest degree a good in the most authoritative of all- this is the political science of which the good is justice, in other words,the common interest. All men think justice to be a sort of equality; and to a certain extent they agree in the philosophical distinctions which have been laid down by us about Ethics. For they admit that justice is a thing and has a relation to persons, and that equals ought to have equality. But there still remains a question: equality or inequality of what? Here is a difficulty which calls for political speculation. For very likely some persons will say that offices of state ought to be unequally distributed according to superior excellence, in whatever respect, of the citizen, although there is no other difference between him and the rest of the community; for that those who differ in any one respect have different rights and claims. But, surely, if this is true, the complexion or height of a man,or any other advantage, will be a reason for his obtaining a greater share of political rights. The error here lies upon the surface, and may be illustrated from the other arts and sciences. When a number of flute players are equal in their art, there is no reason why those of them who are better bornshould have better flutes given to them; for they will not play any better on the flute, and the superior instrument should be reserved for him who is the superior artist. If what I am saying is still obscure, it will be made clearer as we proceed. For if there were a superior flute-player who was far inferior in birth and beauty, although either of these may be a greater good than the art of flute-playing, and may excel flute-playing in a greater ratio than he excels the others in his art, still he ought to have the best flutes given to him, unless the advantages of wealth and birth contribute to excellence in flute-playing, which they do not. Moreover, upon this principle any good may be compared with any other. For if a given height may be measured wealth and against freedom, height in general may be so measured. Thus if A excels in height more than B in virtue, even if virtue in general excels height still more, all goods will be commensurable; for if a certain amount is better than some other, it is clear that some other will be equal. But since no such comparison can be made, it is evident that there is good reason why in politics men do not ground their claim to office on every sort of inequality any more than in the arts. For if some be slow, and others swift, that is no reason why the one should have little and the others much; it is in gymnastics contests that such excellence is rewarded. Whereas the rival claims of candidates for office can only be based on the possession of elements which enter into the composition of a state. And therefore the noble, or free-born, or rich, may with good reason claim office; for holders of offices must be freemen and taxpayers: a state can be no more composed entirely of poor men than entirely of slaves. But if wealth and freedom are necessary elements, justice and valor are equally so; for without the former qualities a state cannot exist at all,without the latter not well.

Part XIII

If the existence of the state is alone to be considered, then it would seem that all, or some at least, of these claims are just; but, if we take into account a good life, then, as I have already said, educationand virtue have superior claims. As, however, those who are equal in one thing ought not to have an equal share in all, nor those who are unequal in one thing to have an unequal share in all, it is certain that all forms of government which rest on either of these principles are perversions. All men have a claim in a certain sense, as I have already admitted, but all have not an absolute claim. The rich claim because they have a greater share in the land, and land is the common element of the state; also they are generally more trustworthy in contracts. The free claim under the same tide as the noble; for they are nearly akin. For the noble are citizens in a truer sense than the ignoble, and good birth is always valued in a man's own home and country. Another reason is, that those who are sprung from better ancestors are likely to be better men, for nobility is excellence of race. Virtue, too, may be truly said to have a claim, for justice has been acknowledged by us to be a social virtue, and it implies all others. Again, the many may urge their claim against the few; for, when taken collectively, and compared with the few, they are stronger and richer and better. But, what if the good, the rich, the noble, and the other classes who make up a state, are all living together in the same city, Will there, or will there not, be any doubt who shall rule? No doubt at all in determiningwho ought to rule in each of the above-mentioned forms of government. For states are characterized by differences in their governing bodies-one of them has a government of the rich, another of the virtuous, and so on. But a difficulty arises when all these elements co-exist. How are we to decide? Suppose the virtuous to be very few in number: may we consider their numbers in relation to their duties, and ask whether they are enough to administer the state, or so many as will make up a state? Objections may be urged against all the aspirants to political power. For those who found their claims on wealth or family might be thought to have no basis of justice; on this principle, if any one person were richer than all the rest, it is clear that he ought to be ruler of them. In like manner he who is very distinguished by his birth ought to have the superiority over all those who claim on the ground that they are freeborn. In an aristocracy, or government of the best, a like difficulty occurs about virtue; for if one citizen be better than the other members of the government, however good they may be, he too, upon the same principle of justice, should rule over them. And if the people are to be supreme because they are stronger than the few, then if one man, or more than one, but not a majority, is stronger than the many, they ought to rule, and not the many.

All these considerations appear to show that none of the principles on which men claim to rule and to hold all other men in subjection to them are strictly right. To those who claim to be masters of the government on the ground of their virtue or their wealth, the many might fairly answer that they themselves are often better and richer than the few- I do not say individually, but collectively. And another ingenious objection which is sometimes put forward may be met in a similar manner. Some persons doubt whether the legislator who desires to make the justest laws ought to legislate with a view to the good of the higher classes or of the many, when the case which we have mentioned occurs. Now what is just or right is to be interpreted in the sense of 'what is equal'; and that which is right in the sense of being equal is to be considered with reference to the advantage of the state, and the common good of the citizens. And a citizen is one who shares in governing and being governed. He differs under different forms of government, but in the best state he is one who is able and willingto be governed and to govern with a view to the life of virtue.

If, however, there be some one person, or more than one, although not enough to make up the full complement of a state, whose virtue is so pre-eminent that the virtues or the political capacity of all the rest admit of no comparison with his or theirs, he or they can be no longer regarded as part of a state; for justice will not be done to the superior, if he is reckoned only as the equal of those who are so far inferior to him in virtue and in political

capacity. Such an one may truly be deemed a God among men. Hence we see that legislation is necessarily concerned only with those who are equal in birth and in capacity; and that for men of pre-eminent virtue there is no law- they are themselves a law. Any would be ridiculous who attempted to make laws for them: they would probably retort what, in the fable of Antisthenes, the lions said to the hares, when in the council of the beasts the latter began haranguing and claiming equality for all. And for this reason democratic states have institutedostracism; equality is above all things their aim, and therefore they ostracized and banished from the city for a time those who seemed to predominate too much through their wealth, or the number of their friends, or through any other political influence. Mythology tells us that the Argonauts left Heracles behind for a similar reason; the ship Argo would not take him because she feared that he would have been too much for the rest of the crew. Wherefore those who denounce tyranny and blame the counsel which Periander gave to Thrasybulus cannot be held altogether just in their censure. The story is that Periander, when the herald was sent to ask counsel of him, said nothing, but only cut off the tallest ears of corn till he had brought the field to a level. The herald did not know the meaning of the action, but came and reported what he had seen to Thrasybulus, who understood that he was to cut off the principal men in the state; and this is a policy not only expedient for tyrants or in practice confined to them, but equally necessary in oligarchies and democracies. Ostracism is a measure of the same kind, which acts by disabling and banishing the most prominent citizens. Great powers do the same to whole cities and nations, as the Athenians did to the Samians, Chians, and Lesbians; no sooner had they obtained a firm grasp of the empire, than they humbled their allies contrary to treaty; and the Persian king has repeatedly crushed the Medes, Babylonians, and other nations, when their spirit has been stirred by the recollection of their former greatness.

The problem is a universal one, and equally concerns all forms of government, true as well as false; for, although perverted forms with a view to their own interests may adopt this policy, those which seek the common interest do so likewise. The same thing may be observed in the arts and sciences; for the painter will not allow the figure to have a foot which, however beautiful, is not in proportion, nor will the shipbuilder allow the stem or any other part of the vessel to be unduly large, any more than the chorus-master will allow any one who sings louder or better than all the rest to sing in the choir. Monarchs, too, may practice compulsion and still live in harmony with their cities, if their own government is for the interest of the state. Hence where there is an acknowledged superiority the argument in favor of ostracism is based upon a kind of political justice. It would certainly be better that the legislator should from the first so order his state as to have no need of such a remedy. But if the need arises, the next best thing is that he should endeavor to correct the evil by this or some similar measure. The principle, however, has not been fairly applied in states; for, instead of looking to the good of their own constitution, they have used ostracism for factious purposes. It is true that under perverted forms of government, and from their special point of view, such a measure is just and expedient, but it is also clear that it is not absolutely just. In the perfect state there would be great doubts about the use of it, not when applied to excess in strength, wealth, popularity, or the like, but when used against some one who is pre-eminent in virtue- what is to be done with him? Mankind will not say that such an one is to be expelled and exiled; on the other hand, he ought not to be a subject- that would be as if mankind should claim to rule over Zeus, dividing his offices amongthem. The only alternative is that all should joyfully obey such a ruler, according to what seems to be the order of nature, and that men like him should be kings in their state for life.

Hopwood v. State (1996)

A brief overview of the case: *Is it unjust to consider race as a factor in college and university admissions? That is what Cheryl Hopwood argued when she was denied admission to the University of Texas Law School even though her test scores and grades were higher than some of the minority candidates who were admitted. Hopwood, together with a number of other white candidates, sued the University of Texas Law School in the case of Hopwood v. State of Texas (1996).*

Cheryl J. Hopwood v. State of Texas
United States Court of Appeals for the Fifth Circuit
March 18, 1996
JERRY E. SMITH, Circuit Judge:

With the best of intentions, in order to increase the enrollment of certain favored classes of minority students, the University of Texas School of Law ("the law school") discriminates in favor of those applicants by giving substantial racial preferences in its admissions program. The beneficiaries of this system are blacks and Mexican Americans, to the detriment of whites and non-preferred minorities. The question we decide today in No. 94-50664 is whether the Fourteenth Amendment permits the school to discriminate in this way.

We hold that it does not. The law school has presented no compelling justification, under the Fourteenth Amendment or Supreme Court precedent, that allows it to continue to elevate some races over others, even for the wholesome purpose of correcting perceived racial imbalance in the student body. "Racial preferences appear to 'even the score' … only if one embraces the proposition that our society is appropriately viewed as divided into races, making it right that an injustice rendered in the past to a black man should be compensated for by discriminating against a white." City of Richmond v. J.A. Croson Co., 488 U.S. 469, 528, 109 S.Ct. 706, 740, 102 L.Ed.2d 854 (1989) (Scalia, J., concurring in the judgment).

As a result of its diligent efforts in this case, the district court concluded that the law school may continue to impose racial preferences. See Hopwood v. Texas, 861 F.Supp. 551 (W.D.Tex.1994). In No. 94-50664, we reverse and remand, concluding that the law school may not use race as a factor in law school admissions.

The University of Texas School of Law is one of the nation's leading law schools, consistently ranking in the top twenty. See, e.g., America's Best Graduate Schools, U.S. NEWS & WORLD REPORT Mar. 20, 1995, at 84 (national survey ranking of seventeenth). Accordingly, admission to the law school is fiercely competitive, with over 4,000 applicants a year competing to be among the approximately 900 offered admission to achieve an entering class of about 500 students. Many of these applicants have some of the highest grades and test scores in the country.

Numbers are therefore paramount for admission. In the early 1990′s, the law school largely based its initial admissions decisions upon an applicant's so-called Texas Index ("TI") number, a composite of undergraduate grade point average ("GPA") and Law School Aptitude Test ("LSAT") score.1 The law school used this number as a matter of administrative convenience in order to rank candidates and to predict, roughly, one's probability of success in law school. Moreover, the law school relied heavily upon such numbers to estimate the number of offers of admission it needed to make in order to fill its first-year class.

Of course, the law school did not rely upon numbers alone. The admissions office necessarily exercised judgment in interpreting the individual scores of applicants, taking into consideration factors such as the strength of a student's undergraduate education, the difficulty of his major, and significant trends in his own grades and the undergraduate grades at his respective college (such as grade inflation). Admissions personnel also considered what qualities each applicant might bring to his law school class. Thus, the law school could consider an applicant's background, life experiences, and outlook. Not surprisingly, these hard-to-quantify factors were especially significant for marginal candidates.2

Because of the large number of applicants and potential admissions factors, the TI's administrative usefulness was its ability to sort candidates. For the class entering in 1992–the admissions group at issue in this case–the law school placed the typical applicant in one of three categories according to his TI scores: "presumptive admit," "presumptive deny," or a middle "discretionary zone." An applicant's TI category determined how extensive a review his application would receive.

Blacks and Mexican Americans were treated differently from other candidates, however. First, compared to whites and non-preferred minorities,4 the TI ranges that were used to place them into the three admissions categories were lowered to allow the law school to consider and admit more of them. In March 1992, for example, the presumptive TI admission score for resident whites and non-preferred minorities was 199.5 Mexican Americans and blacks needed a TI of only 189 to be presumptively admitted.6 The difference in the presumptive-deny ranges is even more striking. The presumptive denial score for "nonminorities" was 192; the same score for blacks and Mexican Americans was 179.

While these cold numbers may speak little to those unfamiliar with the pool of applicants, the results demonstrate that the difference in the two ranges was dramatic. According to the law school, 1992 resident white applicants had a mean GPA of 3.53 and an LSAT of 164. Mexican Americans scored 3.27 and 158; blacks scored 3.25 and 157. The category of "other minority" achieved a 3.56 and 160.7

These disparate standards greatly affected a candidate's chance of admission. For example, by March 1992, because the presumptive denial score for whites was a TI of 192 or lower, and the presumptive admit TI for minorities was 189 or higher, a minority candidate with a TI of 189 or above almost certainly would be admitted, even though his score was considerably below8 the level at which a white candidate almost certainly would be rejected. Out of the pool of resident applicants who fell within this range (189-192 inclusive), 100% of blacks and 90% of Mexican Americans, but only 6% of whites, were offered admission.9

The stated purpose of this lowering of standards was to meet an "aspiration" of admitting a class consisting of 10% Mexican Americans and 5% blacks, proportions roughly comparable to the percentages of those races graduating from Texas colleges. The law school found meeting these "goals" difficult, however, because of uncertain acceptance rates and the variable quality of the applicant pool.10 In 1992, for example, the entering class contained 41 blacks and 55 Mexican Americans, respectively 8% and 10.7% of the class.

In addition to maintaining separate presumptive TI levels for minorities and whites, the law school ran a segregated application evaluation process. Upon receiving an application form, the school color-coded it according to race. If a candidate failed to designate his race, he was presumed to be in a nonpreferential category. Thus, race was always an overt part of the review of any applicant's file.

Cheryl Hopwood, Douglas Carvell, Kenneth Elliott, and David Rogers (the "plaintiffs") applied for admission to the 1992 entering law school class. All four were white residents of Texas and were rejected.

The plaintiffs were considered as discretionary zone candidates.12 Hopwood, with a GPA of 3.8 and an LSAT of 39 (equivalent to a three-digit LSAT of 160), had a TI of 199, a score barely within the presumptive-admit category for resident whites, which was 199 and up. She was dropped into the discretionary zone for resident whites (193 to 198), however, because Johanson decided her educational background overstated the strength of her GPA.

The plaintiffs sued primarily under the Equal Protection Clause of the Fourteenth Amendment. … The central purpose of the Equal Protection Clause "is to prevent the States from purposefully discriminating between individuals on the basis of race." … In order to preserve these principles, the Supreme Court recently has required that any governmental action that expressly distinguishes between persons on the basis of race be held to the most exacting scrutiny. See, e.g., id. at —-, 115 S.Ct. at 2113; Loving, 388 U.S. at 11, 87 S.Ct. at 1823. Furthermore, there is now absolutely no doubt that courts are to employ strict scrutiny16 when evaluating all racial classifications, including those characterized by their proponents as "benign" or "remedial." …

Under the strict scrutiny analysis, we ask two questions: (1) Does the racial classification serve a compelling government interest, and (2) is it narrowly tailored to the achievement of that goal? …
With these general principles of equal protection in mind, we turn to the specific issue of whether the law school's consideration of race as a factor in admissions violates the Equal Protection Clause. The district court found both a compelling remedial and a non-remedial justification for the practice.

First, the court approved of the non-remedial goal of having a diverse student body, reasoning that "obtaining the educational benefits that flow from a racially and ethnically diverse student body remains a sufficiently compelling interest to support the use of racial classifications." 861 F.Supp. at 571. Second, the court determined that the use of racial classifications could be justified as a remedy for the "present effects at the law school of past discrimination in both the University of Texas system and the Texas educational system as a whole."

We agree with the plaintiffs that any consideration of race or ethnicity by the law school for the purpose of achieving a diverse student body is not a compelling interest under the Fourteenth Amendment. … [T]here has been no indication from the Supreme Court, other than Justice Powell's lonely opinion in Bakke, that the state's interest in diversity constitutes a compelling justification for governmental race-based discrimination. Subsequent Supreme Court caselaw strongly suggests, in fact, that it is not.

Within the general principles of the Fourteenth Amendment, the use of race in admissions for diversity in higher education contradicts, rather than furthers, the aims of equal protection. Diversity fosters, rather than minimizes, the use of race. It treats minorities as a group, rather than as individuals. It may further remedial purposes but, just as likely, may promote improper racial stereotypes, thus fueling racial hostility.

The use of race, in and of itself, to choose students simply achieves a student body that looks different. Such a criterion is no more rational on its own terms than would be choices based upon the physical size or blood type of applicants. Thus, the Supreme Court has long held that governmental actors cannot justify their decisions solely because of race.

While the use of race per se is proscribed, state-supported schools may reasonably consider a host of factors–some of which may have some correlation with race–in making admissions decisions. The federal courts have no warrant to intrude on those executive and legislative judgments unless the distinctions intrude on specific provisions of federal law or the Constitution.

A university may properly favor one applicant over another because of his ability to play the cello, make a downfield tackle, or understand chaos theory. An admissions process may also consider an applicant's home state or relationship to school alumni. Law schools specifically may look at things such as unusual or substantial extracurricular activities in college, which may be atypical factors affecting undergraduate grades. Schools may even consider factors such as whether an applicant's parents attended college or the applicant's economic and social background.28

For this reason, race often is said to be justified in the diversity context, not on its own terms, but as a proxy for other characteristics that institutions of higher education value but that do not raise similar constitutional concerns. Unfortunately, this approach simply replicates the very harm that the Fourteenth Amendment was designed to eliminate.

The assumption is that a certain individual possesses characteristics by virtue of being a member of a certain racial group. This assumption, however, does not withstand scrutiny. "[T]he use of a racial characteristic to establish a presumption that the individual also possesses other, and socially relevant, characteristics, exemplifies, encourages, and legitimizes the mode of thought and behavior that underlies most prejudice and bigotry in modern America." Richard A. Posner, The DeFunis Case and the Constitutionality of Preferential Treatment of Racial Minorities, 1974 SUP.CT.REV. 12 (1974).

To believe that a person's race controls his point of view is to stereotype him. The Supreme Court, however, "has remarked a number of times, in slightly different contexts, that it is incorrect and legally inappropriate to impute to women and minorities 'a different attitude about such issues as the federal budget, school prayer, voting, and foreign relations.' "

Instead, individuals, with their own conceptions of life, further diversity of viewpoint. Plaintiff Hopwood is a fair example of an applicant with a unique background. She is the now-thirty-two-year-old wife of a member of the Armed Forces stationed in San Antonio and, more significantly, is raising a severely handicapped child. Her circumstance would bring a different perspective to the law school. The school might consider this an advantage to her in the application process, or it could decide that her family situation would be too much of a burden on her academic performance.

We do not opine on which way the law school should weigh Hopwood's qualifications; we only observe that "diversity" can take many forms. To foster such diversity, state universities and law schools and other governmental entities must scrutinize applicants individually, rather than resorting to the dangerous proxy of race. …
In summary, we hold that the University of Texas School of Law may not use race as a factor in deciding which applicants to admit in order to achieve a diverse student body, to combat the perceived effects of a hostile environment at the law school, to alleviate the law school's poor reputation in the minority community, or to eliminate any present effects of past discrimination by actors other than the law school. Because the law school has proffered these justifications for its use of race in admissions, the plaintiffs have satisfied their burden of showing that they were

scrutinized under an unconstitutional admissions system. The plaintiffs are entitled to reapply under an admissions system that invokes none of these serious constitutional infirmities. …

Grutter v. Bollinger (2003)

A brief overview of the case: *Barbara Grutter applied to law school at the University of Michigan. She was rejected, even though her grades were higher than some of the minority candidates who were admitted. In Grutter v. Bollinger, the US Supreme Court decided that the University of Michigan had acted lawfully. Racial diversity at law school was an important goal. Do you agree? Was the decision just or unjust?*

GRUTTER v. BOLLINGER et al.
Supreme Court of United States.
Decided June 23, 2003.
Justice O'Connor delivered the opinion of the Court.

This case requires us to decide whether the use of race as a factor in student admissions by the University of Michigan Law School (Law School) is unlawful.

The Law School ranks among the Nation's top law schools. It receives more than 3,500 applications each year for a class of around 350 students. Seeking to "admit a group of students who individually and collectively are among the most capable," the Law School looks for individuals with "substantial promise for success in law school" and "a strong likelihood of succeeding in the practice of law and contributing in diverse ways to the well-being of others." App. 110. More broadly, the Law School seeks "a mix of students with varying backgrounds and experiences who will respect and learn from each other." …

The hallmark of that policy is its focus on academic ability coupled with a flexible assessment of applicants' talents, experiences, and potential "to contribute to the learning of those around them." … The policy aspires to "achieve that diversity which has the potential to enrich everyone's education and thus make a law school class stronger than the sum of its parts." Id., at 118. The policy does not restrict the types of diversity contributions eligible for "substantial weight" in the admissions process, but instead recognizes "many possible bases for diversity admissions." Id., at 118, 120. The policy does, however, reaffirm the Law School's longstanding commitment to "one particular type of diversity," that is, "racial and ethnic diversity with special reference to the inclusion of students from groups which have been historically discriminated against, like African-Americans, Hispanics and Native Americans, who without this commitment might not be represented in our student body in meaningful numbers." Id., at 120. By enrolling a "`critical mass' of [underrepresented] minority students," the Law School seeks to "ensur[e] their ability to make unique contributions to the character of the Law School." Id., at 120-121.

Petitioner Barbara Grutter is a white Michigan resident who applied to the Law School in 1996 with a 3.8 GPA and 161 LSAT score. The Law School initially placed petitioner on a waiting list, but subsequently rejected her application. In December 1997, petitioner filed suit [alleging] that respondents discriminated against her on the basis of race in violation of the Fourteenth Amendment. …

Before this Court, as they have throughout this litigation, respondents assert only one justification for their use of race in the admissions process: obtaining "the educational benefits that flow from a diverse student body." In other words, the Law School asks us to recognize, in the context of higher education, a compelling state interest in student body diversity.

Today, we hold that the Law School has a compelling interest in attaining a diverse student body.

The Law School's educational judgment that such diversity is essential to its educational mission is one to which we defer. The Law School's assessment that diversity will, in fact, yield educational benefits is substantiated by respondents and their amici. Our scrutiny of the interest asserted by the Law School is no less strict for taking into account complex educational judgments in an area that lies primarily within the expertise of the university. Our holding today is in keeping with our tradition of giving a degree of deference to a university's academic decisions, within constitutionally prescribed limits. …

As part of its goal of "assembling a class that is both exceptionally academically qualified and broadly diverse," the Law School seeks to "enroll a `critical mass' of minority students." Brief for Respondent Bollinger et al. 13. The Law School's interest is not simply "to assure within its student body some specified percentage of a particular group merely because of its race or ethnic origin." Bakke, 438 U. S., at 307 (opinion of Powell, J.). That would amount to outright racial balancing, which is patently unconstitutional. Ibid.; Freeman v. Pitts, 503 U. S. 467, 494 (1992) ("Racial balance is not to be achieved for its own sake"); Richmond v. J. A. Croson Co., 488 U. S., at 507. Rather, the Law School's concept of critical mass is defined by reference to the educational benefits that diversity is designed to produce.

These benefits are substantial. As the District Court emphasized, the Law School's admissions policy promotes "cross-racial understanding," helps to break down racial stereotypes, and "enables [students] to better understand persons of different races." App. to Pet. for Cert. 246a. These benefits are "important and laudable," because "classroom discussion is livelier, more spirited, and simply more enlightening and interesting" when the students have "the greatest possible variety of backgrounds." Id., at 246a, 244a.

The Law School's claim of a compelling interest is further bolstered by its amici, who point to the educational benefits that flow from student body diversity. In addition to the expert studies and reports entered into evidence at trial, numerous studies show that student body diversity promotes learning outcomes, and "better prepares students for an increasingly diverse workforce and society, and better prepares them as professionals." …

These benefits are not theoretical but real, as major American businesses have made clear that the skills needed in today's increasingly global marketplace can only be developed through exposure to widely diverse people, cultures, ideas, and viewpoints. Brief for 3M et al. as Amici Curiae 5; Brief for General Motors Corp. as Amicus Curiae 3-4. What is more, high-ranking retired officers and civilian leaders of the United States military assert that, "[b]ased on [their] decades of experience," a "highly qualified, racially diverse officer corps . . . is essential to the military's ability to fulfill its principle mission to provide national security." Brief for Julius W. Becton, Jr., et al. as Amici Curiae 5.

The primary sources for the Nation's officer corps are the service academies and the Reserve Officers Training Corps (ROTC), the latter comprising students already admitted to participating colleges and universities. Ibid. At present, "the military cannot achieve an officer corps that is both highly qualified and racially diverse unless the service academies and the ROTC used limited race-conscious recruiting and admissions policies." Ibid. (emphasis in original). To fulfill its mission, the military "must be selective in admissions for training and education for the officer corps, and it must train and educate a highly qualified, racially diverse officer corps in a racially diverse educational setting." Id., at 29 (emphasis in original). We agree that "[i]t requires only a small step from this analysis to conclude that our country's other most selective institutions must remain both diverse and selective." …

Moreover, universities, and in particular, law schools, represent the training ground for a large number of our Nation's leaders. Sweatt v. Painter, 339 U. S. 629, 634 (1950) (describing law school as a "proving ground for legal learning and practice"). Individuals with law degrees occupy roughly half the state governorships, more than half the seats in the United States Senate, and more than a third of the seats in the United States House of Representatives. See Brief for Association of American Law Schools as Amicus Curiae 5-6. The pattern is even more striking when it comes to highly selective law schools. A handful of these schools accounts for 25 of the 100 United States Senators, 74 United States Courts of Appeals judges, and nearly 200 of the more than 600 United States District Court judges. Id., at 6.

In order to cultivate a set of leaders with legitimacy in the eyes of the citizenry, it is necessary that the path to leadership be visibly open to talented and qualified individuals of every race and ethnicity. All members of our heterogeneous society must have confidence in the openness and integrity of the educational institutions that provide this training. As we have recognized, law schools "cannot be effective in isolation from the individuals and institutions with which the law interacts." See Sweatt v. Painter, supra, at 634. Access to legal education (and thus the legal profession) must be inclusive of talented and qualified individuals of every race and ethnicity, so that all members of our heterogeneous society may participate in the educational institutions that provide the training and education necessary to succeed in America.

The Law School does not premise its need for critical mass on "any belief that minority students always (or even consistently) express some characteristic minority viewpoint on any issue." Brief for Respondent Bollinger et al. 30. To the contrary, diminishing the force of such stereotypes is both a crucial part of the Law School's mission, and one that it cannot accomplish with only token numbers of minority students. Just as growing up in a particular region or having particular professional experiences is likely to affect an individual's views, so too is one's own, unique experience of being a racial minority in a society, like our own, in which race unfortunately still matters. The Law School has determined, based on its experience and expertise, that a "critical mass" of underrepresented minorities is necessary to further its compelling interest in securing the educational benefits of a diverse student body.

Even in the limited circumstance when drawing racial distinctions is permissible to further a compelling state interest, government is still "constrained in how it may pursue that end: [T]he means chosen to accomplish the [government's] asserted purpose must be specifically and narrowly framed to accomplish that purpose." …
We find that the Law School's admissions program bears the hallmarks of a narrowly tailored plan. As Justice Powell made clear in Bakke, truly individualized consideration demands that race be used in a flexible, nonmechanical way. It follows from this mandate that universities cannot establish quotas for members of certain racial groups or put members of those groups on separate admissions tracks. See id., at 315-316. Nor can universities insulate applicants who belong to certain racial or ethnic groups from the competition for admission. Ibid. Universities can, however, consider race or ethnicity more flexibly as a "plus" factor in the context of individualized consideration of each and every applicant. Ibid.

We are satisfied that the Law School's admissions program, like the Harvard plan described by Justice Powell, does not operate as a quota. … Here, the Law School engages in a highly individualized, holistic review of each applicant's file, giving serious consideration to all the ways an applicant might contribute to a diverse educational environment. The Law School affords this individualized consideration to applicants of all races. There is no policy, either de jure or de facto, of automatic acceptance or rejection based on any single "soft" variable. … We also find that, like the Harvard plan Justice Powell referenced in Bakke, the Law School's race-conscious admissions program

adequately ensures that all factors that may contribute to student body diversity are meaningfully considered alongside race in admissions decisions. With respect to the use of race itself, all underrepresented minority students admitted by the Law School have been deemed qualified. By virtue of our Nation's struggle with racial inequality, such students are both likely to have experiences of particular importance to the Law School's mission, and less likely to be admitted in meaningful numbers on criteria that ignore those experiences.

We are mindful, however, that "[a] core purpose of the Fourteenth Amendment was to do away with all governmentally imposed discrimination based on race." Palmore v. Sidoti, 466 U. S. 429, 432 (1984). Accordingly, race-conscious admissions policies must be limited in time. This requirement reflects that racial classifications, however compelling their goals, are potentially so dangerous that they may be employed no more broadly than the interest demands. Enshrining a permanent justification for racial preferences would offend this fundamental equal protection principle. We see no reason to exempt race-conscious admissions programs from the requirement that all governmental use of race must have a logical end point.

We take the Law School at its word that it would "like nothing better than to find a race-neutral admissions formula" and will terminate its race-conscious admissions program as soon as practicable. … It has been 25 years since Justice Powell first approved the use of race to further an interest in student body diversity in the context of public higher education. Since that time, the number of minority applicants with high grades and test scores has indeed increased. See Tr. of Oral Arg. 43. We expect that 25 years from now, the use of racial preferences will no longer be necessary to further the interest approved today.

In summary, the Equal Protection Clause does not prohibit the Law School's narrowly tailored use of race in admissions decisions to further a compelling interest in obtaining the educational benefits that flow from a diverse student body. …

JUSTICE THOMAS, with whom JUSTICE SCALIA joins as to Parts I-VII, concurring in part and dissenting in part. Frederick Douglass, speaking to a group of abolitionists almost 140 years ago, delivered a message lost on today's majority:

> "[I]n regard to the colored people, there is always more that is benevolent, I perceive, than just, manifested towards us. What I ask for the negro is not benevolence, not pity, not sympathy, but simply justice. The American people have always been anxious to know what they shall do with us. . . . I have had but one answer from the beginning. Do nothing with us! Your doing with us has already played the mischief with us. Do nothing with us! If the apples will not remain on the tree of their own strength, if they are worm-eaten at the core, if they are early ripe and disposed to fall, let them fall! . . . And if the negro cannot stand on his own legs, let him fall also. All I ask is, give him a chance to stand on his own legs! Let him alone! . . . [Y]our interference is doing him positive injury." What the Black Man Wants: An Address Delivered in Boston, Massachusetts, on 26 January 1865, reprinted in 4 The Frederick Douglass Papers 59, 68 (J. Blassingame & J. McKivigan eds. 1991) (emphasis in original).

Like Douglass, I believe blacks can achieve in every avenue of American life without the meddling of university administrators. Because I wish to see all students succeed whatever their color, I share, in some respect, the sympathies of those who sponsor the type of discrimination advanced by the University of Michigan Law School (Law School). The Constitution does not, however, tolerate institutional devotion to the status quo in admissions policies

when such devotion ripens into racial discrimination. Nor does the Constitution countenance the unprecedented deference the Court gives to the Law School, an approach inconsistent with the very concept of "strict scrutiny." The Constitution abhors classifications based on race, not only because those classifications can harm favored races or are based on illegitimate motives, but also because every time the government places citizens on racial registers and makes race relevant to the provision of burdens or benefits, it demeans us all. …

Unlike the majority, I seek to define with precision the interest being asserted by the Law School before determining whether that interest is so compelling as to justify racial discrimination. The Law School maintains that it wishes to obtain "educational benefits that flow from student body diversity," Brief for Respondent Bollinger et al. 14. This statement must be evaluated carefully, because it implies that both "diversity" and "educational benefits" are components of the Law School's compelling state interest. Additionally, the Law School's refusal to entertain certain changes in its admissions process and status indicates that the compelling state interest it seeks to validate is actually broader than might appear at first glance. …

One must also consider the Law School's refusal to entertain changes to its current admissions system that might produce the same educational benefits. The Law School adamantly disclaims any race-neutral alternative that would reduce "academic selectivity," which would in turn "require the Law School to become a very different institution, and to sacrifice a core part of its educational mission." Brief for Respondent Bollinger et al. 33-36. In other words, the Law School seeks to improve marginally the education it offers without sacrificing too much of its exclusivity and elite status.

The proffered interest that the majority vindicates today, then, is not simply "diversity." Instead the Court upholds the use of racial discrimination as a tool to advance the Law School's interest in offering a marginally superior education while maintaining an elite institution. … Under the proper standard, there is no pressing public necessity in maintaining a public law school at all and, it follows, certainly not an elite law school. Likewise, marginal improvements in legal education do not qualify as a compelling state interest.

As the foregoing makes clear, Michigan has no compelling interest in having a law school at all, much less an elite one. … The interest in remaining elite and exclusive that the majority thinks so obviously critical requires the use of admissions "standards" that, in turn, create the Law School's "need" to discriminate on the basis of race. … The Court never explicitly holds that the Law School's desire to retain the status quo in "academic selectivity" is itself a compelling state interest, and, as I have demonstrated, it is not. See Part III-B, supra. Therefore, the Law School should be forced to choose between its classroom aesthetic and its exclusionary admissions system—it cannot have it both ways.

With the adoption of different admissions methods, such as accepting all students who meet minimum qualifications, see Brief for United States as Amicus Curiae 13-14, the Law School could achieve its vision of the racially aesthetic student body without the use of racial discrimination. The Law School concedes this, but the Court holds, implicitly and under the guise of narrow tailoring, that the Law School has a compelling state interest in doing what it wants to do. I cannot agree. …

Putting aside the absence of any legal support for the majority's reflexive deference, there is much to be said for the view that the use of tests and other measures to "predict" academic performance is a poor substitute for a system that gives every applicant a chance to prove he can succeed in the study of law. The rallying cry that in the

absence of racial discrimination in admissions there would be a true meritocracy ignores the fact that the entire process is poisoned by numerous exceptions to "merit." For example, in the national debate on racial discrimination in higher education admissions, much has been made of the fact that elite institutions utilize a so-called "legacy" preference to give the children of alumni an advantage in admissions. This, and other, exceptions to a "true" meritocracy give the lie to protestations that merit admissions are in fact the order of the day at the Nation's universities. The Equal Protection Clause does not, however, prohibit the use of unseemly legacy preferences or many other kinds of arbitrary admissions procedures. What the Equal Protection Clause does prohibit are classifications made on the basis of race. So while legacy preferences can stand under the Constitution, racial discrimination cannot.10 I will not twist the Constitution to invalidate legacy preferences or otherwise impose my vision of higher education admissions on the Nation. The majority should similarly stay its impulse to validate faddish racial discrimination the Constitution clearly forbids.

In any event, there is nothing ancient, honorable, or constitutionally protected about "selective" admissions. The University of Michigan should be well aware that alternative methods have historically been used for the admission of students, for it brought to this country the German certificate system in the late-19th century. See H. Wechsler, The Qualified Student 16-39 (1977) (hereinafter Qualified Student). Under this system, a secondary school was certified by a university so that any graduate who completed the course offered by the school was offered admission to the university. The certification regime supplemented, and later virtually replaced (at least in the Midwest), the prior regime of rigorous subject-matter entrance examinations. Id., at 57-58. The facially race-neutral "percent plans" now used in Texas, California, and Florida, see ante, at 340, are in many ways the descendents of the certificate system. …

Having decided to use the LSAT, the Law School must accept the constitutional burdens that come with this decision. The Law School may freely continue to employ the LSAT and other allegedly merit-based standards in whatever fashion it likes. What the Equal Protection Clause forbids, but the Court today allows, is the use of these standards hand-in-hand with racial discrimination. An infinite variety of admissions methods are available to the Law School. Considering all of the radical thinking that has historically occurred at this country's universities, the Law School's intractable approach toward admissions is striking.

The Court will not even deign to make the Law School try other methods, however, preferring instead to grant a 25-year license to violate the Constitution. And the same Court that had the courage to order the desegregation of all public schools in the South now fears, on the basis of platitudes rather than principle, to force the Law School to abandon a decidedly imperfect admissions regime that provides the basis for racial discrimination. …

I must contest the notion that the Law School's discrimination benefits those admitted as a result of it. … The Law School tantalizes unprepared students with the promise of a University of Michigan degree and all of the opportunities that it offers. These overmatched students take the bait, only to find that they cannot succeed in the cauldron of competition. And this mismatch crisis is not restricted to elite institutions. See T. Sowell, Race and Culture 176-177 (1994) ("Even if most minority students are able to meet the normal standards at the `average' range of colleges and universities, the systematic mismatching of minority students begun at the top can mean that such students are generally overmatched throughout all levels of higher education"). Indeed, to cover the tracks of the aestheticists, this cruel farce of racial discrimination must continue— in selection for the Michigan Law Review, see University of Michigan Law School Student Handbook 2002-2003, pp. 39-40 (noting the presence of a "diversity plan" for admission to the review), and in hiring at law firms and for judicial clerkships—until the "beneficiaries" are no longer

tolerated. While these students may graduate with law degrees, there is no evidence that they have received a qualitatively better legal education (or become better lawyers) than if they had gone to a less "elite" law school for which they were better prepared. …

Beyond the harm the Law School's racial discrimination visits upon its test subjects, no social science has disproved the notion that this discrimination "engender[s] attitudes of superiority or, alternatively, provoke[s] resentment among those who believe that they have been wronged by the government's use of race." Adarand, 515 U. S., at 241 (THOMAS, J., concurring in part and concurring in judgment). "These programs stamp minorities with a badge of inferiority and may cause them to develop dependencies or to adopt an attitude that they are `entitled' to preferences." Ibid.

It is uncontested that each year, the Law School admits a handful of blacks who would be admitted in the absence of racial discrimination. See Brief for Respondent Bollinger et al. 6. Who can differentiate between those who belong and those who do not? The majority of blacks are admitted to the Law School because of discrimination, and because of this policy all are tarred as undeserving. This problem of stigma does not depend on determinacy as to whether those stigmatized are actually the "beneficiaries" of racial discrimination. When blacks take positions in the highest places of government, industry, or academia, it is an open question today whether their skin color played a part in their advancement. The question itself is the stigma—because either racial discrimination did play a role, in which case the person may be deemed "otherwise unqualified," or it did not, in which case asking the question itself unfairly marks those blacks who would succeed without discrimination. …

The Court also holds that racial discrimination in admissions should be given another 25 years before it is deemed no longer narrowly tailored to the Law School's fabricated compelling state interest. Ante, at 343. While I agree that in 25 years the practices of the Law School will be illegal, they are, for the reasons I have given, illegal now. The majority does not and cannot rest its time limitation on any evidence that the gap in credentials between black and white students is shrinking or will be gone in that timeframe.13 In recent years there has been virtually no change, for example, in the proportion of law school applicants with LSAT scores of 165 and higher who are black.14 In 1993 blacks constituted 1.1% of law school applicants in that score range, though they represented 11.1% of all applicants. Law School Admission Council, National Statistical Report (1994) (hereinafter LSAC Statistical Report). In 2000 the comparable numbers were 1.0% and 11.3%. LSAC Statistical Report (2001). No one can seriously contend, and the Court does not, that the racial gap in academic credentials will disappear in 25 years. Nor is the Court's holding that racial discrimination will be unconstitutional in 25 years made contingent on the gap closing in that time. …

For the immediate future, however, the majority has placed its imprimatur on a practice that can only weaken the principle of equality embodied in the Declaration of Independence and the Equal Protection Clause. "Our Constitution is color-blind, and neither knows nor tolerates classes among citizens." Plessy v. Ferguson, 163 U. S. 537, 559 (1896) (Harlan, J., dissenting). It has been nearly 140 years since Frederick Douglass asked the intellectual ancestors of the Law School to "[d]o nothing with us!" and the Nation adopted the Fourteenth Amendment. Now we must wait another 25 years to see this principle of equality vindicated. I therefore respectfully dissent from the remainder of the Court's opinion and the judgment.

PGA Tour, Inc. v. Martin (2000)

A brief overview of the case: *Should a golfer with a congenital leg disease have the right to use a golf cart in professional golf tournaments? In the case of PGA Tour, Inc. v. Martin (2000), the justices of the US Supreme Court disagreed. Their disagreement turned in part on competing views about whether walking the course is essential to the game of golf. To what extent does the debate about using golf carts call into question the athletic nature of golf and the honor due to those who excel at it?*

PGA Tour, Inc. v. Martin (2000)
No. 00-24.
SUPREME COURT OF THE UNITED STATES
Decided May 29, 2001
Justice Stevens delivered the opinion of the Court.
This case raises two questions concerning the application of the Americans with Disabilities Act of 1990, 104 Stat. 328, 42 U.S.C. 12101 et seq., to a gifted athlete: first, whether the Act protects access to professional golf tournaments by a qualified entrant with a disability; and second, whether a disabled contestant may be denied the use of a golf cart because it would "fundamentally alter the nature" of the tournaments, 12182(b)(2)(A)(ii), to allow him to ride when all other contestants must walk.

At trial, petitioner did not contest the conclusion that Martin has a disability covered by the ADA, or the fact "that his disability prevents him from walking the course during a round of golf." 994 F. Supp. 1242, 1244 (Ore. 1998). Rather, petitioner asserted that the condition of walking is a substantive rule of competition, and that waiving it as to any individual for any reason would fundamentally alter the nature of the competition. Petitioner's evidence included the testimony of a number of experts, among them some of the greatest golfers in history. Arnold Palmer,13 Jack Nicklaus,14 and Ken Venturi15 explained that fatigue can be a critical factor in a tournament, particularly on the last day when psychological pressure is at a maximum. Their testimony makes it clear that, in their view, permission to use a cart might well give some players a competitive advantage over other players who must walk. They did not, however, express any opinion on whether a cart would give Martin such an advantage.

Rejecting petitioner's argument that an individualized inquiry into the necessity of the walking rule in Martin's case would be inappropriate, the District Court stated that it had "the independent duty to inquire into the purpose of the rule at issue, and to ascertain whether there can be a reasonable modification made to accommodate plaintiff without frustrating the purpose of the rule" and thereby fundamentally altering the nature of petitioner's tournaments. Id., at 1246. The judge found that the purpose of the rule was to inject fatigue into the skill of shot-making, but that the fatigue injected "by walking the course cannot be deemed significant under normal circumstances." Id., at 1250.

Furthermore, Martin presented evidence, and the judge found, that even with the use of a cart, Martin must walk over a mile during an 18-hole round,17 and that the fatigue he suffers from coping with his disability is "undeniably greater" than the fatigue his able-bodied competitors endure from walking the course. Id., at 1251. As the judge observed:

> "[P]laintiff is in significant pain when he walks, and even when he is getting in and out of the cart. With each step, he is at risk of fracturing his tibia and hemorrhaging. The other golfers have to endure the psychological stress of competition as part of their fatigue; Martin has the same stress plus the added stress of pain and

risk of serious injury. As he put it, he would gladly trade the cart for a good leg. To perceive that the cart puts him-with his condition-at a competitive advantage is a gross distortion of reality." Id., at 1251-1252.

As a result, the judge concluded that it would "not fundamentally alter the nature of the PGA Tour's game to accommodate him with a cart." Id., at 1252. The judge accordingly entered a permanent injunction requiring petitioner to permit Martin to use a cart in tour and qualifying events. …

As we have noted, 42 U.S.C. 12182(a) sets forth Title III's general rule prohibiting public accommodations from discriminating against individuals because of their disabilities. The question whether petitioner has violated that rule depends on a proper construction of the term "discrimination," which is defined by Title III to include:
"a failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford such goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter the nature of such goods, services, facilities, privileges, advantages, or accommodations." 12182(b)(2)(A)(ii) (emphasis added).

Petitioner does not contest that a golf cart is a reasonable modification that is necessary if Martin is to play in its tournaments. Martin's claim thus differs from one that might be asserted by players with less serious afflictions that make walking the course uncomfortable or difficult, but not beyond their capacity. In such cases, an accommodation might be reasonable but not necessary. In this case, however, the narrow dispute is whether allowing Martin to use a golf cart, despite the walking requirement that applies to the PGA TOUR, the NIKE TOUR, and the third stage of the Q-School, is a modification that would "fundamentally alter the nature" of those events.

In theory, a modification of petitioner's golf tournaments might constitute a fundamental alteration in two different ways. It might alter such an essential aspect of the game of golf that it would be unacceptable even if it affected all competitors equally; changing the diameter of the hole from three to six inches might be such a modification.36 Alternatively, a less significant change that has only a peripheral impact on the game itself might nevertheless give a disabled player, in addition to access to the competition as required by Title III, an advantage over others and, for that reason, fundamentally alter the character of the competition.37 We are not persuaded that a waiver of the walking rule for Martin would work a fundamental alteration in either sense.

As an initial matter, we observe that the use of carts is not itself inconsistent with the fundamental character of the game of golf. From early on, the essence of the game has been shot-making-using clubs to cause a ball to progress from the teeing ground to a hole some distance away with as few strokes as possible.39 That essential aspect of the game is still reflected in the very first of the Rules of Golf, which declares: "The Game of Golf consists in playing a ball from the teeing ground into the hole by a stroke or successive strokes in accordance with the rules."

Rule 1-1, Rules of Golf, App. 104 (italics in original). Over the years, there have been many changes in the players' equipment, in golf course design, in the Rules of Golf, and in the method of transporting clubs from hole to hole.40 Originally, so few clubs were used that each player could carry them without a bag. Then came golf bags, caddies, carts that were pulled by hand, and eventually motorized carts that carried players as well as clubs. "Golf carts started appearing with increasing regularity on American golf courses in the 1950′s. Today they are everywhere. And they are encouraged. For one thing, they often speed up play, and for another, they are great revenue producers."41 There is nothing in the Rules of Golf that either forbids the use of carts, or penalizes a player for using a cart. That set of rules, as we have observed, is widely accepted in both the amateur and professional golf world as the

rules of the game.42 The walking rule that is contained in petitioner's hard cards, based on an optional condition buried in an appendix to the Rules of Golf,43 is not an essential attribute of the game itself.

Indeed, the walking rule is not an indispensable feature of tournament golf either. As already mentioned, petitioner permits golf carts to be used in the SENIOR PGA TOUR, the open qualifying events for petitioner's tournaments, the first two stages of the Q-School, and, until 1997, the third stage of the Q-School as well. See supra, at 2-4. Moreover, petitioner allows the use of carts during certain tournament rounds in both the PGA TOUR and the NIKE TOUR. See supra, at 4, and n. 6. In addition, although the USGA enforces a walking rule in most of the tournaments that it sponsors, it permits carts in the Senior Amateur and the Senior Women's Amateur championships.

Petitioner, however, distinguishes the game of golf as it is generally played from the game that it sponsors in the PGA TOUR, NIKE TOUR, and (at least recently) the last stage of the Q-School-golf at the "highest level." According to petitioner, "[t]he goal of the highest-level competitive athletics is to assess and compare the performance of different competitors, a task that is meaningful only if the competitors are subject to identical substantive rules."45 The waiver of any possibly "outcome-affecting" rule for a contestant would violate this principle and therefore, in petitioner's view, fundamentally alter the nature of the highest level athletic event.46 The walking rule is one such rule, petitioner submits, because its purpose is "to inject the element of fatigue into the skill of shot-making,"47 and thus its effect may be the critical loss of a stroke. As a consequence, the reasonable modification Martin seeks would fundamentally alter the nature of petitioner's highest level tournaments even if he were the only person in the world who has both the talent to compete in those elite events and a disability sufficiently serious that he cannot do so without using a cart.

The force of petitioner's argument is, first of all, mitigated by the fact that golf is a game in which it is impossible to guarantee that all competitors will play under exactly the same conditions or that an individual's ability will be the sole determinant of the outcome. For example, changes in the weather may produce harder greens and more head winds for the tournament leader than for his closest pursuers. A lucky bounce may save a shot or two.48 Whether such happenstance events are more or less probable than the likelihood that a golfer afflicted with Klippel-Trenaunay-Weber Syndrome would one day qualify for the NIKE TOUR and PGA TOUR, they at least demonstrate that pure chance may have a greater impact on the outcome of elite golf tournaments than the fatigue resulting from the enforcement of the walking rule.

Further, the factual basis of petitioner's argument is undermined by the District Court's finding that the fatigue from walking during one of petitioner's 4-day tournaments cannot be deemed significant. The District Court credited the testimony of a professor in physiology and expert on fatigue, who calculated the calories expended in walking a golf course (about five miles) to be approximately 500 calories-"nutritionally … less than a Big Mac." 994 F. Supp., at 1250. What is more, that energy is expended over a 5-hour period, during which golfers have numerous intervals for rest and refreshment. In fact, the expert concluded, because golf is a low intensity activity, fatigue from the game is primarily a psychological phenomenon in which stress and motivation are the key ingredients. And even under conditions of severe heat and humidity, the critical factor in fatigue is fluid loss rather than exercise from walking. …

To be sure, the waiver of an essential rule of competition for anyone would fundamentally alter the nature of petitioner's tournaments. As we have demonstrated, however, the walking rule is at best peripheral to the nature of petitioner's athletic events, and thus it might be waived in individual cases without working a fundamental alteration. Therefore, petitioner's claim that all the substantive rules for its "highest-level" competitions are sacrosanct and cannot

be modified under any circumstances is effectively a contention that it is exempt from Title III's reasonable modification requirement. But that provision carves out no exemption for elite athletics, and given Title III's coverage not only of places of "exhibition or entertainment" but also of "golf course[s]," 42 U.S.C. 12181(7)(C), (L), its application to petitioner's tournaments cannot be said to be unintended or unexpected, see 12101(a)(1), (5). Even if it were, "the fact that a statute can be applied in situations not expressly anticipated by Congress does not demonstrate ambiguity. It demonstrates breadth." Pennsylvania Dept. of Corrections v. Yeskey, 524 U.S., at 212 (internal quotation marks omitted).51

Under the ADA's basic requirement that the need of a disabled person be evaluated on an individual basis, we have no doubt that allowing Martin to use a golf cart would not fundamentally alter the nature of petitioner's tournaments. As we have discussed, the purpose of the walking rule is to subject players to fatigue, which in turn may influence the outcome of tournaments. Even if the rule does serve that purpose, it is an uncontested finding of the District Court that Martin "easily endures greater fatigue even with a cart than his able-bodied competitors do by walking." 994 F. Supp., at 1252. The purpose of the walking rule is therefore not compromised in the slightest by allowing Martin to use a cart. A modification that provides an exception to a peripheral tournament rule without impairing its purpose cannot be said to "fundamentally alter" the tournament. What it can be said to do, on the other hand, is to allow Martin the chance to qualify for and compete in the athletic events petitioner offers to those members of the public who have the skill and desire to enter. That is exactly what the ADA requires.52 As a result, Martin's request for a waiver of the walking rule should have been granted. …

Scalia, J., filed a dissenting opinion, in which Thomas, J., joined.
In my view today's opinion exercises a benevolent compassion that the law does not place it within our power to impose. The judgment distorts the text of Title III, the structure of the ADA, and common sense. I respectfully dissent. …

The Court attacks this "fundamental alteration" analysis by asking two questions: first, whether the "essence" or an "essential aspect" of the sport of golf has been altered; and second, whether the change, even if not essential to the game, would give the disabled player an advantage over others and thereby "fundamentally alter the character of the competition." Ante, at 20-21. It answers no to both.

Before considering the Court's answer to the first question, it is worth pointing out that the assumption which underlies that question is false. Nowhere is it writ that PGA TOUR golf must be classic "essential" golf. Why cannot the PGA TOUR, if it wishes, promote a new game, with distinctive rules (much as the American League promotes a game of baseball in which the pitcher's turn at the plate can be taken by a "designated hitter")? If members of the public do not like the new rules-if they feel that these rules do not truly test the individual's skill at "real golf" (or the team's skill at "real baseball") they can withdraw their patronage. But the rules are the rules. They are (as in all games) entirely arbitrary, and there is no basis on which anyone-not even the Supreme Court of the United States-can pronounce one or another of them to be "nonessential" if the rulemaker (here the PGA TOUR) deems it to be essential.

If one assumes, however, that the PGA TOUR has some legal obligation to play classic, Platonic golf-and if one assumes the correctness of all the other wrong turns the Court has made to get to this point-then we Justices must confront what is indeed an awesome responsibility. It has been rendered the solemn duty of the Supreme Court of the United States, laid upon it by Congress in pursuance of the Federal Government's power "[t]o regulate

Commerce with foreign Nations, and among the several States," U.S. Const., Art. I, 8, cl. 3, to decide What Is Golf. I am sure that the Framers of the Constitution, aware of the 1457 edict of King James II of Scotland prohibiting golf because it interfered with the practice of archery, fully expected that sooner or later the paths of golf and government, the law and the links, would once again cross, and that the judges of this august Court would some day have to wrestle with that age-old jurisprudential question, for which their years of study in the law have so well prepared them: Is someone riding around a golf course from shot to shot really a golfer? The answer, we learn, is yes. The Court ultimately concludes, and it will henceforth be the Law of the Land, that walking is not a "fundamental" aspect of golf.

Either out of humility or out of self-respect (one or the other) the Court should decline to answer this incredibly difficult and incredibly silly question. To say that something is "essential" is ordinarily to say that it is necessary to the achievement of a certain object. But since it is the very nature of a game to have no object except amusement (that is what distinguishes games from productive activity), it is quite impossible to say that any of a game's arbitrary rules is "essential." Eighteen-hole golf courses, 10-foot-high basketball hoops, 90-foot baselines, 100-yard football fields-all are arbitrary and none is essential. The only support for any of them is tradition and (in more modern times) insistence by what has come to be regarded as the ruling body of the sport-both of which factors support the PGA TOUR's position in the present case. (Many, indeed, consider walking to be the central feature of the game of golf-hence Mark Twain's classic criticism of the sport: "a good walk spoiled.") I suppose there is some point at which the rules of a well-known game are changed to such a degree that no reasonable person would call it the same game. If the PGA TOUR competitors were required to dribble a large, inflated ball and put it through a round hoop, the game could no longer reasonably be called golf. But this criterion-destroying recognizability as the same generic game-is surely not the test of "essentialness" or "fundamentalness" that the Court applies, since it apparently thinks that merely changing the diameter of the cup might "fundamentally alter" the game of golf, ante, at 20.

Having concluded that dispensing with the walking rule would not violate federal-Platonic "golf" (and, implicitly, that it is federal-Platonic golf, and no other, that the PGA TOUR can insist upon) the Court moves on to the second part of its test: the competitive effects of waiving this nonessential rule. In this part of its analysis, the Court first finds that the effects of the change are "mitigated" by the fact that in the game of golf weather, a "lucky bounce," and "pure chance" provide different conditions for each competitor and individual ability may not "be the sole determinant of the outcome." Ante, at 25. I guess that is why those who follow professional golfing consider Jack Nicklaus the luckiest golfer of all time, only to be challenged of late by the phenomenal luck of Tiger Woods. The Court's empiricism is unpersuasive. "Pure chance" is randomly distributed among the players, but allowing respondent to use a cart gives him a "lucky" break every time he plays. Pure chance also only matters at the margin-a stroke here or there; the cart substantially improves this respondent's competitive prospects beyond a couple of strokes. But even granting that there are significant nonhuman variables affecting competition, that fact does not justify adding another variable that always favors one player.

In an apparent effort to make its opinion as narrow as possible, the Court relies upon the District Court's finding that even with a cart, respondent will be at least as fatigued as everyone else. Ante, at 28. This, the Court says, proves that competition will not be affected. Far from thinking that reliance on this finding cabins the effect of today's opinion, I think it will prove to be its most expansive and destructive feature. Because step one of the Court's two-part inquiry into whether a requested change in a sport will "fundamentally alter [its] nature," 12182(b)(2)(A)(ii), consists of an utterly unprincipled ontology of sports (pursuant to which the Court is not even sure whether golf's "essence" requires a 3-inch hole), there is every reason to think that in future cases involving requests for special treatment by would-be athletes the second step of the analysis will be determinative. In resolving that second step-

determining whether waiver of the "nonessential" rule will have an impermissible "competitive effect"-by measuring the athletic capacity of the requesting individual, and asking whether the special dispensation would do no more than place him on a par (so to speak) with other competitors, the Court guarantees that future cases of this sort will have to be decided on the basis of individualized factual findings. Which means that future cases of this sort will be numerous, and a rich source of lucrative litigation. One can envision the parents of a Little League player with attention deficit disorder trying to convince a judge that their son's disability makes it at least 25% more difficult to hit a pitched ball. (If they are successful, the only thing that could prevent a court order giving the kid four strikes would be a judicial determination that, in baseball, three strikes are metaphysically necessary, which is quite absurd.)

The statute, of course, provides no basis for this individualized analysis that is the Court's last step on a long and misguided journey. The statute seeks to assure that a disabled person's disability will not deny him equal access to (among other things) competitive sporting events-not that his disability will not deny him an equal chance to win competitive sporting events. The latter is quite impossible, since the very nature of competitive sport is the measurement, by uniform rules, of unevenly distributed excellence. This unequal distribution is precisely what determines the winners and losers-and artificially to "even out" that distribution, by giving one or another player exemption from a rule that emphasizes his particular weakness, is to destroy the game. That is why the "handicaps" that are customary in social games of golf-which, by adding strokes to the scores of the good players and subtracting them from scores of the bad ones, "even out" the varying abilities-are not used in professional golf. In the Court's world, there is one set of rules that is "fair with respect to the able-bodied" but "individualized" rules, mandated by the ADA, for "talented but disabled athletes." Ante, at 29. The ADA mandates no such ridiculous thing. Agility, strength, speed, balance, quickness of mind, steadiness of nerves, intensity of concentration-these talents are not evenly distributed. No wild-eyed dreamer has ever suggested that the managing bodies of the competitive sports that test precisely these qualities should try to take account of the uneven distribution of God-given gifts when writing and enforcing the rules of competition. And I have no doubt Congress did not authorize misty-eyed judicial supervision of such a revolution.

Goodridge v. Dept. of Public Health (2003)

A brief overview of the case: *In a landmark ruling on November 18, 2003, the Massachusetts Supreme Judicial Court ruled that the state may not deny the protections, benefits and obligations conferred by civil marriage to two individuals of the same-sex who wish to marry. Is it possible to decide whether the state should recognize same-sex marriage without taking sides in the moral and religious controversy over the purpose of marriage and the moral status of homosexuality? Did the court succeed in being neutral?*

Goodridge v. Department of Public Health (2003)
440 Mass. 309

MARSHALL, C.J. Marriage is a vital social institution. The exclusive commitment of two individuals to each other nurtures love and mutual support; it brings stability to our society. For those who choose to marry, and for their children, marriage provides an abundance of legal, financial, and social benefits. In return it imposes weighty legal, financial, and social obligations. The question before us is whether, consistent with the Massachusetts Constitution, the Commonwealth may deny the protections, benefits, and obligations conferred by civil marriage to two individuals of the same sex who wish to marry. We conclude that it may not. The Massachusetts Constitution affirms the dignity and equality of all individuals. It forbids the creation of second class citizens. In reaching our conclusion we have given full deference to the arguments made by the Commonwealth. But it has failed to identify any constitutionally adequate reason for denying civil marriage to same-sex couples.

We are mindful that our decision marks a change in the history of our marriage law. Many people hold deep-seated religious, moral, and ethical convictions that marriage should be limited to the union of one man and one woman, and that homosexual conduct is immoral. Many hold equally strong religious, moral, and ethical convictions that same-sex couples are entitled to be married, and that homosexual persons should be treated no differently than their heterosexual neighbors. Neither view answers the question before us. Our concern is with the Massachusetts Constitution as a charter of governance for every person properly within its reach. “Our obligation is to define the liberty of all, not to mandate our own moral code.” Lawrence v. Texas, 123 S. Ct. 2472, 2480 (2003) (Lawrence), quoting Planned Parenthood of Southeastern Pa. v. Casey, 505 U.S. 833, 850 (1992). …

Barred access to the protections, benefits, and obligations of civil marriage, a person who enters into an intimate, exclusive union with another of the same sex is arbitrarily deprived of membership in one of our community’s most rewarding and cherished institutions. That exclusion is incompatible with the constitutional principles of respect for individual autonomy and equality under law. …

The plaintiffs’ claim that the marriage restriction violates the Massachusetts Constitution can be analyzed in two ways. Does it offend the Constitution’s guarantees of equality before the law? Or do the liberty and due process provisions of the Massachusetts Constitution secure the plaintiffs’ right to marry their chosen partner? …
We begin by considering the nature of civil marriage itself. Simply put, the government creates civil marriage. … In a real sense, there are three partners to every civil marriage: two willing spouses and an approving State. See DeMatteo v. DeMatteo, 436 Mass. 18 , 31 (2002) (“Marriage is not a mere contract between two parties but a legal status from which certain rights and obligations arise”); Smith v. Smith, 171 Mass. 404 , 409 (1898) (on marriage, the parties “assume[] new relations to each other and to the State”). See also French v. McAnarney, 290 Mass. 544 , 546

(1935). While only the parties can mutually assent to marriage, the terms of the marriage – who may marry and what obligations, benefits, and liabilities attach to civil marriage – are set by the Commonwealth. Conversely, while only the parties can agree to end the marriage (absent the death of one of them or a marriage void ab initio), the Commonwealth defines the exit terms. See G. L. c. 208.

Civil marriage is created and regulated through exercise of the police power. See Commonwealth v. Stowell, 389 Mass. 171 , 175 (1983) (regulation of marriage is properly within the scope of the police power). “Police power” (now more commonly termed the State’s regulatory authority) is an old fashioned term for the Commonwealth’s lawmaking authority, as bounded by the liberty and equality guarantees of the Massachusetts Constitution and its express delegation of power from the people to their government. In broad terms, it is the Legislature’s power to enact rules to regulate conduct, to the extent that such laws are “necessary to secure the health, safety, good order, comfort, or general welfare of the community” (citations omitted). Opinion of the Justices, 341 Mass. 760 , 785 (1960). [Note 12] See Commonwealth v. Alger, 7 Cush. 53 , 85 (1851).

Without question, civil marriage enhances the “welfare of the community.” It is a “social institution of the highest importance.” French v. McAnarney, supra. Civil marriage anchors an ordered society by encouraging stable relationships over transient ones. It is central to the way the Commonwealth identifies individuals, provides for the orderly distribution of property, ensures that children and adults are cared for and supported whenever possible from private rather than public funds, and tracks important epidemiological and demographic data.

Marriage also bestows enormous private and social advantages on those who choose to marry. Civil marriage is at once a deeply personal commitment to another human being and a highly public celebration of the ideals of mutuality, companionship, intimacy, fidelity, and family. “It is an association that promotes a way of life, not causes; a harmony in living, not political faiths; a bilateral loyalty, not commercial or social projects.” Griswold v. Connecticut, 381 U.S. 479, 486 (1965). Because it fulfils yearnings for security, safe haven, and connection that express our common humanity, civil marriage is an esteemed institution, and the decision whether and whom to marry is among life’s momentous acts of self-definition. …

For decades, indeed centuries, in much of this country (including Massachusetts) no lawful marriage was possible between white and black Americans. That long history availed not when the Supreme Court of California held in 1948 that a legislative prohibition against interracial marriage violated the due process and equality guarantees of the Fourteenth Amendment, Perez v. Sharp, 32 Cal. 2d 711, 728 (1948), or when, nineteen years later, the United States Supreme Court also held that a statutory bar to interracial marriage violated the Fourteenth Amendment, Loving v. Virginia, 388 U.S. 1 (1967). [Note 16] As both Perez and Loving make clear, the right to marry means little if it does not include the right to marry the person of one’s choice, subject to appropriate government restrictions in the interests of public health, safety, and welfare. See Perez v. Sharp, supra at 717 (“the essence of the right to marry is freedom to join in marriage with the person of one’s choice”). See also Loving v. Virginia, supra at 12. In this case, as in Perez and Loving, a statute deprives individuals of access to an institution of fundamental legal, personal, and social significance – the institution of marriage – because of a single trait: skin color in Perez and Loving, sexual orientation here. As it did in Perez and Loving, history must yield to a more fully developed understanding of the invidious quality of the discrimination. [Note 17] …

The individual liberty and equality safeguards of the Massachusetts Constitution protect both “freedom from” unwarranted government intrusion into protected spheres of life and “freedom to” partake in benefits created by the

State for the common good. See Bachrach v. Secretary of the Commonwealth, 382 Mass. 268 , 273 (1981); Dalli v. Board of Educ., 358 Mass. 753 , 759 (1971). Both freedoms are involved here. Whether and whom to marry, how to express sexual intimacy, and whether and how to establish a family – these are among the most basic of every individual's liberty and due process rights. See, e.g., Lawrence, supra at 2481; Planned Parenthood of Southeastern Pa. v. Casey, 505 U.S. 833, 851 (1992); Zablocki v. Redhail, 434 U.S. 374, 384 (1978); Roe v. Wade, 410 U.S. 113, 152-153 (1973); Eisenstadt v. Baird, 405 U.S. 438, 453 (1972); Loving v. Virginia, supra. And central to personal freedom and security is the assurance that the laws will apply equally to persons in similar situations. "Absolute equality before the law is a fundamental principle of our own Constitution." Opinion of the Justices, 211 Mass. 618 , 619 (1912). The liberty interest in choosing whether and whom to marry would be hollow if the Commonwealth could, without sufficient justification, foreclose an individual from freely choosing the person with whom to share an exclusive commitment in the unique institution of civil marriage. ….

The department posits three legislative rationales for prohibiting same-sex couples from marrying: (1) providing a "favorable setting for procreation"; (2) ensuring the optimal setting for child rearing, which the department defines as "a two-parent family with one parent of each sex"; and (3) preserving scarce State and private financial resources. We consider each in, turn.

The judge in the Superior Court endorsed the first rationale, holding that "the state's interest in regulating marriage is based on the traditional concept that marriage's primary purpose is procreation." This is incorrect. Our laws of civil marriage do not privilege procreative heterosexual intercourse between married people above every other form of adult intimacy and every other means of creating a family. General Laws c. 207 contains no requirement that the applicants for a marriage license attest to their ability or intention to conceive children by coitus. Fertility is not a condition of marriage, nor is it grounds for divorce. People who have never consummated their marriage, and never plan to, may be and stay married. See Franklin v. Franklin, 154 Mass. 515 , 516 (1891) ("The consummation of a marriage by coition is not necessary to its validity"). [Note 22] People who cannot stir from their deathbed may marry. See G. L. c. 207, s. 28A. While it is certainly true that many, perhaps most, married couples have children together (assisted or unassisted), it is the exclusive and permanent commitment of the marriage partners to one another, not the begetting of children, that is the sine qua non of civil marriage. [Note 23]

Moreover, the Commonwealth affirmatively facilitates bringing children into a family regardless of whether the intended parent is married or unmarried, whether the child is adopted or born into a family, whether assistive technology was used to conceive the child, and whether the parent or her partner is heterosexual, homosexual, or bisexual. [Note 24] If procreation were a necessary component of civil marriage, our statutes would draw a tighter circle around the permissible bounds of nonmarital child bearing and the creation of families by noncoital means. The attempt to isolate procreation as "the source of a fundamental right to marry," post at 370 (Cordy, J., dissenting), overlooks the integrated way in which courts have examined the complex and overlapping realms of personal autonomy, marriage, family life, and child rearing. Our jurisprudence recognizes that, in these nuanced and fundamentally private areas of life, such a narrow focus is inappropriate.

The "marriage is procreation" argument singles out the one unbridgeable difference between same-sex and opposite-sex couples, and transforms that difference into the essence of legal marriage. Like "Amendment 2" to the Constitution of Colorado, which effectively denied homosexual persons equality under the law and full access to the political process, the marriage restriction impermissibly "identifies persons by a single trait and then denies them protection across the board." Romer v. Evans, 517 U.S. 620, 633 (1996). In so doing, the State's action confers an

official stamp of approval on the destructive stereotype that same-sex relationships are inherently unstable and inferior to opposite-sex relationships and are not worthy of respect. [Note 25]

The department's first stated rationale, equating marriage with unassisted heterosexual procreation, shades imperceptibly into its second: that confining marriage to opposite-sex couples ensures that children are raised in the "optimal" setting. Protecting the welfare of children is a paramount State policy. Restricting marriage to opposite-sex couples, however, cannot plausibly further this policy. … Moreover, the department readily concedes that people in same-sex couples may be "excellent" parents. These couples (including four of the plaintiff couples) have children for the reasons others do – to love them, to care for them, to nurture them. But the task of child rearing for same-sex couples is made infinitely harder by their status as outliers to the marriage laws. …

No one disputes that the plaintiff couples are families, that many are parents, and that the children they are raising, like all children, need and should have the fullest opportunity to grow up in a secure, protected family unit. Similarly, no one disputes that, under the rubric of marriage, the State provides a cornucopia of substantial benefits to married parents and their children. The preferential treatment of civil marriage reflects the Legislature's conclusion that marriage "is the foremost setting for the education and socialization of children" precisely because it "encourages parents to remain committed to each other and to their children as they grow." Post at 383 (Cordy, J., dissenting). In this case, we are confronted with an entire, sizeable class of parents raising children who have absolutely no access to civil marriage and its protections because they are forbidden from procuring a marriage license. It cannot be rational under our laws, and indeed it is not permitted, to penalize children by depriving them of State benefits because the State disapproves of their parents' sexual orientation. …

The department suggests additional rationales for prohibiting same-sex couples from marrying, which are developed by some amici. It argues that broadening civil marriage to include same-sex couples will trivialize or destroy the institution of marriage as it has historically been fashioned. Certainly our decision today marks a significant change in the definition of marriage as it has been inherited from the common law, and understood by many societies for centuries. But it does not disturb the fundamental value of marriage in our society.

Here, the plaintiffs seek only to be married, not to undermine the institution of civil marriage. They do not want marriage abolished. They do not attack the binary nature of marriage, the consanguinity provisions, or any of the other gate-keeping provisions of the marriage licensing law. Recognizing the right of an individual to marry a person of the same sex will not diminish the validity or dignity of opposite-sex marriage, any more than recognizing the right of an individual to marry a person of a different race devalues the marriage of a person who marries someone of her own race. [Note 28] If anything, extending civil marriage to same-sex couples reinforces the importance of marriage to individuals and communities. That same-sex couples are willing to embrace marriage's solemn obligations of exclusivity, mutual support, and commitment to one another is a testament to the enduring place of marriage in our laws and in the human spirit. [Note 29] …

The department has had more than ample opportunity to articulate a constitutionally adequate justification for limiting civil marriage to opposite-sex unions. It has failed to do so. The department has offered purported justifications for the civil marriage restriction that are starkly at odds with the comprehensive network of vigorous, gender-neutral laws promoting stable families and the best interests of children. It has failed to identify any relevant characteristic that would justify shutting the door to civil marriage to a person who wishes to marry someone of the same sex.

The marriage ban works a deep and scarring hardship on a very real segment of the community for no rational reason. The absence of any reasonable relationship between, on the one hand, an absolute disqualification of same-sex couples who wish to enter into civil marriage and, on the other, protection of public health, safety, or general welfare, suggests that the marriage restriction is rooted in persistent prejudices against persons who are (or who are believed to be) homosexual. [Note 33] “The Constitution cannot control such prejudices but neither can it tolerate them. Private biases may be outside the reach of the law, but the law cannot, directly or indirectly, give them effect.” Palmore v. Sidoti, 466 U.S. 429, 433 (1984) (construing Fourteenth Amendment). Limiting the protections, benefits, and obligations of civil marriage to opposite-sex couples violates the basic premises of individual liberty and equality under law protected by the Massachusetts Constitution. …