COMMENTARIES

ON THE

LAWS

OF

ENGLAND

BOOK THE FIRST

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SECTION THE SECOND.

OF THE NATURE OF LAWS IN GENERAL.

LAW, in it's moſt general and comprehenſive ſenſe, ſignifies a rule of action; and is applied indiſcriminately to all kinds of action, whether animate, or inanimate, rational or irrational. Thus we ſay, the laws of motion, of gravitation, of optics, or mechanics, as well as the laws of nature and of nations. And it is that rule of action, which is preſcribed by ſome ſuperior, and which the inferior is bound to obey.

THUS when the ſupreme being formed the univerſe, and created matter out of nothing, he impreſſed certain principles upon that matter, from which it can never depart, and without which it would ceaſe to be. When he put that matter into motion, he eſtabliſhed certain laws of motion, to which all moveable bodies muſt conform. And, to deſcend from the greateſt operations to the ſmalleſt, when a workman forms a clock, or other piece of mechaniſm, he eſtabliſhes at his own pleaſure certain arbitrary laws for it's direction; as that the hand ſhall deſcribe a given ſpace in a given time; to which law as long as the work conforms, ſo long it continues in perfection, and anſwers the end of it's formation.

If we farther advance, from mere inactive matter to vegetable and animal life, we ſhall find them ſtill governed by laws; more numerous indeed, but equally fixed and invariable. The whole progreſ of plants, from the ſeed to the root, and from thence to the ſeed again; --- the method of animal nutrition, digeſtion, ſecretion,

ſecretion, and all other branches of vital oeconomy; --- are not left to chance, or the will of the creature itſelf, but are performed in a wondrous involuntary manner, and guided by unerring rules laid down by the great creator.

THIS then is the general ſignification of law, a rule of action dictated by ſome ſuperior being; and in thoſe creatures that have neither the power to think, nor to will, ſuch laws muſt be invariably obeyed, ſo long as the creature itſelf ſubſiſts, for it's exiſtence depends on that obedience. But laws, in their more confined ſenſe, and in which it is our preſent buſineſs to conſider them, denote the rules, not of action in general, but of *human* action or conduct: that is, the precepts by which man, the nobleſt of all ſublunary beings, a creature endowed with both reaſon and freewill, is commanded to make uſe of thoſe faculties in the general regulation of his behaviour.

MAN, conſidered as a creature, muſt neceſſarily be ſubject to the laws of his creator, for he is entirely a dependent being. A being, independent of any other, has no rule to purſue, but ſuch as he preſcribes to himſelf; but a ſtate of dependance will inevitably oblige the inferior to take the will of him, on whom he depends, as the rule of his conduct: not indeed in every particular, but in all thoſe points wherein his dependance conſiſts. This principle therefore has more or leſs extent and effect, in proportion as the ſuperiority of the one and the dependance of the other is greater or leſs, abſolute or limited. And conſequently as man depends abſolutely upon his maker for every thing, it is neceſſary that he ſhould in all points conform to his maker's will.

THIS will of his maker is called the law of nature. For as God, when he created matter, and endued it with a principle of mobility, eſtabliſhed certain rules for the perpetual direction of that motion; ſo, when he created man, and endued him with freewill to conduct himſelf in all parts of life, he laid down certain

tain immutable laws of human nature, whereby that freewill is in ſome degree regulated and reſtrained, and gave him alſo the faculty of reaſon to diſcover the purport of thoſe laws.

CONSIDERING the creator only as a being of infinite *power*, he was able unqueſtionably to have preſcribed whatever laws he pleaſed to his creature, man, however unjuſt or ſevere. But as he is alſo a being of infinite *wiſdom*, he has laid down only ſuch laws as were founded in thoſe relations of juſtice, that exiſted in the nature of things antecedent to any poſitive precept. Theſe are the eternal, immutable laws of good and evil, to which the creator himſelf in all his diſpenſations conforms; and which he has enabled human reaſon to diſcover, ſo far as they are neceſſary for the conduct of human actions. Such among others are theſe principles: that we ſhould live honeſtly, ſhould hurt nobody, and ſhould render to every one it's due; to which three general precepts Juſtinian[a] has reduced the whole doctrine of law.

BUT if the diſcovery of theſe firſt principles of the law of nature depended only upon the due exertion of right reaſon, and could not otherwiſe be attained than by a chain of metaphyſical diſquiſitions, mankind would have wanted ſome inducement to have quickened their inquiries, and the greater part of the world would have reſted content in mental indolence, and ignorance it's inſeparable companion. As therefore the creator is a being, not only of infinite *power*, and *wiſdom*, but alſo of infinite *goodneſs*, he has been pleaſed ſo to contrive the conſtitution and frame of humanity, that we ſhould want no other prompter to enquire after and purſue the rule of right, but only our own ſelf-love, that univerſal principle of action. For he has ſo intimately connected, ſo inſeparably interwoven the laws of eternal juſtice with the happineſs of each individual, that the latter cannot be attained but by obſerving the former; and, if the former be punctually obeyed, it cannot but induce the latter. In conſequence of which mutual connection of juſtice and human felicity, he has not per-

[a] *Juris praecepta ſunt haec, honeſte vivere, alterum non laedere, ſuum cuique tribuere. Inſt.* 1. 1. 3.

plexed

plexed the law of nature with a multitude of abſtracted rules and precepts, referring merely to the fitneſs or unfitneſs of things, as ſome have vainly ſurmiſed; but has graciouſly reduced the rule of obedience to this one paternal precept, "that man ſhould "purſue his own happineſs." This is the foundation of what we call ethics, or natural law. For the ſeveral articles into which it is branched in our ſyſtems, amount to no more than demonſtrating, that this or that action tends to man's real happineſs, and therefore very juſtly concluding that the performance of it is a part of the law of nature; or, on the other hand, that this or that action is deſtructive of man's real happineſs, and therefore that the law of nature forbids it.

THIS law of nature, being co-eval with mankind and dictated by God himſelf, is of courſe ſuperior in obligation to any other. It is binding over all the globe, in all countries, and at all times: no human laws are of any validity, if contrary to this; and ſuch of them as are valid derive all their force, and all their authority, mediately or immediately, from this original.

BUT in order to apply this to the particular exigencies of each individual, it is ſtill neceſſary to have recourſe to reaſon; whoſe office it is to diſcover, as was before obſerved, what the law of nature directs in every circumſtance of life; by conſidering, what method will tend the moſt effectually to our own ſubſtantial happineſs. And if our reaſon were always, as in our firſt anceſtor before his tranſgreſſion, clear and perfect, unruffled by paſſions, unclouded by prejudice, unimpaired by diſeaſe or intemperance, the taſk would be pleaſant and eaſy; we ſhould need no other guide but this. But every man now finds the contrary in his own experience; that his reaſon is corrupt, and his underſtanding full of ignorance and error.

THIS has given manifold occaſion for the benign interpoſition of divine providence; which, in compaſſion to the frailty, the imperfection, and the blindneſs of human reaſon, hath been

 pleaſed,

pleafed, at fundry times and in divers manners, to difcover and enforce it's laws by an immediate and direct revelation. The doctrines thus delivered we call the revealed or divine law, and they are to be found only in the holy fcriptures. Thefe precepts, when revealed, are found upon comparifon to be really a part of the original law of nature, as they tend in all their confequences to man's felicity. But we are not from thence to conclude that the knowlege of thefe truths was attainable by reafon, in it's prefent corrupted ftate; fince we find that, until they were revealed, they were hid from the wifdom of ages. As then the moral precepts of this law are indeed of the fame original with thofe of the law of nature, fo their intrinfic obligation is of equal ftrength and perpetuity. Yet undoubtedly the revealed law is (humanly fpeaking) of infinitely more authority than what we generally call the natural law. Becaufe one is the law of nature, expreffly declared fo to be by God himfelf; the other is only what, by the affiftance of human reafon, we imagine to be that law. If we could be as certain of the latter as we are of the former, both would have an equal authority; but, till then, they can never be put in any competition together.

UPON thefe two foundations, the law of nature and the law of revelation, depend all human laws; that is to fay, no human laws fhould be fuffered to contradict thefe. There is, it is true, a great number of indifferent points, in which both the divine law and the natural leave a man at his own liberty; but which are found neceffary for the benefit of fociety to be reftrained within certain limits. And herein it is that human laws have their greateft force and efficacy; for, with regard to fuch points as are not indifferent, human laws are only declaratory of, and act in fubordination to, the former. To inftance in the cafe of murder: this is expreffly forbidden by the divine, and demonftrably by the natural law; and from thefe prohibitions arifes the true unlawfulnefs of this crime. Thofe human laws, that annex a punifhment to it, do not at all increafe it's moral guilt, or fuperadd any frefh obligation *in foro confcientiae* to abftain from

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it's perpetration. Nay, if any human law ſhould allow or injoin us to commit it, we are bound to tranſgreſs that human law, or elſe we muſt offend both the natural and the divine. But with regard to matters that are in themſelves indifferent, and are not commanded or forbidden by thoſe ſuperior laws; ſuch, for inſtance, as exporting of wool into foreign countries; here the inferior legiſlature has ſcope and opportunity to interpoſe, and to make that action unlawful which before was not ſo.

IF man were to live in a ſtate of nature, unconnected with other individuals, there would be no occaſion for any other laws, than the law of nature, and the law of God. Neither could any other law poſſibly exiſt; for a law always ſuppoſes ſome ſuperior who is to make it; and in a ſtate of nature we are all equal, without any other ſuperior but him who is the author of our being. But man was formed for ſociety; and, as is demonſtrated by the writers on this ſubject[b], is neither capable of living alone, nor indeed has the courage to do it. However, as it is impoſſible for the whole race of mankind to be united in one great ſociety, they muſt neceſſarily divide into many; and form ſeparate ſtates, commonwealths, and nations; entirely independent of each other, and yet liable to a mutual intercourſe. Hence ariſes a third kind of law to regulate this mutual intercourſe, called "the law of "nations;" which, as none of theſe ſtates will acknowlege a ſuperiority in the other, cannot be dictated by either; but depends entirely upon the rules of natural law, or upon mutual compacts, treaties, leagues, and agreements between theſe ſeveral communities: in the conſtruction alſo of which compacts we have no other rule to reſort to, but the law of nature; being the only one to which both communities are equally ſubject: and therefore the civil law[c] very juſtly obſerves, that *quod naturalis ratio inter omnes homines conſtituit, vocatur jus gentium.*

THUS much I thought it neceſſary to premiſe concerning the law of nature, the revealed law, and the law of nations, before

[b] Puffendorf, *l.* 7. *c.* 1. compared with Barbeyrac's commentary.

[c] *Ff.* 1. 1. 9.

I proceeded to treat more fully of the principal ſubject of this ſection, municipal or civil law; that is, the rule by which particular diſtricts, communities, or nations are governed; being thus defined by Juſtinian[d], "*jus civile eſt quod quiſque ſibi populus con-* "*ſtituit.*" I call it *municipal* law, in compliance with common ſpeech; for, tho' ſtrictly that expreſſion denotes the particular cuſtoms of one ſingle *municipium* or free town, yet it may with ſufficient propriety be applied to any one ſtate or nation, which is governed by the ſame laws and cuſtoms.

MUNICIPAL law, thus underſtood, is properly defined to be "a rule of civil conduct preſcribed by the ſupreme power in "a ſtate, commanding what is right and prohibiting what is "wrong." Let us endeavour to explain it's ſeveral properties, as they ariſe out of this definition.

AND, firſt, it is a *rule*; not a tranſient ſudden order from a ſuperior to or concerning a particular perſon; but ſomething permanent, uniform, and univerſal. Therefore a particular act of the legiſlature to confiſcate the goods of Titius, or to attaint him of high treaſon, does not enter into the idea of a municipal law: for the operation of this act is ſpent upon Titius only, and has no relation to the community in general; it is rather a ſentence than a law. But an act to declare that the crime of which Titius is accuſed ſhall be deemed high treaſon; this has permanency, uniformity, and univerſality, and therefore is properly a *rule*. It is alſo called a *rule*, to diſtinguiſh it from *advice* or *counſel*, which we are at liberty to follow or not, as we ſee proper; and to judge upon the reaſonableneſs or unreaſonableneſs of the thing adviſed. Whereas our obedience to the *law* depends not upon *our approbation*, but upon the *maker's will*. Counſel is only matter of perſuaſion, law is matter of injunction; counſel acts only upon the willing, law upon the unwilling alſo.

[d] *Inſt.* 1. 2. 1.

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IT is alſo called a *rule*, to diſtinguiſh it from a *compact* or *agreement*; for a compact is a promiſe proceeding *from* us, law is a command directed *to* us. The language of a compact is, "I "will, or will not, do this;" that of a law is, "thou ſhalt, or "ſhalt not, do it." It is true there is an obligation which a compact carries with it, equal in point of conſcience to that of a law; but then the original of the obligation is different. In compacts, we ourſelves determine and promiſe what ſhall be done, before we are obliged to do it; in laws, we are obliged to act, without ourſelves determining or promiſing any thing at all. Upon theſe accounts law is defined to be "*a rule*."

MUNICIPAL law is alſo "a rule *of civil conduct*." This diſtinguiſhes municipal law from the natural, or revealed; the former of which is the rule of *moral* conduct, and the latter not only the rule of moral conduct, but alſo the rule of faith. Theſe regard man as a creature, and point out his duty to God, to himſelf, and to his neighbour, conſidered in the light of an individual. But municipal or civil law regards him alſo as a citizen, and bound to other duties towards his neighbour, than thoſe of mere nature and religion: duties, which he has engaged in by enjoying the benefits of the common union; and which amount to no more, than that he do contribute, on his part, to the ſubſiſtence and peace of the ſociety.

IT is likewiſe "a rule *preſcribed*." Becauſe a bare reſolution, confined in the breaſt of the legiſlator, without manifeſting itſelf by ſome external ſign, can never be properly a law. It is requiſite that this reſolution be notified to the people who are to obey it. But the manner in which this notification is to be made, is matter of very great indifference. It may be notified by univerſal tradition and long practice, which ſuppoſes a previous publication, and is the caſe of the common law of England. It may be notified, *viva voce*, by officers appointed for that purpoſe, as is done with regard to proclamations, and ſuch acts of parliament

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as are appointed to be publicly read in churches and other aſſemblies. It may laſtly be notified by writing, printing, or the like; which is the general courſe taken with all our acts of parliament. Yet, whatever way is made uſe of, it is incumbent on the promulgators to do it in the moſt public and perſpicuous manner; not like Caligula, who (according to Dio Caſſius) wrote his laws in a very ſmall character, and hung them up upon high pillars, the more effectually to enſnare the people. There is ſtill a more unreaſonable method than this, which is called making of laws *ex poſt facto*; when *after* an action is committed, the legiſlator then for the firſt time declares it to have been a crime, and inflicts a puniſhment upon the perſon who has committed it; here it is impoſſible that the party could foreſee that an action, innocent when it was done, ſhould be afterwards converted to guilt by a ſubſequent law; he had therefore no cauſe to abſtain from it; and all puniſhment for not abſtaining muſt of conſequence be cruel and unjuſt[e]. All laws ſhould be therefore made to commence *in futuro*, and be notified before their commencement; which is implied in the term "*preſcribed*." But when this rule is in the uſual manner notified, or preſcribed, it is then the ſubject's buſineſs to be thoroughly acquainted therewith; for if ignorance, of what he *might* know, were admitted as a legitimate excuſe, the laws would be of no effect, but might always be eluded with impunity.

BUT farther: municipal law is "a rule of civil conduct preſcribed *by the ſupreme power in a ſtate*." For legiſlature, as was before obſerved, is the greateſt act of ſuperiority that can be exerciſed by one being over another. Wherefore it is requiſite to the very eſſence of a law, that it be made by the ſupreme power. Sovereignty and legiſlature are indeed convertible terms; one cannot ſubſiſt without the other.

[e] Such laws among the Romans were denominated *privilegia*, or private laws, of which Cicero *de leg*. 3. 19. and in his oration *pro domo*, 17. thus ſpeaks; "*Vetant leges ſacratae, vetant duodecim tabulae, leges privatis hominibus irrogari; id enim eſt privilegium. Nemo unquam tulit, nihil eſt crudelius, nihil perniciofius, nihil quod minus haec civitas ferre poſſit.*"

THIS

THIS will naturally lead us into a ſhort enquiry concerning the nature of ſociety and civil government; and the natural, inherent right that belongs to the ſovereignty of a ſtate, wherever that ſovereignty be lodged, of making and enforcing laws.

THE only true and natural foundations of ſociety are the wants and the fears of individuals. Not that we can believe, with ſome theoretical writers, that there ever was a time when there was no ſuch thing as ſociety; and that, from the impulſe of reaſon, and through a ſenſe of their wants and weakneſſes, individuals met together in a large plain, entered into an original contract, and choſe the talleſt man preſent to be their governor. This notion, of an actually exiſting unconnected ſtate of nature, is too wild to be ſeriouſly admitted; and beſides it is plainly contradictory to the revealed accounts of the primitive origin of mankind, and their preſervation two thouſand years afterwards; both which were effected by the means of ſingle families. Theſe formed the firſt ſociety, among themſelves; which every day extended it's limits, and when it grew too large to ſubſiſt with convenience in that paſtoral ſtate, wherein the patriarchs appear to have lived, it neceſſarily ſubdivided itſelf by various migrations into more. Afterwards, as agriculture increaſed, which employs and can maintain a much greater number of hands, migrations became leſs frequent; and various tribes, which had formerly ſeparated, reunited again; ſometimes by compulſion and conqueſt, ſometimes by accident, and ſometimes perhaps by compact. But though ſociety had not it's formal beginning from any convention of individuals, actuated by their wants and their fears; yet it is the *ſenſe* of their weakneſs and imperfection that *keeps* mankind together; that demonſtrates the neceſſity of this union; and that therefore is the ſolid and natural foundation, as well as the cement, of ſociety. And this is what we mean by the original contract of ſociety; which, though perhaps in no inſtance it has ever been formally expreſſed at the firſt inſtitution of a ſtate, yet in nature and reaſon muſt always be underſtood and implied, in

in the very act of aſſociating together: namely, that the whole ſhould protect all it's parts, and that every part ſhould pay obedience to the will of the whole; or, in other words, that the community ſhould guard the rights of each individual member, and that (in return for this protection) each individual ſhould ſubmit to the laws of the community; without which ſubmiſſion of all it was impoſſible that protection could be certainly extended to any.

FOR when ſociety is once formed, government reſults of courſe, as neceſſary to preſerve and to keep that ſociety in order. Unleſs ſome ſuperior were conſtituted, whoſe commands and deciſions all the members are bound to obey, they would ſtill remain as in a ſtate of nature, without any judge upon earth to define their ſeveral rights, and redreſs their ſeveral wrongs. But, as all the members of ſociety are naturally equal, it may be aſked, in whoſe hands are the reins of government to be entruſted? To this the general anſwer is eaſy; but the application of it to particular caſes has occaſioned one half of thoſe miſchiefs which are apt to proceed from miſguided political zeal. In general, all mankind will agree that government ſhould be repoſed in ſuch perſons, in whom thoſe qualities are moſt likely to be found, the perfection of which are among the attributes of him who is emphatically ſtiled the ſupreme being; the three grand requiſites, I mean, of wiſdom, of goodneſs, and of power: wiſdom, to diſcern the real intereſt of the community; goodneſs, to endeavour always to purſue that real intereſt; and ſtrength, or power, to carry this knowlege and intention into action. Theſe are the natural foundations of ſovereignty, and theſe are the requiſites that ought to be found in every well conſtituted frame of government.

HOW the ſeveral forms of government we now ſee in the world at firſt actually began, is matter of great uncertainty, and has occaſioned infinite diſputes. It is not my buſineſs or intention to enter into any of them. However they began, or by what

what right ſoever they ſubſiſt, there is and muſt be in all of them a ſupreme, irreſiſtible, abſolute, uncontrolled authority, in which the *jura ſummi imperii*, or the rights of ſovereignty, reſide. And this authority is placed in thoſe hands, wherein (according to the opinion of the founders of ſuch reſpective ſtates, either expreſſly given, or collected from their tacit approbation) the qualities requiſite for ſupremacy, wiſdom, goodneſs, and power, are the moſt likely to be found.

THE political writers of antiquity will not allow more than three regular forms of government; the firſt, when the ſovereign power is lodged in an aggregate aſſembly conſiſting of all the members of a community, which is called a democracy; the ſecond, when it is lodged in a council, compoſed of ſelect members, and then it is ſtiled an ariſtocracy; the laſt, when it is entruſted in the hands of a ſingle perſon, and then it takes the name of a monarchy. All other ſpecies of government, they ſay, are either corruptions of, or reducible to, theſe three.

BY the ſovereign power, as was before obſerved, is meant the making of laws; for wherever that power reſides, all others muſt conform to, and be directed by it, whatever appearance the outward form and adminiſtration of the government may put on. For it is at any time in the option of the legiſlature to alter that form and adminiſtration by a new edict or rule, and to put the execution of the laws into whatever hands it pleaſes: and all the other powers of the ſtate muſt obey the legiſlative power in the execution of their ſeveral functions, or elſe the conſtitution is at an end.

IN a democracy, where the right of making laws reſides in the people at large, public virtue, or goodneſs of intention, is more likely to be found, than either of the other qualities of government. Popular aſſemblies are frequently fooliſh in their contrivance, and weak in their execution; but generally mean to do the thing that is right and juſt, and have always a degree of patriotiſm

triotiſm or public ſpirit. In ariſtocracies there is more wiſdom to be found, than in the other frames of government; being compoſed, or intended to be compoſed, of the moſt experienced citizens; but there is leſs honeſty than in a republic, and leſs ſtrength than in a monarchy. A monarchy is indeed the moſt powerful of any, all the ſinews of government being knit together, and united in the hand of the prince; but then there is imminent danger of his employing that ſtrength to improvident or oppreſſive purpoſes.

THUS theſe three ſpecies of government have, all of them, their ſeveral perfections and imperfections. Democracies are uſually the beſt calculated to direct the end of a law; ariſtocracies to invent the means by which that end ſhall be obtained; and monarchies to carry thoſe means into execution. And the antients, as was obſerved, had in general no idea of any other permanent form of government but theſe three; for though Cicero[f] declares himſelf of opinion, "*eſſe optime conſtitutam rem-*"*publicam, quae ex tribus generibus illis, regali, optimo, et populari,* "*ſit modice confuſa*;" yet Tacitus treats this notion of a mixed government, formed out of them all, and partaking of the advantages of each, as a viſionary whim; and one that, if effected, could never be laſting or ſecure[g].

BUT happily for us of this iſland, the Britiſh conſtitution has long remained, and I truſt will long continue, a ſtanding exception to the truth of this obſervation. For, as with us the executive power of the laws is lodged in a ſingle perſon, they have all the advantages of ſtrength and diſpatch, that are to be found in the moſt abſolute monarchy; and, as the legiſlature of the kingdom is entruſted to three diſtinct powers, entirely independent of each other; firſt, the king; ſecondly, the lords ſpiritual and temporal, which is an ariſtocratical aſſembly of perſons

[f] In his fragments *de rep. l.* 2.

[g] "*Cunctas nationes et urbes populus, aut* "*primores, aut ſinguli regunt: delecta ex his,* "*et conſtituta reipublicae forma laudari facilius* "*quam evenire, vel, ſi evenit, haud diuturna* "*eſſe poteſt.*" *Ann. l.* 4.

ſelected

ſelected for their piety, their birth, their wiſdom, their valour, or their property; and, thirdly, the houſe of commons, freely choſen by the people from among themſelves, which makes it a kind of democracy; as this aggregate body, actuated by different ſprings, and attentive to different intereſts, compoſes the Britiſh parliament, and has the ſupreme diſpoſal of every thing; there can no inconvenience be attempted by either of the three branches, but will be withſtood by one of the other two; each branch being armed with a negative power, ſufficient to repel any innovation which it ſhall think inexpedient or dangerous.

HERE then is lodged the ſovereignty of the Britiſh conſtitution; and lodged as beneficially as is poſſible for ſociety. For in no other ſhape could we be ſo certain of finding the three great qualities of government ſo well and ſo happily united. If the ſupreme power were lodged in any one of the three branches ſeparately, we muſt be expoſed to the inconveniences of either abſolute monarchy, ariſtocracy, or democracy; and ſo want two of the three principal ingredients of good polity, either virtue, wiſdom, or power. If it were lodged in any two of the branches; for inſtance, in the king and houſe of lords, our laws might be providently made, and well executed, but they might not always have the good of the people in view: if lodged in the king and commons, we ſhould want that circumſpection and mediatory caution, which the wiſdom of the peers is to afford: if the ſupreme rights of legiſlature were lodged in the two houſes only, and the king had no negative upon their proceedings, they might be tempted to encroach upon the royal prerogative, or perhaps to aboliſh the kingly office, and thereby weaken (if not totally deſtroy) the ſtrength of the executive power. But the conſtitutional government of this iſland is ſo admirably tempered and compounded, that nothing can endanger or hurt it, but deſtroying the equilibrium of power between one branch of the legiſlature and the reſt. For if ever it ſhould happen that the independence of any one of the three ſhould be loſt, or that it ſhould become ſubſervient to the views of either of the other two, there would

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ſoon be an end of our conſtitution. The legiſlature would be changed from that, which was originally ſet up by the general conſent and fundamental act of the ſociety; and ſuch a change, however effected, is according to Mr Locke[h] (who perhaps carries his theory too far) at once an entire diſſolution of the bands of government; and the people would be reduced to a ſtate of anarchy, with liberty to conſtitute to themſelves a new legiſlative power.

HAVING thus curſorily conſidered the three uſual ſpecies of government, and our own ſingular conſtitution, ſelected and compounded from them all, I proceed to obſerve, that, as the power of making laws conſtitutes the ſupreme authority, ſo wherever the ſupreme authority in any ſtate reſides, it is the right of that authority to make laws; that is, in the words of our definition, *to preſcribe the rule of civil action*. And this may be diſcovered from the very end and inſtitution of civil ſtates. For a ſtate is a collective body, compoſed of a multitude of individuals, united for their ſafety and convenience, and intending to act together as one man. If it therefore is to act as one man, it ought to act by one uniform will. But, inaſmuch as political communities are made up of many natural perſons, each of whom has his particular will and inclination, theſe ſeveral wills cannot by any *natural* union be joined together, or tempered and diſpoſed into a laſting harmony, ſo as to conſtitute and produce that one uniform will of the whole. It can therefore be no otherwiſe produced than by a *political* union; by the conſent of all perſons to ſubmit their own private wills to the will of one man, or of one or more aſſemblies of men, to whom the ſupreme authority is entruſted: and this will of that one man, or aſſemblage of men, is in different ſtates, according to their different conſtitutions, underſtood to be *law*.

THUS far as to the *right* of the ſupreme power to make laws; but farther, it is it's *duty* likewiſe. For ſince the reſpec-

[h] On government, part 2. §. 212.

tive

tive members are bound to conform themſelves to the will of the ſtate, it is expedient that they receive directions from the ſtate declaratory of that it's will. But ſince it is impoſſible, in ſo great a multitude, to give injunctions to every particular man, relative to each particular action, therefore the ſtate eſtabliſhes general rules, for the perpetual information and direction of all perſons in all points, whether of poſitive or negative duty. And this, in order that every man may know what to look upon as his own, what as another's; what abſolute and what relative duties are required at his hands; what is to be eſteemed honeſt, diſhoneſt, or indifferent; what degree every man retains of his natural liberty; what he has given up as the price of the benefits of ſociety; and after what manner each perſon is to moderate the uſe and exerciſe of thoſe rights which the ſtate aſſigns him, in order to promote and ſecure the public tranquillity.

FROM what has been advanced, the truth of the former branch of our definition, is (I truſt) ſufficiently evident; that "*municipal law is a rule of civil conduct preſcribed by the ſupreme* "*power in a ſtate.*" I proceed now to the latter branch of it; that it is a rule ſo preſcribed, "*commanding what is right, and* "*prohibiting what is wrong.*"

NOW in order to do this completely, it is firſt of all neceſſary that the boundaries of right and wrong be eſtabliſhed and aſcertained by law. And when this is once done, it will follow of courſe that it is likewiſe the buſineſs of the law, conſidered as a rule of civil conduct, to enforce theſe rights and to reſtrain or redreſs theſe wrongs. It remains therefore only to conſider in what manner the law is ſaid to aſcertain the boundaries of right and wrong; and the methods which it takes to command the one and prohibit the other.

FOR this purpoſe every law may be ſaid to conſiſt of ſeveral parts: one, *declaratory*; whereby the rights to be obſerved, and the wrongs to be eſchewed, are clearly defined and laid down: another,

another, *directory*; whereby the ſubject is inſtructed and enjoined to obſerve thoſe rights, and to abſtain from the commiſſion of thoſe wrongs: a third, *remedial*; whereby a method is pointed out to recover a man's private rights, or redreſs his private wrongs: to which may be added a fourth, uſually termed the *ſanction*, or *vindicatory* branch of the law; whereby it is ſignified what evil or penalty ſhall be incurred by ſuch as commit any public wrongs, and tranſgreſs or neglect their duty.

WITH regard to the firſt of theſe, the *declaratory* part of the municipal law, this depends not ſo much upon the law of revelation or of nature, as upon the wiſdom and will of the legiſlator. This doctrine, which before was ſlightly touched, deſerves a more particular explication. Thoſe rights then which God and nature have eſtabliſhed, and are therefore called natural rights, ſuch as are life and liberty, need not the aid of human laws to be more effectually inveſted in every man than they are; neither do they receive any additional ſtrength when declared by the municipal laws to be inviolable. On the contrary, no human legiſlature has power to abridge or deſtroy them, unleſs the owner ſhall himſelf commit ſome act that amounts to a forfeiture. Neither do divine or natural *duties* (ſuch as, for inſtance, the worſhip of God, the maintenance of children, and the like) receive any ſtronger ſanction from being alſo declared to be duties by the law of the land. The caſe is the ſame as to crimes and miſdemeſnors, that are forbidden by the ſuperior laws, and therefore ſtiled *mala in ſe*, ſuch as murder, theft, and perjury; which contract no additional turpitude from being declared unlawful by the inferior legiſlature. For that legiſlature in all theſe caſes acts only, as was before obſerved, in ſubordination to the great lawgiver, tranſcribing and publiſhing his precepts. So that, upon the whole, the declaratory part of the municipal law has no force or operation at all, with regard to actions that are naturally and intrinſically right or wrong.

BUT with regard to things in themſelves indifferent, the caſe is entirely altered. Theſe become either right or wrong, juſt or unjuſt, duties or miſdemeſnors, according as the municipal legiſlator ſees proper, for promoting the welfare of the ſociety, and more effectually carrying on the purpoſes of civil life. Thus our own common law has declared, that the goods of the wife do inſtantly upon marriage become the property and right of the huſband; and our ſtatute law has declared all monopolies a public offence: yet that right, and this offence, have no foundation in nature; but are merely created by the law, for the purpoſes of civil ſociety. And ſometimes, where the thing itſelf has it's riſe from the law of nature, the particular circumſtances and mode of doing it become right or wrong, as the laws of the land ſhall direct. Thus, for inſtance, in civil duties; obedience to ſuperiors is the doctrine of revealed as well as natural religion: but who thoſe ſuperiors ſhall be, and in what circumſtances, or to what degrees they ſhall be obeyed, is the province of human laws to determine. And ſo, as to injuries or crimes, it muſt be left to our own legiſlature to decide, in what caſes the ſeiſing another's cattle ſhall amount to the crime of robbery; and where it ſhall be a juſtifiable action, as when a landlord takes them by way of diſtreſs for rent.

THUS much for the *declaratory* part of the municipal law: and the *directory* ſtands much upon the ſame footing; for this virtually includes the former, the declaration being uſually collected from the direction. The law that ſays, "thou ſhalt not "ſteal," implies a declaration that ſtealing is a crime. And we have ſeen that, in things naturally indifferent, the very eſſence of right and wrong depends upon the direction of the laws to do or to omit it.

THE *remedial* part of a law is ſo neceſſary a conſequence of the former two, that laws muſt be very vague and imperfect without it. For in vain would rights be declared, in vain directed

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to be obſerved, if there were no method of recovering and aſſerting thoſe rights, when wrongfully withheld or invaded. This is what we mean properly, when we ſpeak of the protection of the law. When, for inſtance, the *declaratory* part of the law has ſaid "that the field or inheritance, which belonged to Titius's "father, is veſted by his death in Titius;" and the *directory* part has "forbidden any one to enter on another's property without "the leave of the owner;" if Gaius after this will preſume to take poſſeſſion of the land, the *remedial* part of the law will then interpoſe it's office; will make Gaius reſtore the poſſeſſion to Titius, and alſo pay him damages for the invaſion.

WITH regard to the *ſanction* of laws, or the evil that may attend the breach of public duties; it is obſerved, that human legiſlators have for the moſt part choſen to make the ſanction of their laws rather *vindicatory* than *remuneratory*, or to conſiſt rather in puniſhments, than in actual particular rewards. Becauſe, in the firſt place, the quiet enjoyment and protection of all our civil rights and liberties, which are the ſure and general conſequence of obedience to the municipal law, are in themſelves the beſt and moſt valuable of all rewards. Becauſe alſo, were the exerciſe of every virtue to be enforced by the propoſal of particular rewards, it were impoſſible for any ſtate to furniſh ſtock enough for ſo profuſe a bounty. And farther, becauſe the dread of evil is a much more forcible principle of human actions than the proſpect of good[i]. For which reaſons, though a prudent beſtowing of rewards is ſometimes of exquiſite uſe, yet we find that thoſe civil laws, which enforce and enjoin our duty, do ſeldom, if ever, propoſe any privilege or gift to ſuch as obey the law; but do conſtantly come armed with a penalty denounced againſt tranſgreſſors, either expreſſly defining the nature and quantity of the puniſhment, or elſe leaving it to the diſcretion of the judges, and thoſe who are entruſted with the care of putting the laws in execution.

[i] Locke, Hum. Und. b. 2. c. 21.

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OF all the parts of a law the moſt effectual is the *vindicatory*. For it is but loſt labour to ſay, "do this, or avoid that," unleſs we alſo declare, "this ſhall be the conſequence of your noncom-"pliance." We muſt therefore obſerve, that the main ſtrength and force of a law conſiſts in the penalty annexed to it. Herein is to be found the principal obligation of human laws.

LEGISLATORS and their laws are ſaid to *compel* and *oblige*; not that by any natural violence they ſo conſtrain a man, as to render it impoſſible for him to act otherwiſe than as they direct, which is the ſtrict ſenſe of obligation: but becauſe, by declaring and exhibiting a penalty againſt offenders, they bring it to paſs that no man can eaſily chooſe to tranſgreſs the law; ſince, by reaſon of the impending correction, compliance is in a high degree preferable to diſobedience. And, even where rewards are propoſed as well as puniſhments threatened, the obligation of the law ſeems chiefly to conſiſt in the penalty: for rewards, in their nature, can only *perſuade* and *allure*; nothing is *compulſory* but puniſhment.

IT is held, it is true, and very juſtly, by the principal of our ethical writers, that human laws are binding upon mens conſciences. But if that were the only, or moſt forcible obligation, the good only would regard the laws, and the bad would ſet them at defiance. And, true as this principle is, it muſt ſtill be underſtood with ſome reſtriction. It holds, I apprehend, as to *rights*; and that, when the law has determined the field to belong to Titius, it is matter of conſcience no longer to withhold or to invade it. So alſo in regard to *natural duties*, and ſuch offences as are *mala in ſe*: here we are bound in conſcience, becauſe we are bound by ſuperior laws, before thoſe human laws were in being, to perform the one and abſtain from the other. But in relation to thoſe laws which enjoin only *poſitive duties*, and forbid only ſuch things as are not *mala in ſe* but *mala prohibita* merely, an-

nexing a penalty to noncompliance, here I apprehend conſcience is no farther concerned, than by directing a ſubmiſſion to the penalty, in caſe of our breach of thoſe laws: for otherwiſe the multitude of penal laws in a ſtate would not only be looked upon as an impolitic, but would alſo be a very wicked thing; if every ſuch law were a ſnare for the conſcience of the ſubject. But in theſe caſes the alternative is offered to every man; "either ab-"ſtain from this, or ſubmit to ſuch a penalty;" and his conſcience will be clear, whichever ſide of the alternative he thinks proper to embrace. Thus, by the ſtatutes for preſerving the game, a penalty is denounced againſt every unqualified perſon that kills a hare. Now this prohibitory law does not make the tranſgreſſion a moral offence: the only obligation in conſcience is to ſubmit to the penalty if levied.

I HAVE now gone through the definition laid down of a municipal law; and have ſhewn that it is "a rule --- of civil con-"duct --- preſcribed --- by the ſupreme power in a ſtate --- com-"manding what is right, and prohibiting what is wrong:" in the explication of which I have endeavoured to interweave a few uſeful principles, concerning the nature of civil government, and the obligation of human laws. Before I conclude this ſection, it may not be amiſs to add a few obſervations concerning the *interpretation* of laws.

WHEN any doubt aroſe upon the conſtruction of the Roman laws, the uſage was to ſtate the caſe to the emperor in writing, and take his opinion upon it. This was certainly a bad method of interpretation. To interrogate the legiſlature to decide particular diſputes, is not only endleſs, but affords great room for partiality and oppreſſion. The anſwers of the emperor were called his reſcripts, and theſe had in ſucceeding caſes the force of perpetual laws; though they ought to be carefully diſtinguiſhed, by every rational civilian, from thoſe general conſtitutions, which had only the nature of things for their guide. The emperor Macrinus, as his hiſtorian Capitolinus informs us, had once reſolved

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to abolish these rescripts, and retain only the general edicts; he could not bear that the hasty and crude answers of such princes as Commodus and Caracalla should be reverenced as laws. But Justinian thought otherwise[k], and he has preserved them all. In like manner the canon laws, or decretal epistles of the popes, are all of them rescripts in the strictest sense. Contrary to all true forms of reasoning, they argue from particulars to generals.

THE fairest and most rational method to interpret the will of the legislator, is by exploring his intentions at the time when the law was made, by *signs* the most natural and probable. And these signs are either the words, the context, the subject matter, the effects and consequence, or the spirit and reason of the law. Let us take a short view of them all.

1. Words are generally to be understood in their usual and most known signification; not so much regarding the propriety of grammar, as their general and popular use. Thus the law mentioned by Puffendorf[l], which forbad a layman to *lay hands* on a priest, was adjudged to extend to him, who had hurt a priest with a weapon. Again; terms of art, or technical terms, must be taken according to the acceptation of the learned in each art, trade, and science. So in the act of settlement, where the crown of England is limited "to the princess Sophia, and the heirs "of her body, being protestants," it becomes necessary to call in the assistance of lawyers, to ascertain the precise idea of the words "*heirs of her body;*" which in a legal sense comprize only certain of her lineal descendants. Lastly, where words are clearly *repugnant* in two laws, the later law takes place of the elder: *leges posteriores priores contrarias abrogant* is a maxim of universal law, as well as of our own constitutions. And accordingly it was laid down by a law of the twelve tables at Rome, *quod populus postremum jussit, id jus ratum esto.*

[k] *Inst.* 1. 2. 6.

[l] L. of N. and N. 5. 12. 3.

2. IF words happen to be ſtill dubious, we may eſtabliſh their meaning from the context; with which it may be of ſingular uſe to compare a word, or a ſentence, whenever they are ambiguous, equivocal, or intricate. Thus the proeme, or preamble, is often called in to help the conſtruction of an act of parliament. Of the ſame nature and uſe is the compariſon of a law with other laws, that are made by the ſame legiſlator, that have ſome affinity with the ſubject, or that expreſſly relate to the ſame point. Thus, when the law of England declares murder to be felony without benefit of clergy, we muſt reſort to the ſame law of England to learn what the benefit of clergy is: and, when the common law cenſures ſimoniacal contracts, it affords great light to the ſubject to conſider what the canon law has adjudged to be ſimony.

3. AS to the ſubject matter, words are always to be underſtood as having a regard thereto; for that is always ſuppoſed to be in the eye of the legiſlator, and all his expreſſions directed to that end. Thus, when a law of our Edward III. forbids all eccleſiaſtical perſons to purchaſe *proviſions* at Rome, it might ſeem to prohibit the buying of grain and other victual; but when we conſider that the ſtatute was made to repreſs the uſurpations of the papal ſee, and that the nominations to vacant benefices by the pope were called *proviſions*, we ſhall ſee that the reſtraint is intended to be laid upon ſuch proviſions only.

4. AS to the effects and conſequence, the rule is, where words bear either none, or a very abſurd ſignification, if literally underſtood, we muſt a little deviate from the received ſenſe of them. Therefore the Bolognian law, mentioned by Puffendorf[m], which enacted "that whoever drew blood in the ſtreets ſhould be puniſh-"ed with the utmoſt ſeverity," was held after long debate not to extend to the ſurgeon, who opened the vein of a perſon that fell down in the ſtreet with a fit.

[m] *l.* 5. *c.* 12. §. 8.

5. BUT,

5. BUT, lastly, the most universal and effectual way of discovering the true meaning of a law, when the words are dubious, is by considering the reason and spirit of it; or the cause which moved the legislator to enact it. For when this reason ceases, the law itself ought likewise to cease with it. An instance of this is given in a case put by Cicero, or whoever was the author of the rhetorical treatise inscribed to Herennius[n]. There was a law, that those who in a storm forsook the ship should forfeit all property therein; and the ship and lading should belong entirely to those who staid in it. In a dangerous tempest all the mariners forsook the ship, except only one sick passenger, who by reason of his disease was unable to get out and escape. By chance the ship came safe to port. The sick man kept possession and claimed the benefit of the law. Now here all the learned agree, that the sick man is not within the reason of the law; for the reason of making it was, to give encouragement to such as should venture their lives to save the vessel: but this is a merit, which he could never pretend to, who neither staid in the ship upon that account, nor contributed any thing to it's preservation.

FROM this method of interpreting laws, by the reason of them, arises what we call *equity*; which is thus defined by Grotius[o], "the correction of that, wherein the law (by reason of its universality) is deficient." For since in laws all cases cannot be foreseen or expressed, it is necessary, that when the general decrees of the law come to be applied to particular cases, there should be somewhere a power vested of excepting those circumstances, which (had they been foreseen) the legislator himself would have excepted. And these are the cases, which, as Grotius expresses it, "*lex non exacte definit, sed arbitrio boni viri permittit.*"

Equity thus depending, essentially, upon the particular circumstances of each individual case, there can be no established

[n] *l.* 1. *c.* 11.

[o] *de aequitate.*

rules

rules and fixed precepts of equity laid down, without deſtroying it's very eſſence, and reducing it to a poſitive law. And, on the other hand, the liberty of conſidering all caſes in an equitable light muſt not be indulged too far, leſt thereby we deſtroy all law, and leave the deciſion of every queſtion entirely in the breaſt of the judge. And law, without equity, tho' hard and diſagreeable, is much more deſirable for the public good, than equity without law; which would make every judge a legiſlator, and introduce moſt infinite confuſion; as there would then be almoſt as many different rules of action laid down in our courts, as there are differences of capacity and ſentiment in the human mind.

ROUSSEAU SOCIAL CONTRACT

OF
THE SOCIAL CONTRACT

OR

PRINCIPLES
OF POLITICAL RIGHT

BY

JEAN JACQUES ROUSSEAU
Citizen of Geneva

– *foederis aequas*
Dicamus leges

Aeneid, xi

[*351*]

Book I

[1] I want to inquire whether in the civil order there can be some legitimate and sure rule of administration, taking men as they are, and the laws as they can be: In this inquiry I shall try always to combine what right permits with what interest prescribes, so that justice and utility may not be disjoined.

[2] I begin without proving the importance of my subject. I shall be asked whether I am a prince or a lawgiver that I write on Politics? I reply that I am not, and that that is why I write on Politics. If I were a prince or a legislator, I would not waste my time saying what needs doing; I would do it, or keep silent.

[3] Born a citizen of a free State, and a member of the sovereign, the right to vote in it is enough to impose on me the duty to learn about public affairs, regardless of how weak might be the influence of my voice on them. Happy, whenever I meditate about Governments, always to find in my inquiries new reasons for loving that of my country!

Chapter One
Subject of this First Book

[1] Man is born free, and everywhere he is in chains. One believes himself the others' master, and yet is more a slave than they. How did this change come about? I do not know. What can make it legitimate? I believe I can solve this question.

[2] If I considered only force, and the effect that follows from it, [*352*] I would say; as long as a People is compelled to obey and does obey, it does well; as soon as it can shake off the yoke and does shake it off, it does even better; for in recovering its freedom by the same right as the right by which it was robbed of it, either the people is well founded to take it back, or it was deprived of it without foundation. But the social order is a sacred right, which provides the basis for all the others. Yet this right does not come from nature; it is therefore founded on conventions. The problem is to know what these conventions are. Before coming to that, I must establish what I have just set forth.

Chapter Two
Of the First Societies

[1] The most ancient of all societies and the only natural one is that of the family. Even so children remain bound to the father only as long as they need him for their preservation. As soon as that need ceases, the natural bond dissolves. The children, exempt from the obedience they owe the father, the father exempt from the cares he owed the children, all equally return to independence. If they remain united, they are no longer so naturally but voluntarily, and even the family maintains itself only by convention.

[2] This common freedom is a consequence of man's nature. His first law is to attend to his own preservation, his first cares are those he owes himself, and since, as soon as he has reached the age of reason, he is sole judge of the means proper to preserve himself, he becomes his own master.

[3] The family is, then, if you will, the first model of political societies; the chief is the image of the father, the people are the image of the children, and all, being born equal and free, alienate their freedom only for the sake of their utility. The only difference is that in the family the father's love for his children repays him for the cares he bestows on them, and that in the State the pleasure of commanding takes the place of the chief's lack of love for his peoples.

[4] Grotius denies that all human power is established for [*353*] the sake of the governed: he gives slavery as an example. His most frequent mode of argument is always to establish right by fact.* One could use a more consistent method, but not one more favorable to Tyrants.

[5] So that, according to Grotius, it is an open question whether humankind belongs to a hundred men, or whether those hundred men belong to humankind, and throughout his book he appears to incline to the first opinion: that is also Hobbes's sentiment. Here,

* "Learned investigations of public right are often nothing but the history of ancient abuses, and it was a misplaced single-mindedness to have taken the trouble to study them too closely." *Ms Treatise on the Interests of France in Relation to Her Neighbors; by M. L[e] M[arquis] d'A[rgenson].* This is precisely what Grotius did.

then, is humankind, divided into herds of cattle, each with its chief who tends it to devour it.

[6] As a shepherd is of a nature superior to his flock's, so too are the shepherds of men, who are their chiefs, of a nature superior to their peoples'. This is how, according to Philo, the Emperor Caligula reasoned; concluding rather well from this analogy that kings were Gods, or that peoples were beasts.

[7] Caligula's reasoning amounts to that of Hobbes and of Grotius. Aristotle before all of them had also said that men are not naturally equal, but that some were born for slavery and others for domination.

[8] Aristotle was right, but he mistook the effect for the cause. Any man born in slavery is born for slavery, nothing could be more certain. Slaves lose everything in their chains, even the desire to be rid of them; they love their servitude, as the companions of Ulysses loved their brutishness.* Hence, if there are slaves by nature, it is because there were slaves contrary to nature. Force made the first slaves, their cowardice perpetuated them.

[9] I have said nothing about King Adam, or about emperor Noah, father of three great monarchs who among themselves divided the uni[*354*]verse, as did the children of Saturn, whom some believed they recognized in them. I hope my moderation will be appreciated; for since I am a direct descendant from one of these Princes, and perhaps from the elder branch, for all I know, I might, upon verification of titles, find I am the legitimate King of humankind. Be that as it may, it cannot be denied that Adam was Sovereign of the world as Robinson was of his island, as long as he was its sole inhabitant; and what made this empire convenient was that the monarch, secure on his throne, had neither rebellions, nor wars, nor conspirators to fear.

Chapter Three
The Right of the Stronger

[1] The stronger is never strong enough to be forever master, unless he transforms his force into right, and obedience into duty. Hence

* See a small treatise by Plutarch entitled: *That Beasts Use Reason.*

the right of the stronger; a right which is apparently understood ironically, and in principle really established: But will no one ever explain this word to us? Force is a physical power; I fail to see what morality can result from its effects. To yield to force is an act of necessity, not of will; at most it is an act of prudence. In what sense can it become a duty?

[2] Let us assume this alleged right for a moment. I say that it can only result in an unintelligible muddle. For once force makes right, the effect changes together with the cause; every force that overcomes the first, inherits its right. Once one can disobey with impunity, one can do so legitimately, and since the stronger is always right, one need only make sure to be the stronger. But what is a right that perishes when force ceases? If one has to obey by force, one need not obey by duty, and if one is no longer forced to obey, one is no longer obliged to do so. Clearly, then, this word "right" adds nothing to force; it means nothing at all here.

[3] Obey the powers that be. If this means yield to force, the precept is good but superfluous, I warrant that it [*355*] will never be violated. All power comes from God, I admit it; but so does all illness. Does this mean it is forbidden to call the doctor? A brigand takes me by surprise at the edge of a woods: am I not only forced to hand over my purse, but also obliged in conscience to hand it over even if I could withhold it? For the pistol he holds is, after all, also a power.

[4] Let us agree, then, that force does not make right, and that one is only obliged to obey legitimate powers. Thus my original question keeps coming back.

Chapter Four
Of Slavery

[1] Since no man has a natural authority over his fellow-man, and since force produces no right, conventions remain as the basis of all legitimate authority among men.

[2] If, says Grotius, an individual can alienate his freedom, and enslave himself to a master, why could not a whole people alienate its freedom and subject itself to a king? There are quite a few ambiguous words here which call for explanation, but let us confine

ourselves to the word *alienate*. To alienate is to give or to sell. Now, a man who enslaves himself to another does not give himself, he sells himself, at the very least for his subsistence: but a people, what does it sell itself for? A king, far from furnishing his subjects' subsistence, takes his own entirely from them, and according to Rabelais a king does not live modestly. Do the subjects then give their persons on condition that their goods will be taken as well? I do not see what they have left to preserve.

[3] The despot, it will be said, guarantees civil tranquility for his subjects. All right; but what does it profit them if the wars his ambition brings on them, if his insatiable greed, the harassment by his administration cause them more distress than their own dissension would have done? What does it profit them if this very tranquility is one of their miseries? Life is also tranquil in dungeons; is that enough to feel well in them? The Greeks imprisoned in the Cyclops's cave lived there [*356*] tranquilly, while awaiting their turn to be devoured.

[4] To say a man gives himself gratuitously is to say something absurd and inconceivable; such an act is illegitimate and null, for the simple reason that whoever does so is not in his right mind. To say the same of a whole people is to assume a people of madmen; madness does not make right.

[5] Even if everyone could alienate himself, he could not alienate his children; they are born men and free; their freedom belongs to them, no one but they themselves has the right to dispose of it. Before they have reached the age of reason, their father may in their name stipulate conditions for their preservation, for their well-being; but he cannot give them away irrevocably and unconditionally; for such a gift is contrary to the ends of nature and exceeds the rights of paternity. Hence, for an arbitrary government to be legitimate, the people would, in each generation, have to be master of accepting or rejecting it, but in that case the government would no longer be arbitrary.

[6] To renounce one's freedom is to renounce one's quality as man, the rights of humanity, and even its duties. There can be no possible compensation for someone who renounces everything. Such a renunciation is incompatible with the nature of man, and to deprive one's will of all freedom is to deprive one's actions of all morality. Finally, a convention that stipulates absolute authority

on one side, and unlimited obedience on the other, is vain and contradictory. Is it not clear that one is under no obligation toward a person from whom one has the right to demand everything, and does not this condition alone, without equivalent and without exchange, nullify the act? For what right can my slave have against me, since everything he has belongs to me, and his right being mine, this right of mine against myself is an utterly meaningless expression?

[7] Grotius and the rest derive from war another origin of the alleged right of slavery. Since, according to them, the victor has the right to kill the vanquished, the latter can buy back his life at the cost of his freedom; a convention they regard as all the more legitimate because it proves profitable to both parties. But it is clear that this alleged right to kill the vanquished in no way results from the state of war. Men are not naturally enemies, if only because when they live in their primitive independence [357] the relation among them is not sufficiently stable to constitute either a state of peace or a state of war. It is the relation between things and not between men that constitutes war, and since the state of war cannot arise from simple personal relations but only from property relations, private war or war between one man and another can exist neither in the state of nature, where there is no stable property, nor in the social state, where everything is under the authority of the laws.

[8] Individual fights, duels, skirmishes, are acts that do not constitute a state; and as for the private wars authorized by the ordinances of King Louis IX of France and suspended by the peace of God, they are abuses of feudal government, an absurd system if ever there was one, contrary both to the principles of natural right and to all good polity.

[9] War is then not a relationship between one man and another, but a relationship between one State and another, in which individuals are enemies only by accident, not as men, nor even as citizens,* but as soldiers; not as members of the fatherland, but as its defenders. Finally, any State can only have other States, and not men, as enemies, inasmuch as it is impossible to fix a true relation between things of different natures.

[10] This principle even conforms to the established maxims of all ages and to the constant practice of all civilized peoples. Declarations of war are warnings not so much to the powers as to their subjects. The foreigner, whether he be a king, a private individual, or a people, who robs, kills, or detains subjects without declaring war on their prince, is not an enemy, he is a brigand. Even in the midst of war, a just prince may well seize everything in enemy territory that belongs to the public, but he respects the person and the goods of private individuals; he respects rights on which his own are founded. Since the aim of war is the destruction of the enemy State, one has the right to kill its defenders as long as they bear arms; but as soon as they lay down their arms and surrender they cease to be enemies or the enemy's instruments, and become simply men once more, and one no longer has a right over their life. It is sometimes possible to kill the State without killing a single one of its members: and [358] war confers no right that is not necessary to its end. These principles are not those of Grotius; they are not founded on the authority of poets, but follow from the nature of things, and are founded on reason.

[11] As regards the right of conquest, it has no other foundation than the law of the stronger. If war does not give the victor the right to massacre vanquished peoples, then this right which he does not have cannot be the foundation of the right to enslave them. One has the right to kill the enemy only when one cannot make him a slave. Hence the right to make him a slave does not derive from the right to kill him: it is therefore an iniquitous exchange to make him buy his life, over which one has no right whatsoever, at the cost of his freedom. Is it not clear that by establishing the right of life and death by the right of slavery, and the right of slavery by the right of life and death, one falls into a vicious circle?

* The Romans who understood and respected the right of war better than any nation in the world were so scrupulous in this regard that a citizen was not allowed to serve as a volunteer without having enlisted specifically against the enemy, and one designated as such by name. When a Legion in which the Younger Cato fought his first campaign under Popilius was reorganized, the Elder Cato wrote to Popilius that if he was willing to have his son continue to serve under him, he would have to have him take a new military oath because, the first oath having been vacated, he could no longer bear arms against the enemy. And the same Cato wrote to his son to be careful not to appear in battle without having taken this new oath. I know that the siege of Clusium and other individual facts can be urged against me, but I cite laws, practices. The Romans are the people who least frequently transgressed their laws, and they are the only ones to have had such fine ones. [1782 edn.]

[12] Even assuming this terrible right to kill all, I say that a slave made in war or a conquered people is not bound to anything at all toward their master, except to obey him as long as they are forced to do so. In taking an equivalent of his life, the victor did not spare it: instead of killing him unprofitably, he killed him usefully. So far, then, is he from having acquired over him any authority associated with his force, that they continue in a state of war as before; their relation itself is its effect, and the exercise of the right of war presupposes the absence of a peace treaty. They have made a convention; very well: but that convention, far from destroying the state of war, presupposes its continuation.

[13] Thus, from whatever angle one looks at things, the right to slavery is null, not only because it is illegitimate, but because it is absurd and meaningless. These words *slavery* and *right* are contradictory; they are mutually exclusive. Either between one man and another, or between a man and a people, the following speech will always be equally absurd. *I make a convention with you which is entirely at your expense and entirely to my profit, which I shall observe as long as I please, and which you shall observe as long as I please.*

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Chapter Five
That One Always Has to Go back to a First Convention

[1] Even if I were to grant everything I have thus far refuted, the abettors of despotism would be no better off. There will always be a great difference between subjugating a multitude and ruling a society. When scattered men, regardless of their number, are successively enslaved to a single man, I see in this nothing but a master and slaves, I do not see in it a people and its chief; it is, if you will, an aggregation, but not an association; there is here neither public good, nor body politic. That man, even if he had enslaved half the world, still remains nothing but a private individual; his interest, separate from that of the others, still remains nothing but a private interest. When this same man dies, his empire is left behind scattered and without a bond, like an oak dissolves and collapses into a heap of ashes on being consumed by fire.

[2] A people, says Grotius, can give itself to a king. So that according to Grotius a people is a people before giving itself to a king. That very gift is a civil act, it presupposes a public deliberation. Hence before examining the act by which a people elects a king, it would be well to examine the act by which a people is a people. For this act, being necessarily prior to the other, is the true foundation of society.

[3] Indeed, if there were no prior convention, then, unless the election were unanimous, why would the minority be obliged to submit to the choice of the majority, and why would a hundred who want a master have the right to vote on behalf of ten who do not want one? The law of majority rule is itself something established by convention, and presupposes unanimity at least once.

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Chapter Six
Of the Social Pact

[1] I assume men having reached the point where the obstacles that interfere with their preservation in the state of nature prevail by their resistance over the forces which each individual can muster to maintain himself in that state. Then that primitive state can no longer subsist, and humankind would perish if it did not change its way of being.

[2] Now, since men cannot engender new forces, but only unite and direct those that exist, they are left with no other means of self-preservation than to form, by aggregation, a sum of forces that might prevail over those obstacles' resistance, to set them in motion by a single impetus, and make them act in concert.

[3] This sum of forces can only arise from the cooperation of many: but since each man's force and freedom are his primary instruments of self-preservation, how can he commit them without harming himself, and without neglecting the cares he owes himself? This difficulty, in relation to my subject, can be stated in the following terms.

[4] "To find a form of association that will defend and protect the person and goods of each associate with the full common force, and by means of which each, uniting with all, nevertheless obey

only himself and remain as free as before." This is the fundamental problem to which the social contract provides the solution.

[5] The clauses of this contract are so completely determined by the nature of the act that the slightest modification would render them null and void; so that although they may never have been formally stated, they are everywhere the same, everywhere tacitly admitted and recognized; until, the social compact having been violated, everyone is thereupon restored to his original rights and resumes his natural freedom while losing the conventional freedom for which he renounced it.

[6] These clauses, rightly understood, all come down to just one, namely the total alienation of each associate with all of his rights to the whole community: For, in the first place, since each gives himself entirely, the condition is [*361*] equal for all, and since the condition is equal for all, no one has any interest in making it burdensome to the rest.

[7] Moreover, since the alienation is made without reservation, the union is as perfect as it can be, and no associate has anything further to claim: For if individuals were left some rights, then, since there would be no common superior who might adjudicate between them and the public, each, being judge in his own case on some issue, would soon claim to be so on all, the state of nature would subsist and the association necessarily become tyrannical or empty.

[8] Finally, each, by giving himself to all, gives himself to no one, and since there is no associate over whom one does not acquire the same right as one grants him over oneself, one gains the equivalent of all one loses, and more force to preserve what one has.

[9] If, then, one sets aside everything that is not of the essence of the social compact, one finds that it can be reduced to the following terms: *Each of us puts his person and his full power in common under the supreme direction of the general will; and in a body we receive each member as an indivisible part of the whole.*

[10] At once, in place of the private person of each contracting party, this act of association produces a moral and collective body made up of as many members as the assembly has voices, and which receives by this same act its unity, its common *self*, its life and its will. The public person thus formed by the union of all the others

formerly assumed the name *City** and now assumes [*362*] that of *Republic* or of *body politic*, which its members call *State* when it is passive, *Sovereign* when active, *Power* when comparing it to similar bodies. As for the associates, they collectively assume the name *people* and individually call themselves *Citizens* as participants in the sovereign authority, and *Subjects* as subjected to the laws of the State. But these terms are often confused and mistaken for one another; it is enough to be able to distinguish them where they are used in their precise sense.

Chapter Seven
Of the Sovereign

[1] This formula shows that the act of association involves a reciprocal engagement between the public and private individuals, and that each individual, by contracting, so to speak, with himself, finds himself engaged in a two-fold relation: namely, as member of the Sovereign toward private individuals, and as a member of the State toward the Sovereign. But here the maxim of civil right, that no one is bound by engagements toward himself, does not apply; for there is a great difference between assuming an obligation toward oneself, and assuming a responsibility toward a whole of which one is a part.

[2] It should also be noted that the public deliberation which can obligate all subjects toward the Sovereign because of the two differ-

* The true sense of this word is almost entirely effaced among the moderns; most take a city for a City, and a bourgeois for a Citizen. They do not know that houses make the city but Citizens make the City. This same error once cost the Carthaginians dear. I have not read that the subjects of any Prince were ever given the title *Cives*, not even the Macedonians in ancient times nor, in our days, the English, although they are closer to freedom than all the others. Only the French assume the name *Citizen* casually, because they have no genuine idea of it, as can be seen in their Dictionaries; otherwise they would be committing the crime of Lese-Majesty in usurping it: for them this name expresses a virtue and not a right. When Bodin wanted to speak of our Citizens and Bourgeois, he committed a bad blunder in taking the one for the other. M. d'Alembert made no mistake about it, and in his article *Geneva* he correctly distinguished the [*362*] four orders of men (even five, if simple foreigners are included) there are in our city, and only two of which make up the Republic. No other French author has, to my knowledge, understood the true meaning of the word *Citizen*.

ent relations in terms of which each subject is viewed cannot, for the opposite reason, obligate the Sovereign toward itself, and that it is therefore contrary to the nature of the body politic for the Sovereign to impose on itself a law which it cannot break. Since the Sovereign can consider itself only in terms of one and the same relation, it is then in the same situation as a private individual contracting with himself: which shows that there is not, nor can there be, any kind of fundamental law that is obligatory for the body of the people, not even the social contract. This does not mean [*363*] that this body cannot perfectly well enter into engagements with others about anything that does not detract from this contract; for with regard to foreigners it becomes a simple being, an individual.

[3] But the body politic or Sovereign, since it owes its being solely to the sanctity of the contract, can never obligate itself, even toward another, to anything that detracts from that original act, such as to alienate any part of itself or to subject itself to another Sovereign. To violate the act by which it exists would be to annihilate itself, and what is nothing produces nothing.

[4] As soon as this multitude is thus united in one body, one cannot injure one of the members without attacking the body, and still less can one injure the body without the members being affected. Thus duty and interest alike obligate the contracting parties to help one another, and the same men must strive to combine in this two-fold relation all the advantages attendant on it.

[5] Now the Sovereign, since it is formed entirely of the individuals who make it up, has not and cannot have any interests contrary to theirs; consequently the Sovereign power has no need of a guarantor toward the subjects, because it is impossible for the body to want to harm all of its members, and we shall see later that it cannot harm any one of them in particular. The Sovereign, by the mere fact that it is, is always everything it ought to be.

[6] But this is not the case regarding the subjects' relations to the Sovereign, and notwithstanding the common interest, the Sovereign would have no guarantee of the subjects' engagements if it did not find means to ensure their fidelity.

[7] Indeed each individual may, as a man, have a particular will contrary to or different from the general will he has as a Citizen. His particular interest may speak to him quite differently from the common interest; his absolute and naturally independent existence

may lead him to look upon what he owes to the common cause as a gratuitous contribution, the loss of which will harm others less than its payment burdens him and, by considering the moral person that constitutes the State as a being of reason because it is not a man, he would enjoy the rights of a citizen without being willing to fulfill the duties of a subject; an injustice, the progress of which would cause the ruin of the body politic.

[*364*] [8] Hence for the social compact not to be an empty formula, it tacitly includes the following engagement which alone can give force to the rest, that whoever refuses to obey the general will shall be constrained to do so by the entire body: which means nothing other than that he shall be forced to be free; for this is the condition which, by giving each Citizen to the Fatherland, guarantees him against all personal dependence; the condition which is the device and makes for the operation of the political machine, and alone renders legitimate civil engagements which would otherwise be absurd, tyrannical, and liable to the most enormous abuses.

Chapter Eight
Of the Civil State

[1] This transition from the state of nature to the civil state produces a most remarkable change in man by substituting justice for instinct in his conduct, and endowing his actions with the morality they previously lacked. Only then, when the voice of duty succeeds physical impulsion and right succeeds appetite, does man, who until then had looked only to himself, see himself forced to act on other principles, and to consult his reason before listening to his inclinations. Although in this state he deprives himself of several advantages he has from nature, he gains such great advantages in return, his faculties are exercised and developed, his ideas enlarged, his sentiments ennobled, his entire soul is elevated to such an extent, that if the abuses of this new condition did not often degrade him to beneath the condition he has left, he should ceaselessly bless the happy moment which wrested him from it forever, and out of a stupid and bounded animal made an intelligent being and a man.

[2] Let us reduce this entire balance to terms easy to compare. What man loses by the social contract is his natural freedom and

an unlimited right to everything that tempts him and he can reach; what he gains is civil freedom and property in everything he possesses. In order not to be mistaken about these compensations, one has [*365*] to distinguish clearly between natural freedom which has no other bounds than the individual's forces, and civil freedom which is limited by the general will, and between possession which is merely the effect of force or the right of the first occupant, and property which can only be founded on a positive title.

[3] To the preceding one might add to the credit of the civil state moral freedom, which alone makes man truly the master of himself; for the impulsion of mere appetite is slavery, and obedience to the law one has prescribed to oneself is freedom. But I have already said too much on this topic, and the philosophical meaning of the word *freedom* is not my subject here.

Chapter Six
Of Law

[1] By the social pact we have given the body politic existence and life: the task now is to give it motion and will by legislation. For the initial act by which this body assumes form and unity still leaves entirely undetermined what it must do to preserve itself.

[2] What is good and conformable to order is so by the nature of things and independently of human conventions. All justice comes from God, he alone is its source; but if we were capable of receiving it from so high, we would need neither government nor laws. No doubt there is a universal justice emanating from reason alone; but this justice, to be admitted among us, has to be reciprocal. Considering things in human terms, the laws of justice are vain among men for want of natural sanctions; they only bring good to the wicked and evil to the just when he observes them toward everyone while no one observes them toward him. Conventions and laws are therefore necessary to combine rights with duties and to bring justice back to its object. In the state of nature, where everything is common, I owe nothing to those to whom I have promised nothing. I recognize as another's only what is of no use to myself. It is not so in the civil state where all rights are fixed by law.

[3] But what, then, finally, is a law? So long as one leaves it at attaching only metaphysical ideas to this word, one will continue reasoning without understanding one another, and even once it has been stated what a law of nature is, one will not have been brought any closer to knowing what a law of the State is.

[4] I have already said that there is no general will about a particular object. Indeed, this particular object is either within the State or outside the State. If it is outside the State, a will that is foreign is not general in relation to it; and if this object is inside the State, it is a part of it: Then a relation is formed between the whole and its part that makes them into two separate beings, of which the part is [*379*] one, and the whole less that part, the other. But the whole less a part is not the whole, and as long as this relation persists there is no longer a whole but two unequal parts; from which it follows that neither is the will of one of these parts general in relation to the other.

[5] But when the whole people enacts statutes for the whole people it considers only itself, and if a relation is then formed, it is between the entire object from one point of view and the entire object from another point of view, with no division of the whole. Then the matter with regard to which the statute is being enacted is general, as is the enacting will. It is this act which I call law.

[6] When I say that the object of the laws is always general, I mean that the law considers the subjects in a body and their actions in the abstract, never any man as an individual or a particular action. Thus the law can very well state that there will be privileges, but it cannot confer them on any one by name; the law can create several Classes of Citizens, it can even specify the qualifications that entitle to membership in these classes, but it cannot nominate this person or that for admission to them; it can establish a royal government and hereditary succession, but it cannot elect a king or name a royal family; in a word, any function that relates to an individual does not fall within the province of the legislative power.

[7] On this idea one immediately sees that one need no longer ask whose province it is to make laws, since they are acts of the general will; nor whether the Prince is above the laws, since it is a member of the State; nor whether the law can be unjust, since no man can be unjust toward himself; nor how one is both free and subject to the laws, since they are merely records of our wills.

[8] One also sees that since the law combines the universality of the will and that of the object, what any man, regardless of who he may be, orders on his own authority is not a law; what even the Sovereign orders regarding a particular object is not a law either, but a decree, nor is it an act of sovereignty but of magistracy.

[9] I therefore call Republic any State ruled by laws, whatever may be the form of administration: for then the public interest alone governs, and the [*380*] public thing counts for something. Every legitimate Government is republican:* I shall explain in the sequel what Government is.

* By this word I understand not only an Aristocracy or a Democracy, but in general any government guided by the general will, which is the law. To be legitimate, the Government must not be confused with the Sovereign, but be its minister: Then monarchy itself is a republic. This will become clearer in the following book.

[10] Laws are, properly speaking, nothing but the conditions of the civil association. The People subject to the laws ought to be their author; only those who are associating may regulate the conditions of the society; but how will they regulate them? Will it be by common agreement, by a sudden inspiration? Has the body politic an organ to state its wills? Who will give it the foresight necessary to form its acts and to publish them in advance, or how will it declare them in time of need? How will a blind multitude, which often does not know what it wills because it rarely knows what is good for it, carry out an undertaking as great, as difficult as a system of legislation? By itself the people always wills the good, but by itself it does not always see it. The general will is always upright, but the judgment which guides it is not always enlightened. It must be made to see objects as they are, sometimes as they should appear to it, shown the good path which it is seeking, secured against seduction by particular wills, bring together places and times within its purview, weigh the appeal of present, perceptible advantages against the danger of remote and hidden evils. Individuals see the good they reject, the public wills the good it does not see. All are equally in need of guides: The first must be obligated to conform their wills to their reason; the other must be taught to know what it wills. Then public enlightenment results in the union of understanding and will in the social body, from this union results the smooth cooperation of the parts, and finally the greatest force of the whole. Hence arises the necessity of a Lawgiver.

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Chapter Seven
Of the Lawgiver

[1] To discover the best rules of society suited to each Nation would require a superior intelligence who saw all of man's passions and experienced none of them, who had no relation to our nature yet knew it thoroughly, whose happiness was independent of us and who was nevertheless willing to care for ours; finally, one who, preparing his distant glory in the progress of times, could work in

one century and enjoy the reward in another.* It would require gods to give men laws.

[2] The same reasoning Caligula made as to fact, Plato made as to right in defining the civil or royal man he seeks in his book on ruling; but if it is true that a great Prince is a rare man, what of a great Lawgiver? The first need only follow the model which the other must propose. He is the mechanic who invents the machine, the first is nothing but the workman who assembles and operates it. At the birth of societies, says Montesquieu, it is the chiefs of republics who make the institution, and after that it is the institutions that form the chiefs of republics.

[3] Anyone who dares to institute a people must feel capable of, so to speak, changing human nature; of transforming each individual who by himself is a perfect and solitary whole into part of a larger whole from which that individual would as it were receive his life and his being; of weakening man's constitution in order to strengthen it; of substituting a partial and moral existence for the independent and physical existence we have all received from nature. In a word, he must take from man his own forces in order to give him forces which [*382*] are foreign to him and of which he cannot make use without the help of others. The more these natural forces are dead and destroyed, the greater and more lasting are the acquired ones, and the more solid and lasting also is the institution: So that when each Citizen is nothing and can do nothing except with all the others, and the force acquired by the whole is equal or superior to the sum of the natural forces of all the individuals, the legislation may be said to be at the highest pitch of perfection it can reach.

[4] The Lawgiver is in every respect an extraordinary man in the State. While he must be so by his genius, he is no less so by his office. It is not magistracy, it is not sovereignty. This office which gives the republic its constitution has no place in its constitution: It is a singular and superior function that has nothing in common with human empire; for just as he who has command over men ought not to have command over the laws, so neither should he who has command over the laws have command over men; otherwise the

* A people becomes famous only once its legislation begins to decline. No one knows how many centuries the institution of Lycurgus made for the Spartans' happiness before the rest of Greece took notice of them.

laws, as ministers to his passions, would often only perpetuate his injustices, and he could never avoid having particular views vitiate the sanctity of his work.

[5] When Lycurgus gave his fatherland laws, he began by abdicating the Kingship. It was the custom of most Greek cities to entrust the establishment of their laws to foreigners. The modern Republics of Italy often imitated this practice: the Republic of Geneva did so as well and to good effect.* Rome in its finest period witnessed the rebirth of all the crimes of Tyranny in its midst, and found itself on the verge of perishing, for having united the legislative authority and the sovereign power in the same hands.

[6] Yet the Decemvirs themselves never arrogated to themselves the right to have any law passed solely on their authority. *Nothing we propose*, they used to say to the people, *can become law without your consent. Romans, [383] be yourselves the authors of the laws that are to make for your happiness.*

[7] Thus he who drafts the laws has, then, or should have no legislative right, and the people itself cannot divest itself of this non-transferable right, even if it wanted to do so; because according to the fundamental pact only the general will obligates particulars, and there can never be any assurance that a particular will conforms to the general will until it has been submitted to the free suffrage of the people: I have said this already, but it is not useless to repeat it.

[8] So that one finds at one and the same time two apparently incompatible things in the work of legislation: an undertaking beyond human force, and to execute it an authority that is nil.

[9] A further difficulty which deserves attention. The wise who would speak to the vulgar in their own rather than in the vulgar language will not be understood by them. Yet there are a thousand kinds of ideas which it is impossible to translate into the language of the people. Views that are too general and aims that are too remote are equally beyond its reach; each individual, appreciating no other scheme of government than that which bears directly on

* Those who look upon Calvin as only a theologian fail to appreciate the range of his genius. The framing of our wise Edicts, in which he played a large part, does him as much honor as his institution. Whatever revolutions time may bring about in our rites as long as love of fatherland and freedom is not extinguished among us, the memory of that great man will never cease to be honored in it.

his particular interest, has difficulty perceiving the advantages he is supposed to derive from the constant privations required by good laws. For a nascent people to be capable of appreciating sound maxims of politics and of following the fundamental rules of reason of State, the effect would have to become the cause, the social spirit which is to be the work of the institution would have to preside over the institution itself, and men would have to be prior to laws what they ought to become by means of them. Thus, since the Lawgiver can use neither force nor reasoning, he must of necessity have recourse to an authority of a different order, which might be able to rally without violence and to persuade without convincing.

[10] This is what has at all times forced the fathers of nations to resort to the intervention of heaven and to honor the Gods with their own wisdom, so that peoples, subject to the laws of the State as to those of nature, and recognizing the same power in the formation of man and in that of the city, freely obey the yoke of public felicity, and bear it with docility.

[11] This sublime reason which rises beyond the reach *[384]* of vulgar men it is whose decisions the Lawgiver places in the mouth of the immortals, in order to rally by divine authority those whom human prudence could not move.* But it is not up to just anyone to make the Gods speak or to have them believe him when he proclaims himself their interpreter. The great soul of the Lawgiver is the true miracle which must prove his mission. Any man can carve tablets of stone, bribe an oracle, feign secret dealings with some divinity, train a bird to speak in his ear, or find other crude ways to impress the people. Someone who can do only that much might even by chance succeed in assembling a flock of fools, but he will never found an empire, and his extravagant work will soon perish together with him. Empty tricks form a passing bond, only wisdom can make it lasting. The Jewish law which still endures, that of Ishmael's child which has ruled half the world for ten centuries, still proclaim today the great men who dictated them; and while prideful philosophy or blind party spirit regards them as

* "The truth is, says Machiavelli, that there has never been in any country a lawgiver who has not invoked the deity; for otherwise his laws would not have been accepted. A wise man knows many useful truths which cannot be demonstrated in a way that will convince other people." *Discourses on Livy*, Bk. I, ch. 11.

nothing but lucky impostors, the true politician admires in their institutions the great and powerful genius which presides over enduring establishments.

[12] One should not from all this conclude with Warburton that among us politics and religion have a common object, but rather that at the origin of nations the one serves as the instrument of the other.

Chapter Eight
Of the People

[1] Just as an architect, before putting up a large building, observes and tests the ground to see whether it can support the weight, so the wise institutor does not begin by *[385]* drawing up laws good in themselves, but first examines whether the people for whom he intends them is fit to bear them. That is why Plato refused to give laws to the Arcadians and Cyrenians, since he knew that both peoples were rich and could not tolerate equality: that is why there were good laws and wicked men in Crete, for Minos had done no more than to discipline a vice-ridden people.

[2] A thousand nations on earth have been brilliant which could never have tolerated good laws, and even those which could have tolerated them could have done so only for a very brief period in the course of their entire lifetime. Peoples, like men, are docile only in their youth, with age they grow incorrigible; once customs are established and prejudices rooted, it is a dangerous and futile undertaking to try to reform them; the people cannot tolerate having their evils touched even if only to destroy them, like those stupid and cowardly patients who tremble at the sight of a doctor.

[3] This is not to say that, just as some illnesses overwhelm men's minds and deprive them of the memory of the past, there may not also sometimes occur periods of violence in the lifetime of States when revolutions do to peoples what certain crises do to individuals, when horror of the past takes the place of forgetting, and when the State aflame with civil wars is so to speak reborn from its ashes and recovers the vigor of youth as it escapes death's embrace. Such was Sparta at the time of Lycurgus, such was Rome after the Tarquins; and such, among us, were Holland and Switzerland after the expulsion of the Tyrants.

[4] But such events are rare; they are exceptions the reason for which is always found in the particular constitution of the State in question. They could not even happen twice with the same people, for a people can free itself as long as it is merely barbarous, but it can no longer do so once the civil mainspring is worn out. Then troubles may destroy it while revolutions may not be able to restore it, and as soon as its chains are broken, it falls apart and ceases to exist: From then on it needs a master, not a liberator. Free peoples, remember this maxim: Freedom can be gained; but it is never recovered.

[386] [5] For Nations as for men there is a time of maturity for which one has to wait before subjecting them to laws; but the maturity of a people is not always easy to recognize, and if one acts too soon the work is ruined. One people is amenable to discipline at birth, another is not amenable to it after ten centuries. The Russians will never be truly politically organized because they were politically organized too early. Peter's genius was imitative; he did not have true genius, the kind that creates and makes everything out of nothing. Some of the things he did were good, most were misguided. He saw that his people was barbarous, he did not see that it lacked the maturity for political order; he wanted to civilize it when all it needed was to be made warlike. He wanted from the first to make Germans, Englishmen, whereas he should have begun by making Russians; he prevented his subjects from ever becoming what they could be by persuading them that they are what they are not. In the same way a French Tutor forms his pupil for a moment's brilliance in childhood, and to be nothing after that. The Russian Empire will try to subjugate Europe, and will itself be subjugated. The Tartars, its subjects or neighbors, will become its masters and ours: This revolution seems to me inevitable. All the Kings of Europe are working in concert to hasten it.

Chapter Nine
Continued

[1] Just as nature has set limits to the stature of a well-formed man, beyond which it makes only Giants and Dwarfs, so, too, with regard to the best constitution of a State, there are bounds to the size it