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GOVERNMENT

BY: JEREMY BENTHAM

CATEGORY: POLITICS AND GOVERNMENT – GENERAL

A  
FRAGMENT  
ON  
GOVERNMENT;  
BEING

An EXAMINATION of what is delivered,  
On the Subject of GOVERNMENT in General  
In the INTRODUCTION to  
Sir William Blackstone's COMMENTARIES:

by Jeremy Bentham

WITH A  
PREFACE,  
IN WHICH IS GIVEN  
A CRITIQUE on THE WORK AT LARGE.

Rien ne recule plus le progrès des connoissances, qu'un  
mauvais ouvrage d'un Auteur célèbre: parce qu'avant  
d'instruire, il faut commencer par détromper.

MONTESQUIEU *Espirit: des Lois*, L. XXX. Ch. XV.

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## Preface

The age we live in is a busy age; in which knowledge is rapidly advancing towards perfection. In the natural world, in particular, every thing teems with discovery and with improvement. The most distant and recondite regions of the earth traversed and explored the all-vivifying and subtle element of the air so recently analyzed and made known to striking evidences, were all others wanting, of this pleasing truth.

Correspondent to discovery and improvement in the natural world, is reformation in the moral; if that which seems a common notion be, indeed, a true one, that in the moral world there no longer remains any matter for discovery. Perhaps, however, this may not be the case: perhaps among such observations as would be best calculated to serve as grounds for reformation, are some which, being observations of matters of fact hitherto either incompletely noticed, or not at all would, when produced, appear capable of bearing the name of discoveries: with so little method and precision have the consequences of this fundamental axiom, *it is the greatest happiness of the greatest number that is the measure of right and wrong*, been as yet developped.

Be this as it may, if there be room for making, and if there be use in publishing, discoveries in the natural world, surely there is not much less room for making, nor much less use in proposing, reformation in the moral. If it be a matter of importance and of use to us to be made acquainted with distant countries, surely it is not a matter of much less importance, nor of much less use to us, to be made better and better acquainted with the chief means of living happily in our own: If it be of importance and of use to us to know the principles of the element we breathe, surely it is not of much less importance nor of much less use to comprehend the principles, and endeavour at the improvement of those laws, by which alone we breathe it in security. If to this endeavour we should fancy any Author, especially any Author of great name, to be, and as far as could in such case be

expected, to avow himself a determined and persevering enemy, what should we say of him? We should say that the interests of reformation, and through them the welfare of mankind, were inseparably connected with the downfall of his works: of a great part, at least, of the esteem and, influence, which these works might under whatever title have acquired.

Such an enemy it has been my misfortune (and not mine only) to see, or fancy at least I saw, in the Author of the celebrated COMMENTARIES on the LAWS of ENGLAND; an Author whose works have had beyond comparison a more extensive circulation, have obtained a greater share of esteem, of applause, and consequently of influence (and that by a title on many grounds so indisputable) than any other writer who on that subject has ever yet appeared.

It is on this account that I conceived, some time since, the design of pointing out some of what appeared to me the capital blemishes of that work, particularly this grand and fundamental one, the antipathy to reformation; or rather, indeed, of laying open and exposing the universal inaccuracy and confusion which seemed to my apprehension to pervade the whole. For, indeed, such an ungenerous antipathy seemed of itself enough to promise a general vein of obscure and crooked reasoning, from whence no clear and sterling knowledge could be derived; so intimate is the connexion between some of the gifts of the understanding, and some of the affections of the heart.

It is in this view then that I took in hand that part of the first volume to which the Author has given the name of INTRODUCTION. It is in this part of the work that is contained whatever comes under the denomination of *general principles*. It is in this part of the work that are contained such preliminary views as it seemed proper to him to give of certain objects real or imaginary, which he found connected with his subject LAW by identity of name: two or three sorts of LAWS of *Nature*, the revealed LAW, and a certain LAW of *Nations*. It is in this part of the work that he has touched upon several topics which relate to all laws or institutions<sup>(1)</sup> in general, or at least to whole classes of institutions without relating to any one more than to another.

To speak more particularly, it is in this part of his work that he has given a definition, such as it is, of that whole branch of law which he had taken for his subject; that branch, which some, considering it as a main stock, would term LAW without addition; and which he, to distinguish it from those others its *condivident branches*,<sup>(2)</sup> terms law municipal:an account, such as it is, of the nature and origin of Natural Society the mother, and of Political Society the daughter, of Law municipal, duly begotten in the bed of Metaphor:a division, such as it is, of a law, individually considered, into what he fancies to be its parts:an account, such as it is, of the method to be taken for interpreting any law that may occur.

In regard to the Law of England in particular, it is here that he gives an account of the division of it into its two branches (branches, however, that are no ways distinct in the purport of them, when once established, but only in respect of the source from whence their establishment took its rise) the Statute or Written law, as it is called, and the Common or Unwritten:an account of what are called General Customs, or institutions in force throughout the whole empire, or at least the whole nation;of what are called

Particular Customs, institutions of local extent established in particular districts; and of such adopted institutions of a general extent, as are parcel of what are called the Civil and the Canon laws; all three in the character of so many branches of what is called the Common Law: in fine, a general account of Equity, that capricious and incomprehensible mistress of our fortunes, whose features neither our Author, nor perhaps any one is well able to delineate; of Equity, who having in the beginning been a rib of Law, but since in some dark age plucked from her side, when sleeping, by the hands not so much of God as of enterprising Judges, now lords it over her parent sister:

All this, I say, together with an account of the different districts of the empire over which different portions of the Law prevail, or over which the Law has different degrees of force, composes that part of our Author's work which he has styled the INTRODUCTION. His eloquent 'Discourse on the study of the Law', with which, as being a discourse of the rhetorical kind rather than of the didactic, I proposed not to intermeddle, prefaces the whole.

It would have been in vain to have thought of travelling over the whole of so vast a work. My design, therefore, was to take such a portion of it, as might afford a fair and adequate specimen of the character and complexion of the whole. For this purpose the part here marked out would, I thought, abundantly suffice. This, however narrow in extent, was the most conspicuous, the most characteristic part of our Author's work, and that which was most his own. The rest was little more than compilation. Pursuing my examination thus far, I should pursue it, I thought, as far as was necessary for my purpose: and I had little stomach to pursue a task at once so laborious and so invidious any farther. If Hercules, according to the old proverb, is to be known *ex pede*: much more thought I, is he to be known *ex capite*.

In these views it was that I proceeded as far as the middle of the definition of the Law *municipal*. It was there I found, not without surprize, the digression which makes the subject of the present Essay. This threw me at first into no small perplexity. To give no account of it at all; to pass wholly *sub silentio*, so large, and in itself so material a part of the work I was examining, would seem strange: at the same time I saw no possibility of entering into an examination of a passage so anomalous, without cutting in pieces the thread of the discourse. Under this doubt I determined at any rate, for the present, to pass it by; the rather as I could not perceive any connexion that it had with any thing that came before or after. I did so; and continuing my examination of the definition from which it digressed, I travelled on to the end of the Introduction. It then became necessary to come to some definitive resolution concerning this excentric part of it: and the result was, that being loth to leave the enterprize I had begun in this respect, imperfect, I sat down to give what I intended should be a very slight and general survey of it. The farther, however, I proceeded in examining it, the more confused and unsatisfactory it appeared to me: and the greater difficulty I found in knowing what to make of it, the more words it cost me, I found, to say so. In this way, and by these means it was that the present Essay grew to the bulk in which the Reader sees it. When it was nearly completed, it occurred to me, that as the digression itself which I was examining was perfectly distinct from, and unconnected with the text from which it starts, so was, or so at least might be, the critique on that digression, from the critique on the text. The former was by much too large to be

engrafted into the latter: and since if it accompanied it at all, it could only be in the shape of an Appendix, there seemed no reason why the same publication should include them both. To the former, therefore, as being the least, I determined to give that finish which I was able, and which I thought was necessary: and to publish it in this detached manner, as the first, if not the only part of a work, the principal and remaining part of which may possibly see the light some time or other, under some such title as that of 'A COMMENT on the COMMENTARIES'

In the mean time that I may stand more fully justified, or excused at least, in an enterprize to most perhaps so extraordinary, and to many doubtless so unacceptable, it may be of use to endeavour to state with some degree of precision, the grounds of that war which, for the interests of true science, and of liberal improvement, I think myself bound to wage against this work. I shall therefore proceed to mark out and distinguish those points of view in which it seems principally reprehensible, not forgetting those in which it seems still entitled to our approbation and applause.

There are two characters, one or other of which every man who finds any thing to say on the subject of Law, may be said to take upon him; that of the *Expositor*, and that of the *Censor*. To the province of the *Expositor* it belongs to explain to us what, as he supposes, the Law is: to that of the *Censor*, to observe to us what he thinks it ought to be. The former, therefore, is principally occupied in stating, or in enquiring after facts.<sup>(3)</sup> the latter, in discussing reasons. The *Expositor*, keeping within his sphere, has no concern with any other faculties of the mind than the apprehension, the memory, and the judgment: the latter, in virtue of those sentiments of pleasure or displeasure which he finds occasion to annex to the objects under his review, holds some intercourse with the affections. That which is Law, is, in different countries, widely different: while that which ought to be, is in all countries to a great degree the same. The *Expositor*, therefore, is always the citizen of this or that particular country: the *Censor* is, or ought to be the citizen of the world. To the *Expositor* it belongs to shew what the Legislator and his underworkman the Judge have done already: to the *Censor* it belongs to suggest what the Legislator ought to do in future. To the *Censor*, in short, it belongs to teach that science, which when by change of hands converted into an art, the LEGISLATOR practises.

Let us now return to our Author. Of these two perfectly distinguishable functions, the latter alone is that which it fell necessarily within his province to discharge. His professed object was to explain to us what the Laws of England were. '*Ita lex scripta est*', was the only motto which he stood engaged to keep in view. The work of censure (for to this word, in default of any other, I find it necessary to give a neutral sense) the work of censure, as it may be styled, or, in a certain sense, of criticism, was to him but a parergona work of supererogation: a work, indeed, which, if aptly executed, could not but be of great ornament to the principal one, and of great instruction as well as entertainment to the Reader, but from which our Author, as well as those that had gone before him on the same line, might, without being chargeable with any deficiency, have stood excused: a work which, when superadded to the principal, would lay the Author under additional obligations, and impose on him new duties: which, notwithstanding whatever else it might differ in from the principal one, agrees with it in this, that it ought to be executed with impartiality, or not at all.

If, on the one hand, a hasty and indiscriminating condemner of what is established may expose himself to contempt; on the other hand, a bigotted or corrupt defender of the works of power, becomes guilty, in a manner, of the abuses which he supports: the more so if, by oblique glances and sophistical glosses, he studies to guard from reproach, or recommend to favour, what he knows not how, and dares not attempt, to justify. To a man who contents himself with simply stating an institution as he thinks it is, no share, it is plain, can justly be attributed (nor would any one think of attributing to him any share) of whatever reproach, any more than of whatever applause the institution may be thought to merit. But if not content with this humbler function, he takes upon him to give reasons in behalf of it, reasons whether made or found by him, it is far otherwise. Every false and sophistical reason that he contributes to circulate, he himself is chargeable with: nor ought he to be holden guiltless even of such as, in a work where fact not reason is the question, he delivers as from other writers without censure. By officiously adopting them he makes them his own, though delivered under the names of the respective Authors: not much less than if delivered under his own. For the very idea of a reason betokens approbation: so that to deliver a remark under that character, and that without censure, is to adopt it. A man will scarcely, therefore, without some note of disapprobation, be the instrument of introducing, in the guise of a reason, an argument which he does not really wish to see approved. Some method or other he will take to wash his hands of it: some method or other he will take to let men see that what he means to be understood to do, is merely to report the judgment of another, not to pass one of his own. Upon that other then he will lay the blame; at least he will take care to repel it from himself. If he omits to do this, the most favourable cause that can be assigned to the omission is indifference: indifference to the public welfare that indifference which is itself a crime.

It is wonderful how forward some have been to look upon it as a kind of presumption and ingratitude, and rebellion, and cruelty, and I know not what besides, not to allege only, nor to own, but to suffer any one so much as to imagine, that an old-established law could in any respect be a fit object of condemnation. Whether it has been a kind of personification, that has been the cause of this, as if the law were a living creature, or whether it has been the mechanical veneration for antiquity, or what other delusion of the fancy, I shall not here enquire. For my part, I know not for what good reason it is that the merit of justifying a law when right should have been thought greater, than that of censuring it when wrong. Under a government of Laws, what is the motto of a good citizen? To obey punctually; to censure freely.

Thus much is certain; that a system that is never to be censured, will never be improved: that if nothing is ever to be found fault with, nothing will ever be mended: and that a resolution to justify every thing at any rate, and to disapprove of nothing, is a resolution which, pursued in future, must stand as an effectual bar to all the additional happiness we can ever hope for; pursued hitherto would have robbed us of that share of happiness which we enjoy already.

Nor is a disposition to find 'every thing as it should be,' less at variance with itself, than with reason and utility. The commonplace arguments in which it vents itself justify not what is established, in effect, any more than they condemn it: since whatever now is established, once was innovation.



Precipitate censure, cast on a political institution, does but recoil on the head of him who casts it. From such an attack it is not the institution itself, if well grounded, that can suffer. What a man says against it either makes impression or makes none. If none, it is just as if nothing had been said about the matter: if it does make an impression, it naturally calls up some one or other in defence. For if the institution is in truth a beneficial one to the community in general, it cannot but have given an interest in its preservation to a number of individuals. By their industry, then, the reasons on which it is grounded are brought to light: from the observation of which those who acquiesced in it before upon trust, now embrace it upon conviction. Censure, therefore, though ill-founded, has no other effect upon an institution than to bring it to that test, by which the value of those, indeed, on which prejudice alone has stamped a currency, is cried down, but by which the credit of those of sterling utility is confirmed.

Nor is it by any means from passion and ill-humour, that censure, passed upon legal institutions, is apt to take its birth. When it is from passion and ill-humour that men speak, it is with men that they are in ill-humour, not with laws: it is men, not laws, that are the butt of arrogance.<sup>(4)</sup> Spleen and turbulence may indeed prompt men to quarrel with living individuals: but when they make complaint of the dead letter of the Law, the work of departed lawgivers, against whom no personal antipathy can have subsisted, it is always from the observation, or from the belief at least, of some real grievance. The Law is no man's enemy: the Law is no man's rival. Ask the clamorous and unruly multitude it is never the Law itself that is in the wrong: it is always some wicked interpreter of the Law that has corrupted and abused it.<sup>(5)</sup>

Thus destitute of foundations are the terrors, or pretended terrors, of those who shudder at the idea of a free censure of established institutions. So little does the peace of society require the aid of those lessons which teach men to accept of any thing as reason, and to yield the same abject and indiscriminating homage to the Laws here, which is paid to the despot elsewhere. The fruits of such tuition are visible enough in the character of that race of men who have always occupied too large a space in the circle of the profession: A passive and enervate race, ready to swallow any thing, and to acquiesce in any thing: with intellects incapable of distinguishing right from wrong, and with affections alike indifferent to either: insensible, short-sighted, obstinate: lethargic, yet liable to be driven into convulsions by false terrors: deaf to the voice of reason and public utility: obsequious only to the whisper of interest, and to the beck of power.

This head of mischief, perhaps, is no more than what may seem included under the former. For why is it an evil to a country that the minds of those who have the Law under their management should be thus enfeebled? It is because it finds them impotent to every enter prize of improvement.

Not that a race of lawyers and politicians of this enervate breed is much less dangerous to the duration of that share of felicity which the State possesses at any given period, than it is mortal to its chance of attaining to a greater. If the designs of a Minister are inimical to his country, what is the man of all others for him to make an instrument of or a dupe? Of all men, surely none so fit as that sort of man who is ever on his knees before the footstool of Authority, and who, when those above him, or before him, have pronounced, thinks it a crime to have an opinion of his own.

Those who duly consider upon what slight and trivial circumstances, even in the happiest times, the adoption or rejection of a Law so often turns; circumstances with which the utility of it has no imaginable connection those who consider the desolate and abject state of the human intellect, during the periods in which so great a part of the still subsisting mass of institutions had their birth those who consider the backwardness there is in most men, unless when spurred by personal interests or resentments, to run a-tilt against the Colossus of authority those, I say, who give these considerations their due weight, will not be quite so zealous, perhaps, as our Author has been to terrify men from setting up what is now 'private judgment,' against what once was 'public': nor to thunder down the harsh epithet of 'arrogance' on those, who, with whatever success, are occupied in bringing rude establishments to the test of polished reason. They will rather do what they can to cherish a disposition at once so useful and so rare:<sup>(6)</sup> which is so little connected with the causes that make popular discontentments dangerous, and which finds so little aliment in those propensities that govern the multitude of men. They will not be for giving such a turn to their discourses as to bespeak the whole of a man's favour for the defenders of what is established: nor all his resentment for the assailants. They will acknowledge that if there be some institutions which it is 'arrogance' to attack, there may be others which it is effrontery to defend. TOURREIL<sup>(7)</sup> has defended torture: torture established by the 'public judgment' of so many enlightened nations. BECCARIA ('indecent' and 'arrogant' Beccaria!) has condemned it. Of these two whose lot among men would one choose rather, the Apologist's or the Censor's?

Of a piece with the discernment which enables a man to perceive, and with the courage which enables him to avow, the defects of a system of institutions, is that accuracy of conception which enables him to give a clear account of it. No wonder then, in a treatise partly of the expository class, and partly of the censorial, that if the latter department is filled with imbecillity, symptoms of kindred weakness should characterize the former.

The former department, however, of our Author's work, is what, on its own account merely, I should scarce have found myself disposed to intermeddle with. The business of simple exposition is a harvest in which there seemed no likelihood of there being any want of labourers: and into which therefore I had little ambition to thrust my sickle.

At any rate, had I sat down to make a report of it in this character alone, it would have been with feelings very different from those of which I now am conscious, and in a tone very different from that which I perceive myself to have assumed. In determining what conduct to observe respecting it, I should have considered whether the taint of error seemed to confine itself to parts, or to diffuse itself through the whole. In the latter case, the least invidious, and considering the bulk of the work, the most beneficial course would have been to have taken no notice of it at all, but to have sat down and tried to give a better. If not the whole in general, but scattered positions only had appeared exceptionable, I should have sat down to rectify those positions with the same apathy with which they were advanced. To fall in an adverse way upon a work simply expository, if that were all there were of it, would have been alike ungenerous and unnecessary. In the involuntary errors of the understanding there can be little to excite, or at least to justify, resentment. That which alone, in a manner, calls for rigid censure, is the sinister bias of the affections. If then I may still continue to mention as separate, parts

which in the work itself are so intimately, and, indeed, undistinguishably blended, it is the censorial part alone that has drawn from me that sort of animadversion I have been led to bestow indiscriminately on the whole. To lay open, and if possible supply, the imperfections of the other, is an operation that might indeed of itself do service; but that which I thought would do still more service, was the weakening the authority of this.

Under the sanction of a great name every string of words however unmeaning, every opinion however erroneous, will have a certain currency. Reputation adds weight to sentiments from whence no part of it arose, and which had they stood alone might have drawn nothing, perhaps, but contempt. Popular fame enters not into nice distinctions. Merit in one department of letters affords a natural, and in a manner irrecusable presumption of merit in another, especially if the two departments be such between which there is apparently a close affiance.

Wonderful, in particular, is that influence which is gained over young minds, by the man who on account of whatever class of merit is esteemed in the character of a *preceptor*. Those who have derived, or fancy themselves to have derived knowledge from what he knows, or appears to know, will naturally be for judging as he judges: for reasoning as he reasons; for approving as he approves; for condemning as he condemns. On these accounts it is, that when the general complexion of a work is unsound, it may be of use to point an attack against the whole of it without distinction, although such parts of it as are noxious as well as unsound be only scattered here and there.

On these considerations then it may be of use to shew, that the work before us, in spite of the merits which recommend it so powerfully to the imagination and to the ear, has no better title on one account than on another, to that influence which, were it to pass unnoticed, it might continue to exercise over the judgment.

The Introduction is the part to which, for reasons that have been already stated, it was always my intention to confine myself. It is but a part even of this Introduction that is the subject of the present Essay. What determined me to begin with this small part of it is, the facility I found in separating it from every thing that precedes or follows it. This is what will be more particularly spoken to in another place.

It is not that this part is among those which seemed most open to animadversion. It is not that stronger traces are exhibited in this part than in another of that spirit in our Author which seems so hostile to Reformation, and to that Liberty which is Reformation's harbinger.

It is not here that he tramples on the right of private judgment, that basis of every thing that an Englishman holds dear. It is not here, in particular, that he insults our understandings with nugatory reasons; stands forth the professed champion of religious intolerance; or openly sets his face against civil reformation.

It is not here, for example, he would persuade us, that a trader who occupies a booth at a fair is a fool for his pains; and on that account no fit object of the Law's protection.<sup>(8)</sup>

It is not here that he gives the presence of one man at the making of a Law, as a reason why ten thousand others that are to obey it, need know nothing of the matter.<sup>(9)</sup>

It is not here, that after telling us, in express terms, there must be an 'actual breaking' to make burglary, he tells us, in the same breath, and in terms equally express, where burglary may be without actual breaking; and this because 'the Law will not suffer itself to be trifled with.'<sup>(10)</sup>

It is not here, that after relating the Laws by which peaceable Christians are made punishable for worshipping God according to their consciences, he pronounces with equal peremptoriness and complacency, that every thing, yes, 'every thing is as it should be.'<sup>(11)</sup>

It is not here, that he commands us to believe, and that on pain of forfeiting all pretensions to either 'sense or probity,' that the system of our jurisprudence is, in the whole and every part of it, the very quintessence of perfection.<sup>(12)</sup>

It is not here that he assures us in point of fact, that there never has been an alteration made in the Law that men have not afterwards found reason to regret.<sup>(13)</sup>

It is not here that he turns the Law into a Castle, for the purpose of opposing every idea of 'fundamental' reparation.<sup>(14)</sup>

It is not here that he turns with scorn upon those beneficent Legislators, whose care it has been to pluck the mask of Mystery from the face of Jurisprudence.<sup>(15)</sup>

If here,<sup>(16)</sup> as every where, he is eager to hold the cup of flattery to high station, he has stooped short, however, in this place, of idolatry.<sup>(17)</sup>

It is not then, I say, this part, it is not even any part of that Introduction, to which alone I have any thoughts of extending my examination, that is the principal seat of that poison, against which it was the purpose of this attempt to give an antidote. The subject handled in this part of the work is such, as admits not of much to be said in the person of the Censor. Employed, as we have seen, in settling matters of a preliminary nature in drawing outlines, it is not in this part that there was occasion to enter into the details of any particular institution. If I chose the Introduction then in preference to any other part, it was on account of its affording the fairest specimen of the whole, and not on account of its affording the greatest scope for censure.

Let us reverse the tablet. While with this freedom I expose our Author's ill deserts, let me not be backward in acknowledging and paying homage to his various merits: a justice due, not to him alone, but to that Public, which now for so many years has been dealing out to him (it cannot be supposed altogether without title) so large a measure of its applause.

Correct, elegant, unembarrassed, ornamented, the style is such, as could scarce fail to recommend a work still more vicious in point of matter to the multitude of readers.

He it is, in short, who first of all institutional writers, has taught Jurisprudence to speak the language of the Scholar and the Gentle man: put a polish upon that rugged science: cleansed her from the dust and cobwebs of the office: and if he has not enriched her with that precision that is drawn only from the sterling treasury of the sciences, has decked her

out, however, to advantage, from the toilette of classic erudition: enlivened her with metaphors and allusions: and sent her abroad in some measure to instruct, and in still greater measure to entertain, the most miscellaneous and even the most fastidious societies.

The merit to which, as much perhaps as to any, the work stands indebted for its reputation, is the enchanting harmony of its numbers: a kind of merit that of itself is sufficient to give a certain degree of celebrity to a work devoid of every other. So much is man governed by the ear.

The function of the Expositor may be conceived to divide itself into two branches: that of history, and that of simple demonstration. The business of history is to represent the Law in the state it has been in, in past periods of its existence: the business of simple demonstration in the sense in which I will take leave to use the word, is to represent the Law in the state it is in for the time being.<sup>(18)</sup>

Again, to the head of demonstration belong the several businesses of arrangement, narration and conjecture. Matter of narration it may be called, where the Law is supposed to be explicit, clear, and settled: matter of conjecture or interpretation, where it is obscure, silent, or unsteady. It is matter of arrangement to distribute the several real or supposed institutions into different masses, for the purpose of a general survey; to determine the order in which those masses shall be brought to view; and to find for each of them a name.

The business of narration and interpretation are conversant chiefly about particular institutions. Into the details of particular institutions it has not been my purpose to descend. On these topics, then, I may say, in the language of procedure, *non sum informatus*. Viewing the work in this light, I have nothing to add to or to except against the public voice.

History is a branch of instruction which our Author, though not rigidly necessary to his design, called in, not without judgment, to cast light and ornament on the dull work of simple demonstration: this part he has executed with an elegance which strikes every one: with what fidelity, having not very particularly examined, I will not take upon me to pronounce.

Among the most difficult and the most important of the functions of the demonstrator is the business of arrangement. In this our Author has been thought, and not, I conceive, without justice, to excel; at least in comparison of any thing in that way that has hitherto appeared. 'Tis to him we owe such an arrangement of the elements of Jurisprudence, as wants little, perhaps, of being the best that a technical nomenclature will admit of. A technical nomenclature, so long as it is admitted to mark out and denominate the principal heads, stands an invincible obstacle to every other than a technical arrangement. For to denominate in general terms, what is it but to arrange? and to arrange under heads, what is it but to denominate upon a large scale? A technical arrangement, governed then in this manner, by a technical nomenclature, can never be otherwise than confused and unsatisfactory. The reason will be sufficiently apparent, when we understand what sort of an arrangement that must be which can be properly termed a

natural one.

That arrangement of the materials of any science may, I take it, be termed a natural one, which takes such properties to characterize them by, as men in general are, by the common constitution of man's nature, disposed to attend to: such, in other words, as naturally, that is readily, engage, and firmly fix the attention of any one to whom they are pointed out. The materials, or elements here in question, are such actions as are the objects of what we call Laws or Institutions.

Now then, with respect to actions in general, there is no property in them that is calculated so readily to engage, and so firmly to fix the attention of an observer, as the tendency they may have to, or divergency (if one may so say) from, that which maybe styled the common end of all of them. The end I mean is Happiness:<sup>(19)</sup> and this tendency in any act is what we style its utility: as this divergency is that to which we give the name of mischievousness. With respect then to such actions in particular as are among the objects of the Law, to point out to a man the utility of them or the mischievousness, is the only way to make him see clearly that property of them which every man is in search of; the only way, in short, to give him satisfaction.

From utility then we may denominate a principle, that may serve to preside over and govern, as it were, such arrangement as shall be made of the several institutions or combinations of institutions that compose the matter of this science: and it is this principle, that by putting its stamp upon the several names given to those combinations, can alone render satisfactory and dear any arrangement that can be made of them.

Governed in this manner by a principle that is recognized by all men, the same arrangement that would serve for the jurisprudence of any one country, would serve with little variation for that of any other.

Yet more. The mischievousness of a bad Law would be detected, at least the utility of it would be rendered suspicious, by the difficulty of finding a place for it in such an arrangement: while, on the other hand, a technical arrangement is a sink that with equal facility will swallow any garbage that is thrown into it.

That this advantage may be possessed by a natural arrangement, is not difficult to conceive. Institutions would be characterized by it in the only universal way in which they can be characterized; by the nature of the several modes of conduct which, by prohibiting, they constitute offences.<sup>(20)</sup>

These offences would be collected into classes denominated by the various modes of their divergency from the common end; that is, as we have said, by their various forms and degrees of mischievousness: in a word, by those properties which are reasons for their being made offences: and whether any such mode of conduct possesses any such property is a question of experience. Now, a bad Law is that which prohibits a mode of conduct that is not mischievous. Thus would it be found impracticable to place the mode of conduct prohibited by a bad law under any denomination of offence, without asserting such a matter of fact as is contradicted by experience. Thus cultivated, in short, the soil of Jurisprudence would be found to repel in a manner every evil institution; like that country

which refuses, we are told, to harbour any thing venomous in its bosom.

The synopsis of such an arrangement would at once be a compendium of expository and of censorial Jurisprudence: nor would it serve more effectually to instruct the subject, than it would to justify or reprove the Legislator.

Such a synopsis, in short, would be at once a map, and that an universal one, of Jurisprudence as it is, and a slight but comprehensive sketch of what it ought to be. For, the reasons of the several institutions comprised under it would stand expressed, we see, and that uniformly (as in our Author's synopsis they do in scattered instances) by the names given to the several classes under which those institutions are comprised. And what reasons? Not technical reasons, such as none but a Lawyer gives, nor any but a Lawyer would put up with;<sup>(21)</sup> but reasons, such as were they in themselves what they might and ought to be, and expressed too in the manner they might and ought to be, any man might see the force of as well as he.

Nor in this is there any thing that need surprize us. The consequences of any Law, or of any act which is made the object of a Law, the only consequences that men are at all interested in, what are they but pain and pleasure? By some such words then as pain and pleasure, they may be expressed: and pain and pleasure at least, are words which a man has no need, we may hope, to go to a Lawyer to know the meaning of.<sup>(22)</sup> In the synopsis then of that sort of arrangement which alone deserves the name of a natural one, terms such as these, terms which if they can be said to belong to any science, belong rather to Ethics than to Jurisprudence, even than to universal Jurisprudence, will engross the most commanding stations.

What then is to be done with those names of classes that are purely technical? With offences, for example, against prerogative, with misprisions, contempts, felonies, praemunires?<sup>(23)</sup> What relation is it that these mark out between the Laws that concern the sorts of acts they are respectively put to signify, and that common end we have been speaking of? Not any. In a natural arrangement what then would become of them? They would either be banished at once to the region of quiddities and substantial forms; or if, and in deference to attachments too inveterate to be all at once dissolved, they were still to be indulged a place, they would be stationed in the corners and bye places of the Synopsis: stationed, not as now to give light, but to receive it. But more of this, perhaps, at some future time.

To return to our Author. Embarrassed, as a man must needs be, by this blind and intractable nomenclature, he will be found, I conceive, to have done as much as could reasonably be expected of a writer so circumstanced; and more and better than was ever done before by any one.

In one part, particularly, of his Synopsis,<sup>(24)</sup> several fragments of a sort of method which is, or at least comes near to, what may be termed a natural one,<sup>(25)</sup> are actually to be found. We there read of `corporal injuries'; of `offences against peace'; against `health'; against `personal security';<sup>(26)</sup> `liberty': `property': light is let in, though irregularly, at various places.

In an unequal imitation of this Synopsis that has lately been performed upon what is called the Civil Law,<sup>4</sup> all is technical. All, in short, is darkness. Scarce a syllable by which a man would be led to suspect, that the affair in hand were an affair that happiness or unhappiness was at all concerned in.<sup>(27)</sup>

To return, once more, to our Author's Commentaries. Not even in a censorial view would I be understood to deem them altogether without merit. For the institutions commented on, where they are capable of good reasons, good reasons are every now and then given: in which way, so far as it goes, one-half of the Censor's task is well accomplished. Nor is the dark side of the picture left absolutely untouched. Under the head of 'Trial by jury', are some very just and interesting remarks on the yet-remaining imperfections of that mode of trial:<sup>(28)</sup> and under that of 'Assurances by matter of Record', on the lying and extortious jargon of Recoveries.<sup>(29)</sup> So little, however, are these particular remarks of a piece with the general disposition, that shews itself so strongly throughout the work, indeed so plainly adverse to the general maxims that we have seen, that I can scarce bring myself to attribute them to our Author. Not only disorder is announced by them, but remedies, well-imagined remedies, are pointed out. One would think some Angel had been sowing wheat among our Author's tares.<sup>(30)</sup>

With regard to this Essay itself, I have not much to say. The insufficiencies of our Author. The business of it is therefore rather to overthrow than to set up; which latter task can seldom be performed to any great advantage where the former is the principal one.

To guard against the danger of misrepresentation, and to make sure of doing our Author no injustice, his own words are given all along: and, as scarce any sentence is left unnoticed, the whole comment wears the form of what is called a perpetual one. With regard to a discourse that is simply institutional, and in which the writer builds upon a plan of his own, a great part of the satisfaction it can be made to afford depends upon the order and connection that are established between the several parts of it. In a comment upon the work of another, no such connection, or at least no such order, can be established commodiously, if at all. The order of the comment is prescribed by the order, perhaps the disorder, of the text.

The chief employment of this Essay, as we have said, has necessarily been to overthrow. In the little, therefore, which has been done by it in the way of setting up, my view has been not so much to think for the Reader, as to put him upon thinking for himself. This I flatter myself with having done on several interesting topics; and this is all that at present I propose.

Among the few positions of my own which I have found occasion to advance, some I observe which promise to be far from popular. These it is likely may give rise to very warm objections: objections which in themselves I do not wonder at, and which in their motive I cannot but approve. The people are a set of masters whom it is not in a man's power in every instance fully to please, and at the same time faithfully to serve. He that is resolved to persevere without deviation in the line of truth and utility, must have learnt to prefer the still whisper of enduring approbation, to the short-lived bustle of tumultuous applause.



Other passages too there may be, of which some farther explanation may perhaps not unreasonably be demanded. But to give these explanations, and to obviate those objections, is a task which, if executed at all, must be referred to some other opportunity. Consistency forbade our expatiating so far as to lose sight of our Author: since it was the line of his course that marked the boundaries of ours.

## Introduction

1. The subject of this examination, is a passage contained in that part of SIR W. BLACKSTONE'S COMMENTARIES on the LAWS of ENGLAND, which the Author has styled the INTRODUCTION. This Introduction of his stands divided into four Sections. The first contains his discourse 'On the STUDY of the LAW'. The second, entitled 'Of the NATURE of LAWS in general', contains his speculations concerning the various objects, real or imaginary, that are in use to be mentioned under the common name of LAW. The third, entitled 'Of the LAWS OF ENGLAND', contains such general observations, relative to these last mentioned Laws, as seemed proper to be premised before he entered into the details of any parts of them in particular. In the fourth, entitled, 'Of the COUNTRIES subject to the LAWS of ENGLAND', is given a statement of the different territorial extents of different branches of those Laws.

2. 'Tis in the second of these sections, that we shall find the passage proposed for examination. It occupies in the edition I happen to have before me,' which is the first (and all the editions, I believe, are paged alike) the space of seven pages; from the 47th, to the 53d, inclusive.

3. After treating of 'LAW in general', of the 'LAW of Nature', LAW of Revelation', and 'LAW of Nations', branches of that imaginary whole, our Author comes at length to what he calls 'LAW municipal': that sort of Law, to which men in their ordinary discourse would give the name of Law without addition; the only sort perhaps of them all (unless it be that of Revelation) to which the name can, with strict propriety, be applied: in a word, that sort which we see made in each nation, to express the will of that body in it which governs. On this subject of LAW Municipal he sets out, as a man ought, with a definition of the phrase itself; an important and fundamental phrase, which stood highly in need of a definition, and never so much as since our Author has defined it.

4. This definition is ushered in with no small display of accuracy. First, it is given entire: it is then taken to pieces, clause by clause; and every clause by itself, justified and explained. In the very midst of these explanations, in the very midst of the definition, he makes a sudden stand. And now it bethinks him that it is a good time to give a dissertation, or rather a bundle of dissertations, upon various subjects On the manner in which Governments were established On the different forms they assume when they are established On the peculiar excellence of that form which is established in this country On

the right, which he thinks it necessary to tell us, the GOVERNMENT in every country has of making LAWS on the duty of making LAWS; which, he says, is also incumbent on the Government. In stating these two last heads, I give, as near as possible, his own words; thinking it premature to engage in discussions, and not daring to decide without discussion on the sense.

5. The digression we are about to examine, is, as it happens, not at all involved with the body of the work from which it starts. No mutual references or allusions: no supports or illustrations communicated or received. It may be considered as one small work inserted into a large one; the containing and the contained, having scarce any other connection than what the operations of the press have given them. It is this disconnection that will enable us the better to bestow on the latter a separate examination, without breaking in upon any thread of reasoning, or any principle of Order.

6. A general statement of the topics touched upon in the digression we are about to examine has been given above. It will be found, I trust, a faithful one. It will not be thought, however, much of a piece, perhaps, with the following, which our Author himself has given us. 'This', (says he,<sup>(31)</sup> meaning an explanation he had been giving of a part of the definition above spoken of) 'will naturally lead us into a short enquiry into the nature of society and civil government,<sup>(32)</sup> and the natural inherent right that belongs to the sovereignty of a state, wherever that sovereignty be lodged, of making and enforcing Laws.'

7. No very explicit mention here, we may observe, of the manner in which governments have been established, or of the different forms they assume when established: no very explicit intimation that these were among the topics to be discussed. None at all of the duty of government to make laws; none at all of the British constitution; though, of the four other topics we have mentioned, there is no one on which he has been near so copious as on this last. The right of Government to make laws, that delicate and invidious topic, as we shall find it when explained, is that which for the moment, seems to have swallowed up almost the whole of his attention.

8. Be this as it may, the contents of the dissertation before us, taken as I have stated them, will furnish us with the matter of five chapters: one, which I shall entitle 'FORMATION of GOVERNMENT' a second, 'FORMS of GOVERNMENT' a third, 'BRITISH Constitution' a fourth, 'RIGHT of the SUPREME POWER to make LAWS' a fifth, 'Duty of the Supreme POWER to make LAWS'.

## CHAPTER I

### Formation of Government

1. The first object which our Author seems to have proposed to himself in the dissertation we are about to examine, is to give us an idea of the manner in which Governments were formed. This occupies the first paragraph, together with part of the second: for the

typographical division does not seem to quadrate very exactly with the intellectual. As the examination of this passage will unavoidably turn in great measure upon the words, it will be proper the reader should have it under his eye.

2. 'The only true and natural foundations of society,' (says our Author)<sup>(33)</sup> '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 its 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 its 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 the very act of associating together: namely, that the whole should protect all its 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.' Thus far our Author.

3. When leading terms are made to chop and change their several significations; sometimes meaning one thing, sometimes another, at the upshot perhaps nothing; and this in the compass of a paragraph; one may judge what will be the complexion of the whole context. This, we shall see, is the case with the chief of those we have been reading: for instance, with the words 'Society', 'State of nature', 'original contract', not to tire the reader with any more. 'Society', in one place means the same thing as 'a state of nature' does: in another place it means the same as 'Government'. Here, we are required to believe there never was such a state as a state of nature: there we are given to understand there has

been. In like manner with respect to an original contract we are given to understand that such a thing never existed; that the notion of it is ridiculous: at the same time that there is no speaking nor stirring without supposing there was one.

4. 1st, Society means a state of nature. For if by 'a state of nature' a man means any thing, it is the state, I take it, men are in or supposed to be in, before they are under government: the state men quit when they enter into a state of government; and in which were it not for government they would remain. But by the word 'society' it is plain at one time that he means that state. First, according to him, comes society; then afterwards comes government. 'For when society', says our Author, 'is once formed, government results of course; as necessary to preserve and keep that society in order.'<sup>(34)</sup> And again, immediately afterwards, 'A state in which a superior has been constituted, whose commands and decisions all the members are bound to obey', he puts as an explanation (nor is it an inapt one) of a state of 'government': and 'unless' men were in a state of that description, they would still remain', he says, 'as in a state of nature'. By society, therefore, he means, once more, the same as by a 'state of nature': he opposes it to government. And he speaks of it as a state which, in this sense, has actually existed.

5. 2dly, This is what he tells us in the beginning of the second of the two paragraphs: but all the time the first paragraph lasted, society meant the same as government. In shifting then from one paragraph to another, it has changed its nature. 'Tis 'the foundations of society',<sup>(35)</sup> that he first began to speak of, and immediately he goes on to explain to us, after his manner of explaining, the foundations of government. 'Tis of a 'formal beginning' of 'Society',<sup>(36)</sup> that he speaks soon after; and by this formal beginning, he tells us immediately, that he means, 'the original contract of society',<sup>(37)</sup> which contract entered into, 'a state',<sup>(38)</sup> he gives us to understand, is thereby 'instituted', and men have undertaken to 'submit to Laws'.<sup>(39)</sup> So long then as this first paragraph lasts, 'society', I think, it is plain cannot but have been meaning the same as 'government'.

6. 3dly, All this while too, this same 'state of nature' to which we have seen 'Society' (a state spoken of as existing) put synonymous, and in which were it not for government, men, he informs us, in the next page, would 'remain',<sup>(40)</sup> is a state in which they never were. So he expressly tells us. This 'notion', says he, 'of an actually existing unconnected state of nature'; (that is, as he explains himself afterwards,<sup>(41)</sup> 'a state in which men have no judge to define their rights, and redress their wrongs), is too wild to be seriously admitted'.<sup>(42)</sup> When he admits it then himself, as he does in his next page, we are to understand, it seems, that he is bantering us: and that the next paragraph is (what one should not otherwise have taken if for) a piece of pleasantry.

7. 4thly, The original contract is a thing, we are to understand, that never had existence; perhaps not in any state: certainly therefore not in all. 'Perhaps, in no instance', says our Author, 'has it ever been formally expressed at the first institution of a state'.<sup>(43)</sup>

8. 5thly, Notwithstanding all this, we must suppose, it seems, that it had in every state: 'yet in nature and reason', (says our Author) 'it must always be understood and implied'.<sup>(44)</sup> Growing bolder in the compass of four or five pages, where he is speaking of our own Government, he asserts roundly,<sup>(45)</sup> that such a Contract was actually made at the first formation of it. 'The legislature would be changed', he says, 'from that which was

originally set up by the general consent and fundamental act of the society.'

9. Let us try whether it be not possible for something to be done towards drawing the import of these terms out of the mist in which our Author has involved them. The word 'Society', I think it appears, is used by him, and that without notice, in two senses that are opposite. In the one, SOCIETY, or a STATE of SOCIETY, is put synonymous to a STATE of NATURE; and stands opposed to GOVERNMENT, or a STATE OF GOVERNMENT: in this sense, it maybe styled, as it commonly is, natural SOCIETY. In the other, it is put synonymous to GOVERNMENT, or a STATE OF GOVERNMENT; and stands opposed to a STATE OF NATURE. In this sense it may be styled, as it commonly is, political SOCIETY. Of the difference between these two states, a tolerably distinct idea, I take it, may be given in a word or two.

10. The idea of a natural society is a negative one. The idea of a political society is a positive one. 'Tis with the latter, therefore, we should begin.

When a number of persons (whom we may style subjects) are supposed to be in the habit of paying obedience to a person, or an assemblage of persons, of a known and certain description (whom we may call governor or governors) such persons altogether (subjects and governors) are said to be in a state of political SOCIETY.

11. The idea of a state of natural SOCIETY is, as we have said, a negative one. When a number of persons are supposed to be in the habit of conversing with each other, at the same time that they are not in any such habit as mentioned above, they are said to be in a state of natural SOCIETY.

12. If we reflect a little, we shall perceive, that, between these two states, there is not that explicit separation which these names, and these definitions might teach one, at first sight, to expect. It is with them as with light and darkness: however distinct the ideas may be, that are, at first mention, suggested by those names, the things themselves have no determinate bound to separate them. The circumstance that has been spoken of as constituting the difference between these two states, is the presence or absence of an habit of obedience. This habit, accordingly, has been spoken of simply as present (that is as being perfectly present) or, in other words, we have spoken as if there were a perfect habit of obedience, in the one case: it has been spoken of simply as absent (that is, as being perfectly absent) or, in other words, we have spoken as if there were no habit of obedience at all, in the other. But neither of these manners of speaking, perhaps, is strictly just. Few, in fact, if any, are the instances of this habit being perfectly absent; certainly none at all, of its being perfectly present. Governments accordingly, in proportion as the habit of obedience is more perfect, recede from, in proportion as it is less perfect, approach to, a state of nature: and instances may present themselves in which it shall be difficult to say whether a habit, perfect, in the degree in which, to constitute a government, it is deemed necessary it should be perfect, does subsist or not.<sup>(46)</sup>

13. On these considerations, the supposition of a perfect state of nature, or, as it may be termed, a state of society perfectly natural, may, perhaps, be justly pronounced, what our Author for the moment seemed to think it, an extravagant supposition: but then that of a government in this sense perfect; or, as it may be termed, a state of society perfectly

political, a state of perfect political union, a state of perfect submission in the subject, of perfect authority in the governor, is no less so.<sup>(47)</sup>

14. A remark there is, which, for the more thoroughly clearing up of our notions on this subject, it may be proper here to make. To some ears, the phrases, 'state of nature,' 'state of political society,' may carry the appearance of being absolute in their signification: as if the condition of a man, or a company of men, in one of these states, or in the other, were a matter that depended altogether upon themselves. But this is not the case. To the expression 'state of nature,' no more than to the expression 'state of political society,' can any precise meaning be annexed, without reference to a party different from that one who is spoken of as being in the state in question. This will readily be perceived. The difference between the two states lies, as we have observed, in the habit of obedience. With respect then to a habit of obedience, it can neither be understood as subsisting in any person, nor as not subsisting in any person, but with reference to some other person. For one party to obey, there must be another party that is obeyed. But this party who is obeyed, may at different times be different. Hence may one and the same party be conceived to obey and not to obey at the same time, so as it be with respect to different persons, or as we may say, to different objects of obedience. Hence it is, then, that one and the same party may be said to be in a state of nature, and not to be in a state of nature, and that at one and the same time, according as it is this or that party that is taken for the other object of comparison. The case is, that in common speech, when no particular object of comparison is specified, all persons in general are intended: so that when a number of persons are said simply to be in a state of nature, what is understood is, that they are so as well with reference to one another, as to all the world.

15. In the same manner we may understand, how the same man, who is governor with respect to one man or set of men, may be subject with respect to another: how among governors some may be in a perfect state of nature, with respect to each other: as the **KINGS of FRANCE and SPAIN**: others, again, in a state of perfect subjection, as the **HOSPODARS OF WALACHIA and MOLDAVIA** with respect to the **GRAND SIGNIOR**: others, again, in a state of manifest but imperfect subjection, as the **GERMAN States** with respect to the **EMPEROR**: others, again, in such a state in which it may be difficult to determine whether they are in a state of imperfect subjection or in a perfect state of nature: as the **KING of NAPLES** with respect to the **POPE**.<sup>(48)</sup>

16. In the same manner, also, it may be conceived, without entering into details, how any single person, born, as all persons are, into a state of perfect subjection to his parents, that is into a state of perfect political society with respect to his parents, may from thence pass into a perfect state of nature; and from thence successively into any number of different states of political society more or less perfect, by passing into different societies.

17. In the same manner also it may be conceived how, in any political society, the same man may, with respect to the same individuals, be, at different periods, and on different occasions, alternately, in the state of governor and subject: to-day concurring, perhaps active, in the business of issuing a general command for the observance of the whole society, amongst the rest of another man in quality of Judge: to-morrow, punished, perhaps, by a particular command of that same Judge for not obeying the general command which he himself (I mean the person acting in character of governor) had

issued. I need scarce remind the reader how happily this alternate state of authority and submission is exemplified among ourselves.

18. Here might be a place to state the different shares which different persons may have in the issuing of the same command: to explain the nature of corporate action: to enumerate and distinguish half a dozen or more different modes in which subordination between the same parties may subsist: to distinguish and explain the different senses of the words, `consent', `representation', and others of connected import: consent and representation, those interesting but perplexing words, sources of so much debate: and sources or pretexts of so much animosity. But the limits of the present design will by no means admit of such protracted and intricate discussions.

19. In the same manner, also, it may be conceived, how the same set of men considered among themselves, may at one time be in a state of nature, at another time in a state of government. For the habit of obedience, in whatever degree of perfection it be necessary it should subsist in order to constitute a government, may be conceived, it is plain, to suffer interruptions. At different junctures it may take place and cease.

20. Instances of this state of things appear not to be unfrequent. The sort of society that has been observed to subsist among the AMERICAN INDIANS may afford us one. According to the accounts we have of those people, in most of their tribes, if not in all, the habit we are speaking of appears to be taken up only in time of war. It ceases again in time of peace. The necessity of acting in concert against a common enemy, subjects a whole tribe to the orders of a common Chief. On the return of peace each warrior resumes his pristine independence.

21. One difficulty there is that still sticks by us. It has been started indeed, but not solved. This is to find a note of distinction, a characteristic mark, whereby to distinguish a society in which there is a habit of obedience, and that at the degree of perfection which is necessary to constitute a state of government, from a society in which there is not: a mark, I mean, which shall have a visible determinate commencement; insomuch that the instant of its first appearance shall be distinguishable from the last at which it had not as yet appeared. `Tis only by the help of such a mark that we can be in a condition to determine, at any given time, whether any given society is in a state of government, or in a state of nature. I can find no such mark, I must confess, any where, unless it be this; the establishment of names of office: the appearance of a certain man, or set of men, with a certain name, serving to mark them out as objects of obedience: such as King, Sachem, Cacique, Senator, Burgomaster, and the like.' This, I think, may serve tolerably well to distinguish a set of men in a state of political union among themselves from the same set of men not yet in such a state.

22. But suppose an incontestable political society, and that a large one, formed; and from that a smaller body to break off: by this breach the smaller body ceases to be in a state of political union with respect to the larger: and has thereby placed itself, with respect to that larger body, in a state of nature. What means shall we find of ascertaining the precise juncture at which this change took place? What shall be taken for the characteristic mark in this case? The appointment, it may be said, of new governors with new names. But no such appointment, suppose, takes place. The subordinate governors, from whom alone

the people at large were in use to receive their commands under the old government, are the same from whom they receive them under the new one. The habit of obedience which these subordinate governors were in with respect to that single person, we will say, who was the supreme governor of the whole, is broken off insensibly and by degrees. The old names by which these subordinate governors were characterized, while they were subordinate, are continued now they are supreme. In this case it seems rather difficult to answer.

23. If an example be required, we may take that of the DUTCH provinces with respect to SPAIN. These provinces were once branches of the Spanish monarchy. They have now, for a long time, been universally spoken of as independent states: independent as well of that of Spain as of every other. They are now in a state of nature with respect to Spain. They were once in a state of political union with respect to Spain: namely, in a state of subjection to a single governor, a King, who was King of Spain. At what precise juncture did the dissolution of this political union take place? At what precise time did these provinces cease to be subject to the King of Spain? This, I doubt, will be rather difficult to agree upon.<sup>(49)</sup>

24. Suppose the defection to have begun, not by entire provinces, as in the instance just mentioned, but by a handful of fugitives, this augmented by the accession of other fugitives, and so, by degrees, to a body of men too strong to be reduced, the difficulty will be increased still farther. At what precise juncture was it that ancient ROME, or that modern VENICE, became an independent state?

25. In general then, at what precise juncture is it, that persons subject to a government, become, by disobedience, with respect to that government, in a state of nature? When is it, in short, that a revolt shall be deemed to have taken place; and when, again, is it, that that revolt shall be deemed to such a degree successful, as to have settled into independence?

26. As it is the obedience of individuals that constitutes a state of submission, so is it their disobedience that must constitute a state of revolt. Is it then every act of disobedience that will do as much? The affirmative, certainly, is what can never be maintained: for then would there be no such thing as government to be found any where. Here then a distinction or two obviously presents itself. Disobedience may be distinguished into conscious or unconscious: and that, with respect as well to the law as to the fact.<sup>(50)</sup> Disobedience that is unconscious with respect to either, will readily, I suppose, be acknowledged not to be a revolt. Disobedience again that is conscious with respect to both, may be distinguished into secret and open; or, in other words, into fraudulent and forcible.<sup>(51)</sup> Disobedience that is only fraudulent, will likewise, I suppose, be readily acknowledged not to amount to a revolt.

27. The difficulty that will remain will concern such disobedience only as is both conscious, (and that as well with respect to law as fact,) and forcible. This disobedience, it should seem, is to be determined neither by numbers altogether (that is of the persons supposed to be disobedient) nor by acts, nor by intentions: all three may be fit to be taken into consideration. But having brought the difficulty to this point, at this point I must be content to leave it. To proceed any farther in the endeavour to solve it, would be to enter



into a discussion of particular local jurisprudence. It would be entering upon the definition of Treason, as distinguished from Murder, Robbery, Riot, and other such crimes, as, in comparison with Treason, are spoken of as being of a more private nature. Suppose the definition of Treason settled, and the commission of an act of Treason is, as far as regards the person committing it, the characteristic mark we are in search of.

28. These remarks it were easy to extend to a much greater length. Indeed, it is what would be necessary, in order to give them a proper fulness, and method, and precision. But that could not be done without exceeding the limits of the present design. As they are, they may serve as hints to such as shall be disposed to give the subject a more exact and regular examination.

29. From what has been said, however, we may judge what truth there is in our Author's observation, that 'when society' (understand natural society) 'is once formed, government' (that is political society) (whatever quantity or degree of Obedience is necessary to constitute political society) 'results of course; as necessary to preserve and to keep that society in order.' By the words, 'of course,' is meant, I suppose, constantly and immediately: at least constantly. According to this, political society, in any sense of it, ought long ago to have been established all the world over. Whether this be the case, let any one judge from the instances of the Hottentots, of the Patagonians, and of so many other barbarous tribes, of which we hear from travellers and navigators.

30. It may be, after all, we have misunderstood his meaning. We have been supposing him to have been meaning to assert a matter of fact, and to have written, or at least begun, this sentence in the character of an historical observer; whereas, all he meant by it, perhaps, was to speak in the character of a Censor, and on a case supposed, to express a sentiment of approbation. In short, what he meant, perhaps, to persuade us of, was not that 'government' does actually 'result' from natural 'society'; but that it were better that it should, to wit, as being necessary to 'preserve and keep' men 'in that state of order', in which it is of advantage to them that they should be. Which of the above mentioned characters he meant to speak in, is a problem I must leave to be determined. The distinction, perhaps, is what never so much as occurred to him; and indeed the shifting insensibly, and without warning, from one of those characters to the other, is a failing that seems inveterate in our Author; and of which we shall probably have more instances than one to notice.

31. To consider the whole paragraph (with its appendage) together, something, it may be seen our Author struggles to overthrow, and something to establish. But how it is he would overthrow, or what it is he would establish, are questions I must confess myself unable to resolve. 'The preservation of mankind', he observes, 'was effected by single families.' This is what upon the authority of the Holy Scriptures, he assumes; and from this it is that he would have us conclude the notion of an original contract (the same notion which he afterwards adopts) to be ridiculous. The force of this conclusion, I must own, I do not see. Mankind was preserved by single families Be it so. What is there in this to hinder 'individuals' of those families, or of families descended from those families, from meeting together 'afterwards, in a large plain', or any where else, 'entering into an original contract', or any other contract, 'and choosing the tallest man', or any other man, 'present', or absent, to be their Governor? The 'flat contradiction' our Author finds

between this supposed transaction and the 'preservation of mankind by single families', is what I must own myself unable to discover. As to the 'actually existing unconnected state of nature' he speaks of, 'the notion of which', he says, 'is too wild to be seriously admitted', whether this be the case with it, is what, as he has given us no notion of it at all, I cannot judge of.

32. Something positive, however, in one place, we seem to have. These 'single families,' by which the preservation of mankind was effected; these single families, he gives us to understand, 'formed the first society.' This is something to proceed upon. A society then of the one kind or the other; a natural society, or else a political society, was formed. I would here then put a case, and then propose a question. In this society we will say no contract had as yet been entered into; no habit of obedience as yet formed. Was this then a natural society merely, or was it a political one? For my part, according to my notion of the two kinds of society as above explained, I can have no difficulty. It was a merely natural one. But, according to our Author's notion, which was it? If it was already a political one, what notion would he give us of such an one as shall have been a natural one; and by what change should such precedent natural one have turned into this political one? If this was not a political one, then what sort of a society are we to understand any one to be which is political? By what mark are we to distinguish it from a natural one? To this, it is plain, our Author has not given any answer. At the same time, that to give an answer to it, was, if any thing, the professed purpose of the long paragraph before us.

33. It is time this passage of our Author were dismissed as among the expressions of it are some of the most striking of those which the vocabulary of the subject furnishes, and these ranged in the most harmonious order, on a distant glance nothing can look fairer: a prettier piece of tinsel-work one shall seldom see exhibited from the shew-glass of political erudition. Step close to it, and the delusion vanishes. It is then seen to consist partly of self-evident observations, and partly of contradictions; partly of what every one knows already and partly of what no one can understand at all.

34. Throughout the whole of it, what distresses me is, not the meeting with any positions, such as, thinking them false, I find a difficulty in proving so: but the not meeting with any positions, true, or false, (unless it be here and there a self-evident one,) that I can find a meaning for. If I can find nothing positive to accede to, no more can I to contradict. Of this latter kind of work, indeed, there is the less to do for any one else, our Author himself having executed it, as we have seen, so amply.

The whole of it is, I must confess, to me a riddle: more acute, by far, than I am, must be the Oedipus that can solve it. Happily it is not necessary, on account of any thing that follows, that it should be solved. Nothing is concluded from it. For aught I can find, it has in itself no use, and none is made of it. There it is, and as well might it be any where else, or no where.

35. Were it then possible, there would be no use in its being solved: but being, as I take it, really unsolvable, it were of use it should be seen to be so. Peace may by this means be restored to the breast of many a desponding student, who, now prepossessed with the hopes of a rich harvest of instruction, makes a crime to himself of his inability to reap what, in truth, his Author has not sown.

36. As to the Original Contract, by turns embraced and ridiculed by our Author, a few pages, perhaps, may not be ill bestowed in endeavouring to come to a precise notion about its reality and use. The stress laid on it formerly, and still, perhaps, by some, is such as renders it an object not undeserving of attention. I was in hopes, however, till I observed the notice taken of it by our author, that this chimera had been effectually demolished by Mr HUME.<sup>(52)</sup> I think we hear not so much of it now as formerly. The indestructible prerogatives of mankind have no need to be supported upon the sandy foundation of a fiction.

37. With respect to this, and other fictions, there was once a time, perhaps, when they had their use. With instruments of this temper, I will not deny but that some political work may have been done, and that useful work, which, under the then circumstances of things, could hardly have been done with any other. But the season of Fiction is now over: insomuch, that what formerly might have been tolerated and countenanced under that name, would, if now attempted to be set on foot, be censured and stigmatized under the harsher appellations of incroachment or imposture. To attempt to introduce any new one, would be now a crime: for which reason there is much danger, without any use, in vaunting and propagating such as have been introduced already. In point of political discernment, the universal spread of learning has raised mankind in a manner to a level with each other, in comparison of what they have been in any former time: nor is any man now so far elevated above his fellows, as that he should be indulged in the dangerous licence of cheating them for their good.

38. As to the fiction now before us, in the character of an *argumentum ad hominem* coming when it did, and managed as it was, it succeeded to admiration.

That compacts, by whomsoever entered into, ought to be kept; that men are bound by compacts, are propositions which men, without knowing or enquiring why, were disposed universally to accede to. The observance of promises they had been accustomed to see pretty constantly enforced. They had been accustomed to see Kings, as well as others, behave themselves as if bound by them. This proposition, then, 'that men are bound by compacts;' and this other, 'that, if one party performs not his part, the other is released from his,' being propositions which no man disputed, were propositions which no man had any call to prove. In theory they were assumed for axioms: and in practice they were observed as rules.<sup>(53)</sup> If, on any occasion, it was thought proper to make a shew of proving them, it was rather for form's sake than for any thing else: and that, rather in the way of memento or instruction to acquiescing auditors, than in the way of proof against opponents. On such an occasion the common place retinue of phrases was at hand; Justice, Right Reason required it, the Law of Nature commanded it, and so forth; all which are but so many ways of intimating that a man is firmly persuaded of the truth of this or that moral proposition, though he either thinks he need not, or finds he can't, tell why. Men were too obviously and too generally interested in the observance of these rules to entertain doubts concerning the force of any arguments they saw employed in their support. It is an old observation how Interest smooths the road to Faith.

39. A compact, then, it was said, was made by the King and People: the terms of it were to this effect. The People, on their part, promised to the King a general obedience. The King, on his part, promised to govern the people in such a particular manner always, as

should be subservient to their happiness. I insist not on the words: I undertake only for the sense; as far as an imaginary engagement, so loosely and so variously worded by those who have imagined it, is capable of any decided signification. Assuming then, as a general rule, that promises, when made, ought to be observed; and, as a point of fact, that a promise to this effect in particular had been made by the party in question, men were more ready to deem themselves qualified to judge when it was such a promise was broken, than to decide directly and avowedly on the delicate question, when it was that a King acted so far in opposition to the happiness of his people, that it were better no longer to obey him.

40. It is manifest, on a very little consideration, that nothing was gained by this manoeuvre after all: no difficulty removed by it. It was still necessary, and that as much as ever, that the question men studied to avoid should be determined, in order to determine the question they thought to substitute in its room. It was still necessary to determine, whether the King in question had, or had not acted so far in opposition to the happiness of his people, that it were better no longer to obey him; in order to determine, whether the promise he was supposed to have made, had, or had not been broken. For what was the supposed purport of this promise? It was no other than what has just been mentioned.

41. Let it be said, that part at least of this promise was to govern in subservience to Law: that hereby a more precise rule was laid down for his conduct, by means of this supposal of a promise, than that other loose and general rule to govern in subservience to the happiness of his people: and that, by this means, it is the letter of the Law that forms the tenor of the rule.

Now true it is, that the governing in opposition to Law, is one way of governing in opposition to the happiness of the people: the natural effect of such a contempt of the Law being, if not actually to destroy, at least to threaten with destruction, all those rights and privileges that are founded on it: rights and privileges on the enjoyment of which that happiness depends. But still it is not this that can be safely taken for the entire purport of the promise here in question: and that for several reasons. First, Because the most mischievous, and under certain constitutions the most feasible, method of governing in opposition to the happiness of the people, is, by setting the Law itself in opposition to their happiness. Secondly, Because it is a case very conceivable, that a King may, to a great degree, impair the happiness of his people without violating the letter of any single Law. Thirdly, Because extraordinary occasions may now and then occur, in which the happiness of the people may be better promoted by acting, for the moment, in opposition to the Law, than in subservience to it. Fourthly, Because it is not any single violation of the Law, as such, that can properly be taken for a breach of his part of the contract, so as to be understood to have released the people from the obligation of performing theirs. For, to quit the fiction, and resume the language of plain truth, it is scarce ever any single violation of the Law that, by being submitted to, can produce so much mischief as shall surpass the probable mischief of resisting it. If every single instance whatever of such a violation were to be deemed an entire dissolution of the contract, a man who reflects at all would scarce find any-where, I believe, under the sun, that Government which he could allow to subsist for twenty years together. It is plain, therefore, that to pass any

sound decision upon the question which the inventors of this fiction substituted instead of the true one, the latter was still necessary to be decided. All they gained by their contrivance was, the convenience of deciding it obliquely, as it were, and by a side wind that is, in a crude and hasty way, without any direct and steady examination.

42. But, after all, for what reason is it, that men ought to keep their promises? The moment any intelligible reason is given, it is this: that it is for the advantage of society they should keep them; and if they do not, that, as far as punishment will go, they should be made to keep them. It is for the advantage of the whole number that the promises of each individual should be kept: and, rather than they should not be kept, that such individuals as fail to keep them should be punished. If it be asked, how this appears? the answer is at hand: Such is the benefit to gain, and mischief to avoid, by keeping them, as much more than compensates the mischief of so much punishment as is requisite to oblige men to it. Whether the dependence of benefit and mischief (that is, of pleasure and pain) upon men's conduct in this behalf, be as here stated, is a question of fact, to be decided, in the same manner that all other questions of fact are to be decided, by testimony, observation, and experience.<sup>(54)</sup>

43. This then, and no other, being the reason why men should be made to keep their promises, viz, that it is for the advantage of society that they should, is a reason that may as well be given at once, why Kings, on the one hand, in governing, should in general keep within established Laws, and (to speak universally) abstain from all such measures as tend to the unhappiness of their subjects: and, on the other hand, why subjects should obey Kings as long as they so conduct themselves, and no longer; why they should obey in short so long as the probable mischiefs of obedience are less than the probable mischiefs of resistance: why, in a word, taking the whole body together, it is their duty to obey, just so long as it is their interest, and no longer. This being the case, what need of saying of the one, that he PROMISED so to govern; of the other, that they PROMISED so to obey, when the fact is otherwise?

44. True it is, that, in this country, according to ancient forms, some sort of vague promise of good government is made by Kings at the ceremony of their coronation: and let the acclamations, perhaps given, perhaps not given, by chance persons out of the surrounding multitude, be construed into a promise of obedience on the part of the whole multitude: that whole multitude itself, a small drop collected together by chance out of the ocean of the state: and let the two promises thus made be deemed to have formed a perfect compact: not that either of them is declared to be the consideration of the other.

45. Make the most of this concession, one experiment there is, by which every reflecting man may satisfy himself, I think, beyond a doubt, that it is the consideration of utility, and no other, that, secretly but unavoidably, has governed his judgment upon all these matters. The experiment is easy and decisive. It is but to reverse, in supposition, in the first place the import of the particular promise thus feigned; in the next place, the effect in point of utility of the observance of promises in general. Suppose the King to promise that he would govern his subjects not according to Law; not in the view to promote their happiness: would this be binding upon him? Suppose the people to promise they would obey him at all events, let him govern as he will; let him govern to their destruction. Would this be binding upon them? Suppose the constant and universal effect of an

observance of promises were to produce mischief would it then be men's duty to observe them? Would it then be right to make Laws, and apply punishment to oblige men to observe them?

46. 'No;' (it may perhaps be replied) 'but for this reason; among promises, some there are that, as every one allows, are void: now these you have been supposing, are unquestionably of the number. A promise that is in itself void, cannot, it is true, create any obligation. But allow the promise to be valid, and it is the promise itself that creates the obligation, and nothing else.' The fallacy of this argument it is easy to perceive. For what is it then that the promise depends on for its validity? what is it that being present makes it valid? what is it that being wanting makes it void? To acknowledge that any one promise may be void, is to acknowledge that if any other is binding, it is not merely because it is a promise. That circumstance then, whatever it be, on which the validity of a promise depends, that circumstance, I say, and not the promise itself must, it is plain, be the cause of the obligation which a promise is apt in general to carry with it.

47. But farther. Allow, for argument's sake, what we have dis proved: allow that the obligation of a promise is independent of every other: allow that a promise is binding *propria vi* Binding then on whom? On him certainly who makes it. Admit this: For what reason is the same individual promise to be binding on those who never made it? The King, fifty years ago, promised my Great-Grandfather to govern him according to Law: my Great-Grandfather, fifty years ago, promised the King to obey him according to Law. The King, just now, promised my neighbour to govern him according to Law: my neighbour, just now, promised the King to obey him according to Law. Be it so. What are these promises, all or any of them, to me? To make answer to this question, some other principle, it is manifest, must be resorted to, than that of the intrinsic obligation of promises upon those who make them.

48. Now this other principle that still recurs upon us, what other can it be than the principle of UTILITY?<sup>(55)</sup> The principle which furnishes us with that reason, which alone depends not upon any higher reason, but which is itself the sole and all-sufficient reason for every point of practice whatsoever.

## CHAPTER II

### Forms of Government

1. The contents of the whole digression we are examining, were distributed, we may remember, at the outset of this Essay, into five divisions. The first, relative to the manner in which Government in general was formed, has already been examined in the preceding

chapter. The next, relative to the different species or forms it may assume, comes now to be considered.

2. The first object that strikes us in this division of our subject is the theological flourish it sets out with. In God may be said, though in a peculiar sense, to be our Author's strength. In theology he has found a not unfrequent source, of ornament to divert us, of authority to overawe us, from sounding into the shallowness of his doctrines. <sup>(56)</sup>

3. That governors, of some sort or other, we must have, is what he has been shewing in the manner we have seen in the last chapter. Now for endowments to qualify them for the exercise of their function. These endowments then, as if it were to make them shew the brighter, and to keep them, as much as possible, from being soiled by the rough hands of impertinent speculators, he has chosen should be of aethereal texture, and has fetched them from the clouds.

'All mankind', <sup>(57)</sup> he says, '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 styled the Supreme Being: the three great requisites, I mean, of wisdom, of goodness, and of power.'

But let us see the whole passage as it stands

4. 'But as all the members of Society', (meaning natural Society) 'are naturally EQUAL,' (i.e., I suppose, with respect to political power, of which none of them as yet have any) 'it may be asked,' (continues he) in whose hands are the reins of government to be intrusted? 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 styled the Supreme Being; the three grand requisites, I mean, of wisdom, 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 knowledge 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.

5. Every thing in its place. Theology in a sermon, or a catechism. But in this place, the flourish we have seen, might, for every purpose of instruction, have much better, it should seem, been spared. What purpose the idea of that tremendous and incomprehensible Being thus unnecessarily introduced can answer, I cannot see, unless it were to bewilder and entrance the reader; as it seems to have bewildered and entranced the writer. Beginning thus, is beginning at the wrong end: it is explaining *ignotum per ignotius*. It is not from the attributes of the Deity, that an idea is to be had of any qualities in men: on the contrary, it is from what we see of the qualities of men, that we obtain the feeble idea we can frame to ourselves, of the attributes of the Deity.

6. We shall soon see whether it be light or darkness our Author has brought back from this excursion to the clouds. The qualifications he has pitched upon for those in whose

hands Government is to be reposed we see are three: wisdom, goodness, and power. Now of these three, one there is which, I doubt, will give him some trouble to know what to do with. I mean that of Power which, looking upon it as a jewel, it should seem, that would give a lustre to the royal diadem, he was for importing from the celestial regions. In heaven, indeed, we shall not dispute its being to be found; and that at all junctures alike. But the parallel, I doubt, already fails. In the earthly governors in question, or, to speak more properly, candidates for government, by the very supposition there can not, at the juncture he supposes, be any such thing. Power is that very quality which, in consideration of these other qualities, which, it is supposed, are possessed by them already, they are now waiting to receive.

7. By Power in this place, I, for my part, mean political power: the only sort of power our Author could mean: the only sort of power that is here in question. A little farther on we shall find him speaking of this endowment as being possessed, and that in the highest degree, by a King, a single person. Natural power therefore, mere organical power, the faculty of giving the hardest blows, can never, it is plain, be that which he meant to number among the attributes of this godlike personage.

8. We see then the dilemma our Author's theology has brought him into, by putting him upon reckoning power among the qualifications of his candidates. Power is either natural or political. Political power is what they cannot have by the supposition: for that is the very thing that is to be created, and which by the establishment of Government, men are going to confer on them. If any, then, it must be natural power; the natural strength that a man possesses of himself without the help of Government. But of this, then, if this be it, there is more, if we may believe our Author, in a single member of a society, than in that member and all the rest of the society put together. <sup>(58)</sup>

9. This difficulty, if possible, one should be glad to see cleared up. The truth is, I take it, that in what our Author has said of power, he has been speaking, as it were, by anticipation: and that what he means by it, is not any power of either kind actually possessed by any man, or body of men, at the juncture he supposes, but only a capacity, if one may call it so, of retaining and putting into action political power, whensoever it shall have been conferred. Now, of actual power, the quantity that is possessed is, in every case, one and the same: for it is neither more nor less than the supreme power. But as to the capacity above spoken of, there do seem, indeed, to be good grounds for supposing it to subsist in a higher degree in a single man than in a body.

10. These grounds it will not be expected that I should display at large: a slight sketch will be sufficient. The efficacy of power is, in part at least, in proportion to the promptitude of obedience: the promptitude of obedience is, in part, in proportion to the promptitude of command: command is an expression of will: a will is sooner formed by one than many. And this, or something like it, I take to be the plain English of our Author's metaphor, where he tells us, <sup>(59)</sup> as we shall see a little farther on, <sup>(60)</sup> that 'a monarchy is the most powerful' (form of government) 'of any, all the sinews of government being knit together, and united in the hands of the prince.'

11. The next paragraph, short as it is, contains variety of matter. The first two sentences of it are to let us know, that with regard to the manner in which each of the particular



governments that we know of have been formed, he thinks proper to pass it by. A third is to intimate, for the second time, that all governments must be absolute in some hands or other. In the fourth and last, he favours us with a very comfortable piece of intelligence; the truth of which, but for his averment, few of us perhaps would have suspected. This is, that the qualifications mentioned by the last paragraph as requisite to be possessed by all Governors of states are, or at least once upon a time were, actually possessed by them: (i.e.) according to the opinion of somebody; but of what somebody is not altogether clear: whether in the opinion of these Governors themselves, or of the persons governed by them.

12. 'How the several forms of government we now see in the world at first actually began,' says our Author, '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 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.'<sup>(61)</sup>

13. Who those persons are whom our Author means here by the word founders; whether those who became the Governors of the states in question, or those who became the governed, or both together, is what I would not take upon me to determine. For aught I know he may have meant neither the one nor the other, but some third person. And, indeed, what I am vehemently inclined to suspect is, that, in our Author's large conception, the mighty and extensive domains of ATHENS and SPARTA, of which we read so much at school and at college, consisting each of several score of miles square, represented, at the time this paragraph was writing, the whole universe: and the respective aeras of Solon and Lycurgus, the whole period of the history of those states.

14. The words 'founders',--'opinion'-'approbation',--in short the whole complection of the sentence is such as brings to one's view a system of government utterly different from the generality of those we have before our eyes; a system in which one would think neither caprice, nor violence, nor accident, nor prejudice, nor passion, had any share: a system uniform, comprehensive, and simultaneous; planned with phlegmatic deliberation; established by full and general assent: such, in short, as, according to common imagination, were the systems laid down by the two sages above-mentioned. If this be the case, the object he had in mind when he said Founders, might be neither Governors nor governed, but some neutral person: such as those sages, chosen as they were in a manner as umpires, might be considered with regard to the persons who, under the prior constitution, whatever it was, had stood respectively in those two relations.

15. All this, however, is but conjecture: In the proposition itself neither this, nor any other restriction is expressed. It is delivered explicitly and emphatically in the character of an universal one. 'In ALL OF THEM', he assures us, 'this authority,' (the supreme authority) 'is placed in those hands, wherein, according to the opinion of the founders of such respective states, these "qualities of wisdom, goodness, and power," are the most likely to be found.' In this character it cannot but throw a singular light on history. I can see no

end, indeed, to the discoveries it leads to, all of them equally new and edifying. When the Spaniards, for example, became masters of the empire of Mexico, a vulgar politician might suppose it was because such of the Mexicans as remained unexterminated, could not help it. No such thing it was because the Spaniards were of 'opinion' or the Mexicans themselves were of 'opinion' (which of the two is not altogether clear) that in Charles Vth, and his successors, more goodness (of which they had such abundant proofs) as well as wisdom, was likely to be found, than in all the Mexicans put together. The same persuasion obtained between Charlemagne and the German Saxons with respect to the goodness and wisdom of Charlemagne: between William the Norman and the English Saxons: between Mahomet and the subjects of John Paleologus: between Odoacer and those of Augustulus: between the Tartar Gengiskan and the Chinese of his time: between the Tartars Chang-ti and Cam-ghi, and the Chinese of their times: between the Protector Cromwell and the Scotch: between William III and the Irish Papists: between Caesar and the Gauls: in short, between the Thirty Tyrants, so called, and the Athenians, whom our Author seems to have had in view: to mention these examples only, out of as many hundred as might be required. All this, if we may trust our Author, he has the 'goodness' to believe: and by such lessons is the penetration of students to be sharpened for piercing into the depths of politics.

16. So much for the introductory paragraph The main part of the subject is treated of in six others: the general contents of which are as follow.

17. In the first he tells us how many different forms of government there are according to the division of the antients: which division he adopts. These are three: Monarchy, Aristocracy, and Democracy.

18. The next is to tell us, that by the sovereign POWER he means that of 'making laws'.

19. In a third he gives us the advantages and disadvantages of these three different forms of government.

20. In a fourth he tells us that these are all the antients would allow of.

21. A Fifth is to tell us that the British form of government is different from each of them; being a combination of all, and possessing the advantages of all.

22. In the sixth, and last, he shews us that it could not possess these advantages, if, instead of being what it is, it were either of those others: and tells us what it is that may destroy it. These two last it will be sufficient here to mention: to examine them will be the task of our next chapter.

23. Monarchy is that form of Government in which the power of making Laws is lodged in the hands of a single member of the state in question. Aristocracy is that form of Government in which the power of making laws is lodged in the hands of several members. Democracy is that form of government in which the power of making laws is lodged in the hands of 'all' of them put together. These, according to our Author, are the definitions of the Antients; and these, therefore, without difficulty, are the definitions of our Author.

24. 'The political writers of antiquity,' says he, '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 styled 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.'

25. '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.'

26. Having thus got three regular simple forms of Government (this anomalous complex one of our own out of the question) and just as many qualifications to divide among them; of each of which, by what he told us a while ago, each form of Government must have some share, it is easy to see how their allotments will be made out. Each form of Government will possess one of these qualities in perfection, taking its chance, if one may say so, for its share in the two others.

27. Among these three different forms of Government then, it should seem according to our Author's account of them, there is not much to choose. Each of them has a qualification, an endowment, to itself. Each of them is completely characterized by this qualification. No intimation is given of any pre-eminence among these qualifications, one above another. Should there be any dispute concerning the preference to be given to any of these forms of government, as proper a method as any of settling it, to judge from this view of them, is that of cross and pile. Hence we may infer, that all the governments that ever were, or will be (except a very particular one that we shall come to presently, that is to say our own) are upon a par: that of ATHENS with that of PERSIA; that of GENEVA with that of Morocco: since they are all of them, he tells us, 'corruptions of, or reducible to', one of these. This is happy. A legislator cannot do amiss. He may save himself the expence of thinking. The choice of a king was once determined, we are told, by the neighing of a horse.' The choice of a form of Government might be determined so as well.

28. As to our own form of government, however, this, it is plain, being that which it seemed good to take for the theme of his panegyric, and being made out of the other three, will possess the advantages of all of them put together; and that without any of the disadvantages; the disadvantages vanishing at the word of command, or even without it, as not being suitable to the purpose.

29. At the end of the paragraph which gives us the above definitions, one observation there is that is a little puzzling. 'Other species of government', we are given to understand, there are besides these; but then those others, if not 'reducible to', are but 'corruptions of these'. Now, what there is in any of these to be corrupted, is not so easy to

understand. The essence of these several forms of government, we must always remember, is placed by him, solely and entirely, in the article of number: in the ratio of the number of the Governors, (for so for shortness we will style those in whose hands is lodged this `power of making laws') to that of the governed. If the number of the former be, to that of the latter, as one to all, then is the form of Government a Monarchy: if as all to all, then is it a Democracy: if as some number between one and all to all, then is it an Aristocracy. Now then, if we can conceive a fourth number, which not being more than all, is neither one nor all, nor any thing between one and all, we can conceive a form of Government, which, upon due proof, may appear to be a corruption of some one or other of these three.<sup>(62)</sup> If not, we must look for the corruption somewhere else: Suppose it were in our Author's reason.<sup>(63)</sup>

30. Not but that we may meet, indeed, with several other hard worded names for forms of Government: but these names were only so many names for one or other of those three. We hear often of a Tyranny: but this is neither more nor less than the name a man gives to our Author's Monarchy, when out of humour with it. It is still the government of number one. We hear now and then, too, of a sort of Government called an Oligarchy: but this is neither more nor less than the name a man gives to our Author's Aristocracy, in the same case. It is still the Government of some number or other, between one and all. In fine, we hear now and then of a sort of government fit to break one's teeth, called an Ochlocracy: but this is neither more nor less than the name a man gives to a Democracy in the same case. It is still that sort of government, which, according to our Author, is the Government of all.

31. Let us now see how he has disposed of his three qualifications among his three sorts or forms of Government. Upon Monarchy, we shall find, he has bestowed the perfection of power; on Aristocracy, of wisdom; on Democracy, of goodness; each of these forms having just enough, we may suppose, of the two remaining qualifications besides its own peculiar one to make up the necessary complement of `qualities requisite for supremacy.' Kings are, (nay were before they were Kings, since it was this qualification determined their subjects to make them Kings<sup>(64)</sup>), as strong as so many Hercules's; but then, as to their wisdom, or their goodness, there is not much to say. The members of an Aristocracy are so many Solomons: but then they are not such sturdy folks as your Kings; nor, if the truth is to be spoken, have they much more honesty than their neighbours. As to the members of a Democracy, they are the best sort of people in the world; but then they are but a puny sort of gentry, as to strength, put them all together; and are apt to be a little defective in point of understanding.

32. `In a democracy', says he, `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 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.'

33. '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 declares himself of opinion, *esse optimé constitutam rempublicam, quae ex tribus generibus illis, regali, optimo, et populari sit modicé 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,

34. In the midst of this fine-spun ratiocination, an accident has happened, of which our Author seems not to be aware. One of his accidents, as a logician would say, has lost its subject: one of the qualifications he has been telling us of, is, somehow or other, become vacant: the form of Government he designed it for, having unluckily slipped through his fingers in the handling. I mean Democracy; which he, and, according to him, the Antients, make out to be the Government of all. Now 'all' is a great many; so many that, I much doubt, it will be rather a difficult matter to find these high and mighty personages power enough, so much as to make a decent figure with. The members of this redoubtable Commonwealth will be still worse off, I doubt, in point of subjects, than Trinculo in the play, or than the potentates, whom some later navigators found lording it, with might and main, ' ' over a Spanish settlement: there were three members of the Government; and they had one subject among them all.<sup>(65)</sup> Let him examine it a little, and it will turn out, I take it, to be precisely that sort of Government, and no other, which one can conceive to obtain, where there is no Government at all. Our Author, we may remember, had shrewd doubts about the existence of a state of nature:<sup>(66)</sup> grant him his Democracy, and it exists in his Democracy.<sup>(67)</sup>

35. The qualification of goodness, I think it was, that belonged to the Government of all, while there was such a Government. This having taken its flight, as we have seen, to the region of nonentities, the qualification that was designed for it remains upon his hands: he is at liberty, therefore, to make a compliment of it to Aristocracy or to Monarchy, which best suits him. Perhaps it were as well to give it to Monarchy; the title of that form of Government to its own peculiar qualification, power, being, as we have seen, rather an equivocal one: or else, which, perhaps, is as good a way of settling matters as any, he may set them to cast lots.

### CHAPTER III

#### British Constitution

1. With a set of data, such as we have seen in the last chapter, we may judge whether our author can meet with any difficulty in proving the British Constitution to be the best of all possible governments, or indeed anything else that he has a mind. In his paragraph on this subject there are several things that lay claim to our attention. But it is necessary we should have it under our eye.

2. 'But happily for us in 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 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.'

3. '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 inconveniencies of either absolute monarchy, aristocracy, or democracy; and so want two of the 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 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 (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.'

4. In considering the first of these two paragraphs, in the first place, the phenomenon we

should little expect to see from any thing that goes before, is a certain executive power, that now, for the first time, bolts out upon us without warning or introduction.

The power, the only power our Author has been speaking of all along till now, is the legislative. 'Tis to this, and this alone, that he has given the name of 'sovereign power'. 'Tis this power, the different distributions of which he makes the characteristics of his three different forms of government. 'Tis with these different distributions, distributions made of the legislative power, that, according to his account, are connected the several qualifications laid down by him, as 'requisites for supremacy': qualifications in the possession of which consist all the advantages which can belong to any form of Government. Coming now then to the British Constitution, it is in the superior degree in which these qualifications of the legislative body are possessed by it, that its peculiar excellence is to consist. It is possessing the qualification of strength, that it possesses the advantage of a monarchy. But how is it then that, by his account, it possesses the qualification of strength? By any disposition made of the legislative power? By the legislative power's being lodged in the hands of a single person, as in the case of a monarchy? No; but to a disposition made of a new power, which comes in, as it were, in a parenthesis, a new power which we now hear of for the first time, a power which has not, by any description given of it, been distinguished from the legislative, an executive.

5. What then is this same executive power? I doubt our Author would not find it a very easy matter to inform us. 'Why not?' says an objector 'is it not that power which in this country the King has in addition to his share in the legislative?' Be it so: the difficulty for a moment is staved off. But that it is far enough from being solved, a few questions will soon shew us. This power, is it that only which the King really has, or is it all that he is said to have? Is it that only which he really has, and which he exercises, or is it that also, which although he be said to have it, he neither does exercise, nor may exercise? Does it include judiciary power or not? If it does, does it include the power of making as well particular decisions and orders, as general, permanent, spontaneous regulations of procedure, such as are some of those we see made by judges? Doth it include supreme military power, and that as well in ordinary as in a time of martial law? Doth it include the supreme fiscal power;<sup>(68)</sup> and, in general, that power which, extending as well over the public money as over every other article of public property, may be styled the *dispensatorial*?<sup>(69)</sup> Doth it include the power of granting patents for inventions, and charters of incorporation? Doth it include the right of making bye-laws in corporations? And is the right of making bye-laws in corporations the superior right to that of conferring the power to make them, or is it that there is an executive power that is superior to a legislative? This executive again, doth it include the right of substituting the laws of war to the laws of peace; and vice versa, the laws of peace to the laws of war? Doth it include the right of restraining the trade of subjects by treaties with foreign powers? Doth it include the right of delivering over, by virtue of the like treaties, large bodies of subjects to foreign laws? He that would understand what power is executive and not legislative, and what legislative and not executive, he that would mark out and delineate the different species of constitutional powers, he that would describe either what is, or what *ought to be* the constitution of a country, and particularly of this country, let him *think of these things*.

6. In the next place we are told in a parenthesis (it being a matter so plain as to be taken for granted) that 'each of these branches of the Legislature is independent, 'yes, 'entirely independent', of the two others. Is this then really the case? Those who consider the influence which the King and so many of the Lords have in the election of members of the House of Commons; the power which the King has, at a minute's warning, of putting an end to the existence of any House of Commons; those who consider the influence which the King has over both Houses, by offices of dignity and profit given and taken away again at pleasure; those who consider that the King, on the other hand, depends for his daily bread on both Houses, but more particularly on the House of Commons; not to mention a variety of other circumstances that might be noticed in the same view, will judge what degree of precision there was in our Author's meaning, when he so roundly asserted the affirmative.

7. One parenthesis more: for this sentence teems with parenthesis within parenthesis. To this we are indebted for a very interesting piece of intelligence: nothing less than a full and true account of the personal merits of the members of the House of Lords for the time being. This he is enabled to do, by means of a contrivance of his own, no less simple than it is ingenious: to wit, that of looking at their titles. It is by looking at men's titles that he perceives, not merely that they ought to possess certain merits, not that there is reason to wish they may possess them, but that they do actually possess them, and that it is by possessing those merits that they came to possess these titles. Seeing that some are bishops, he knows that they are pious: seeing that some are peers, he knows that they are wise, rich, valiant. <sup>(70)</sup>

8. The more we consider the application he makes of the common place notions concerning the three forms of Government to our own, the more we shall see the wide difference there is between reading and reflecting. Our own he finds to be a combination of these three. It has a Monarchical branch, an Aristocratical, and a Democratical. The Aristocratical is the House of Lords; the Democratical is the House of Commons. Much had our Author read, at school, doubt less, and at college, of the wisdom and gravity of the Spartan senate: something, probably, in Montesquieu, and elsewhere, about the Venetian. He had read of the turbulence and extravagance of the Athenian mob. Full of these ideas, the House of Lords were to be our Spartans or Venetians; the House of Commons, our Athenians. With respect then to the point of wisdom, (for that of honesty we will pass by) the consequence is obvious. The House of Commons, however excellent in point of honesty, is an assembly of less wisdom than that of the House of Lords. This is what our Author makes no scruple of assuring us. A Duke's son gets a seat in the House of Commons. There needs no more to make him the very model of an Athenian cobbler.

9. Let us find out, if we can, whence this notion of the want of wisdom in the members of a Democracy, and of the abundance of it in those of an Aristocracy, could have had its rise. We shall then see with what degree of propriety such a notion can be transferred to our Houses of Lords and Commons.

In the members of a Democracy in particular, there is likely to be a want of wisdom Why? The greater part being poor, are, when they begin to take upon them the management of affairs, uneducated: being uneducated, they are illiterate: being illiterate, they are



ignorant. Ignorant, therefore, and unwise, if that be what is meant by ignorant, they begin. Depending for their daily bread on the profits of some petty traffic, or the labour of some manual occupation, they are nailed to the work-board, or the counter. In the business of Government, it is only by fits and starts that they have leisure so much as to act: they have no leisure to reflect. Ignorant therefore they continue. But in what degree is this the case with the members of our House of Commons?

10. On the other hand, the members of an Aristocracy, being few, are rich: either they are members of the Aristocracy, because they are rich; or they are rich, because they are members of the Aristocracy. Being rich, they are educated: being educated, they are learned: being learned, they are knowing. They are at leisure to reflect, as well as act. They may therefore naturally be expected to become more knowing, that is more wise, as they persevere. In what degree is this the case with the members of the House of Lords more than with those of the House of Commons? The fact is, as every body sees, that either the members of the House of Commons are as much at leisure as those of the House of Lords; or, if occupied, occupied in such a way as tends to give them a more than ordinary insight into some particular department of Government. In whom shall we expect to find so much knowledge of Law as in a professed Lawyer? of Trade, as in a Merchant?

11. But hold Our Author, when he attributes to the members of an Aristocracy more wisdom than to those of a Democracy, has a reason of his own. Let us endeavour to understand it, and then apply it, as we have applied the others. In Aristocratical bodies, we are to understand there is more experience at least it is intended by some body or other there should be: which, it seems, answers the same purpose as if there was. 'In Aristocracies,' says our Author, 'there is more wisdom to be found, than in the other frames of Government; being composed,' continues he, 'or intended to be composed, of the most experienced citizens.'<sup>(71)</sup> On this ground then it is, that we are to take for granted, that the members of the House of Lords have more wisdom among them, than those of the House of Commons. It is this article of experience that, being a qualification possessed by the members of an Aristocratical body, as such, in a superior degree to that in which it can be possessed by a democratical body, is to afford us a particular ground for attributing a greater share of wisdom to the members of the upper house, than to those of the lower.

12. How it is that a member of an aristocracy, as such, is, of all things, to have attained more experience than the member of a democracy, our Author has not told us; nor what it is this experience is to consist of. Is it experience of things preparatory to, but different from, the business of governing? This should rather go by the name of knowledge. Is it experience of the business itself of governing? Let us see. For the member of the one body, as of the other, there must be a time when he first enters upon this business. They both enter upon it, suppose on the same day. Now then is it on that same day that one is more experienced in it than the other? or is it on that day ten years?

13. Those indeed who recollect what we observed but now,<sup>(72)</sup> may answer without hesitation, on that day ten years. The reason was there given. It is neither more nor less, than that want of leisure which the bulk of the numerous members of a Democracy must necessarily labour under, more than those of an Aristocracy. But of this, what intimation

is there to be collected, from any thing that has been suggested by our Author?

14. So much with respect to Aristocracies in general. It happens also by accident, that that particular branch of our own government to which he has given the name of the Aristocratical, the House of Lords, has actually greater opportunities of acquiring the qualification of experience, than that other branch, the House of Commons, to which he has given the name of the democratical. But to what is this owing? not to any thing in the characteristic natures of those two bodies, not to the one's being Aristocratical, and the other Democratical; but to a circumstance, entirely foreign and accidental, which we shall see presently. But let us observe his reasoning. The House of Lords, he says, is an assembly that behoves to have more wisdom in it, than the House of Commons. This is the proposition. Now for the proof. The first is an Aristocratical assembly; the second a Democratical. An Aristocratical assembly has more experience than a Democratical; and on that account more wisdom. Therefore the House of Lords, as was to be proved, has more wisdom than the House of Commons. Now, what the whole of the argument rests upon, we may observe, is this fact, that an Aristocratical assembly, as such, has more experience than a Democratical one; but this, with Aristocratical assemblies in general, we see, is not, for any reason that our Author has given us, the case. At the same time with respect to our House of Lords in particular, in comparison with the House of Commons, it does happen to be the case, owing to this simple circumstance: the members of the House of Lords, when once they begin to sit, sit on for life: those of the House of Commons only from seven years to seven years, or it may happen, less.

15. In speaking, however, in this place, of experience, I would rather be understood to mean opportunity of acquiring experience, than experience itself. For actual experience depends upon other concurrent causes.

16. It is, however, from superiority of experience alone, that our Author derives superiority of wisdom. He has, indeed, the proverb in his favour: 'Experience,' it has been said of old, 'is the Mother of Wisdom.' be it so; but then Interest is the Father. There is even an Interest that is the Father of Experience. Among the members of the House of Commons, though none so poor as to be illiterate, are many whose fortunes, according to the common phrase, are yet to make. The fortunes of those of the House of Lords (I speak in general) are made already. The members of the House of Commons may hope to be members of the House of Lords. The members of the House of Lords have no higher House of Lords to rise to. Is it natural for those to be most active who have the least, or those who have the most interest to be so? Are the experienced those who are the least, or those who are the most active? Does experience come to men when asleep, or when awake? Is it the members of the House of Lords that are the most active, or of the House of Commons? To speak plain, is it in the House of Lords that there is most business done, or in the House of Commons? Was it after the fish was caught that the successor of St Peter used the net, or was it before?<sup>(73)</sup> In a word is there most wisdom ordinarily where there is least, or where there is most to gain by being wise?<sup>(74)</sup>

17. A word or two more with respect to the characteristic qualifications, as our Author states them, of the higher assembly of our legislature. Experience is, in virtue of their being an aristocratical assembly, to afford them wisdom: thus far we were arrived before. But he now pushes the deduction a step farther. Wisdom is to afford them 'circumspection

and mediatory caution;' qualifications which it seems as if we should see nothing of, were it not for them. Let us now put a case. The business, indeed, that originates in the House of Lords is, as things stand, so little, that our Author seems to forget that there is any. However, some there is. A bill then originates with the Lords, and is sent down to the Commons. As to 'circumspection' I say nothing: that, let us hope, is not wanting to either House. But whose province is 'mediatory caution,' now?

18. Thus much concerning these two branches of our legislature, so long as they continue what, according to our Author's principles, they are at present: the House of Lords the Aristocratical branch: the House of Commons the Democratical. A little while and we shall see them so; but again a little while, perhaps, and we shall not see them so. By what characteristic does our Author distinguish an Aristocratical legislative body from a Democratical one? By that of number: by the number of the persons that compose them: by that, and that alone: for no other has he given. Now, therefore, to judge by that, the House of Lords, at present, indeed, is the Aristocratical branch: the House of Commons in comparison at least with the other, the Democratical. Thus far is well. But should the list of nobility swell at the rate we have sometimes seen it, there is an assignable period, and that, perhaps, at no very enormous distance, at which the assembly of the Lords will be more numerous than that of the Commons. Which will then be the Aristocratical branch of our Legislature? Upon our Author's principles, the House of Commons. Which the Democratical? The House of Lords.

19. The final cause we are to observe, and finishing exploit, the '*portus et sabbatum*', as Lord Bacon might perhaps have called it,<sup>(75)</sup> of this sublime and edifying dissertation, is this demonstration, he has been giving us, of the perfection of the British Form of Government. This demonstration (for by no less a title ought it to be called) is founded, we may have observed, altogether upon the properties of numbers: properties, newly discovered indeed, and of an extraordinary complection, moral properties; but properties, however, so it seems, of numbers.<sup>(76)</sup> 'Tis in the nature then of numbers we shall find these characteristic properties of the three Forms of Government, if anywhere. Now the properties of numbers are universally allowed to be the proper subject of that mode of demonstration which is called mathematical. The proof our Author has given has therefore already in it the essence of such a demonstration. To be compleat at all points, it wants nothing but the form. This deficiency is no other than what an under-rate workman might easily supply. A mere technical operation does the business. That humble task it shall be my endeavour to perform. The substantial honour I ascribe wholly to our Author, to whom only it is most due.

20. PROPOSITION THEOREM

The British Government is all-perfect

DEMONSTRATION

By definition	1   The British Government = Monarchy + Aristocracy + Democracy.
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Again, by definition,	2	Monarchy = the Government of 1.
Also,	3	Democracy = the Government of all.
Also	4	Aristocracy the Government of some number between 1 and all.
Put	5	All = 1,000,000
Put also	6	The number of governors in an Aristocracy = 1000
Now then, by assumption	7	1 has + strength - wisdom - honesty
Also	8	1000 has + wisdom - strength - honesty
Also	9	1,000,000 has + honesty - strength - wisdom
Rejecting - wisdom - honesty <sup>(77)</sup> in (7)	1 0	1 has + strength
Also rejecting - strength - wisdom in (8)	1 1	1000 has + wisdom

Also rejecting - strength - wisdom in (9)	1 2	1,000,000 has + honesty
Putting together the expressions (10), (11) and (12)	1 3	1 + 1000 + 1,000,000 has strength + wisdom + honesty
But by definition (1), (2), (3), (4) and the suppositions (5), (6)	1 4	The British Government = 1 + 1000 + 1,000,000
Therefore, by (13)	1 5	The British Government has + strength + wisdom + honesty
Changing the expression	1 6	The British Government is all-powerful + all-wise + all-honest
But by definition	1 7	All-powerful + all-wise + all-honest - all-perfect
Therefore, by (16) and (17)	1 8	The British Government is all-perfect, Q.E.D.

SCHOLIUM. After the same manner it may be proved to be all weak, all-foolish, and all-knavish.

21. Thus much for the British Constitution; and for the grounds of that pre-eminence which it boasts, I trust, indeed, not without reason above all others that are known: Such is the idea our Author gives us of those grounds. 'You are not satisfied with it then', says some one. Not perfectly. 'What is then your own?' In truth this is more than I have yet quite settled. I may have settled it with myself, and not think it worth the giving: but if ever I do think it worth the giving, it will hardly be in the form of a comment on a digression stuffed into the belly of a definition. At any rate it is not likely to be much wished for, by those, who have read what has been given us on this subject by an ingenious foreigner: since it is to a foreigner we were destined to owe the best idea that has yet been given of a subject so much our own. Our Author has copied: but Mr. DE L'OLME has thought.

The topic which our Author has thus brought upon the carpet (let any one judge with what necessity) is in respect to some parts of it that we have seen, rather of an invidious nature. Since, however, it has been brought upon the carpet, I have treated it with that

plainness with which an Englishman of all others is bound to treat it, because an Englishman may thus treat it and be safe. I have said what the subject seemed to demand, without any fear indeed, but without any wish, to give offence: resolving not to permit myself to consider how this or that man might chance to take it. I have spoken without sycophantical respects indeed, yet I hope not without decency: certainly without any party spleen. I chose rather to leave it to our Author to compliment men in the lump: and to stand aghast with admiration at the virtues of men unknown.<sup>(78)</sup> Our Author will do as shall seem meet to him. For my part, if ever I stand forth and sing the song of eulogy to great men, it shall be not because they occupy their station, but because they deserve it.

## CHAPTER IV

### Right of the Supreme Power to Make Laws

1 We now come to the third topic touched upon in the digression; namely, the right, as our Author phrases it, which the Supreme Power has of making laws. And this topic occupies one pretty long paragraph. The title here given to it is the same which in the next succeeding paragraph he has found for it himself. This is fortunate: for, to have been obliged to find a title for it myself, is what would have been to the last degree distressing. To intitle a discourse, is to represent the drift of it. But, to represent the drift of this, is a task which, so long at least as I confine my consideration to the paragraph itself, bids defiance to my utmost efforts.

2. 'Tis to another passage or two, a passage or two that we have already seen starting up in distant parts of this digression, that I am indebted for such conjectures as I have been able to make up.

These conjectures, however, I could not have ventured so far to rely on, as on the strength of them to have furnished the paragraph with a title of my own framing. The danger of misrepresentation was too great; a kind of danger which a man cannot but lie imminently exposed to, who ventures to put a precise meaning upon a discourse which in itself has none. That I may just mention, however, in this place, the result of them; what he is really aiming at, I take it, is, to inculcate a persuasion that in every state there must subsist, in some hands or other, a power that is absolute. I mention it thus prematurely, hat the reader may have some clue to guide him in his progress through the paragraph; which it is now time I should recite.

3. 'Having', says our Author, '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 in as much 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.'

4. The other passages which suggested to me the construction I have ventured to put upon this, shall be mentioned by and by. First, let us try what is to be made of it by itself.

5. The obscurity in which the first sentence of this paragraph is enveloped, is such, that I know not how to go about bringing it to light, without borrowing a word or two of logicians. Laying aside the preamble, the body of it, viz. 'as the power of making laws constitutes the supreme authority, so where-ever the supreme authority in any state resides, it is the right of that authority to make laws,' may be considered as constituting that sort of syllogism which logicians call an enthymeme. An enthymeme consists of two propositions; a consequent and an antecedent. 'The power of making laws', says our Author, 'constitutes the supreme authority.' This is his antecedent. From hence it is he concludes, that 'wherever the supreme authority in any state resides, it is the right of that authority to make laws.' This then is his consequent.

Now so it is, that this antecedent, and this consequent, for any difference at least that I can possibly perceive in them, would turn out were they but correctly worded, to mean precisely the same thing: for after saying that 'the power of making laws constitutes the supreme authority', to tell us that, for that reason, 'the supreme authority' is (or has) the power (or the right) of making laws, is giving us, I take it, much the same sort of information, as it would be to us to be told that a thing is so, because it is so: a sort of a truth which there seems to be no very great occasion to send us upon 'discovering, in the end and institution of civil states'. That by the 'sovereign power', he meant 'the power of making laws'; this, or something like it, is no more indeed than what he had told us over and over, and over again, with singular energy and anxiety, in his 46th page, in his 49th, and in, I know not how many, pages besides: I always taking care, for precision's sake, to give a little variety to the expression: the words 'power' and 'authority', sometimes, seemingly put for the same idea; sometimes seemingly opposed to each other: both of them sometimes denoting the fictitious being, the abstract quality; sometimes the real being or beings, the person or persons supposed to possess that quality. Let us disentangle the sense from these ambiguities; let us learn to speak distinctly of the persons, and of the quality we attribute to them; and then let us make another effort to find a meaning for this perplexing passage.

6. By the 'supreme authority' then, (we may suppose our Author to say) 'I mean the same thing as when I say the power of making laws'. This is the proposition we took notice of above, under the name of the antecedent. This antecedent then, we may observe, is a definition: a definition, to wit, of the phrase 'supreme authority'. Now to define a phrase is, to translate it into another phrase, supposed to be better understood, and expressive of

the same ideas. The supposition here then is, that the reader was already, of himself, tolerably well acquainted with the import of the phrase 'power of making laws': that he was not at all, or was however less acquainted with the import of the phrase 'supreme authority'. Upon this supposition then, it is, that in order to his being made clearly to understand the latter, he is informed of its being synonymous to the former. Let us now introduce the mention of the person: let us add the word 'person' to the definition; it will be the same definition still in substance, only a little more fully and precisely worded. For a person to possess the supreme authority, is for a person to possess the power of making laws. This then is what in substance has been already laid down in the antecedent.

7. Now let us consider the consequent, which, when detached from the context, may be spoken of as making a sentence of itself. "Wherever", says he, "the supreme authority in any state resides, it is the right of that authority to make Laws". By 'wherever' I take it for granted, he means, 'in whatever persons': by 'authority', in the former part of the sentence, power; by the same word, 'authority', in the latter part of the sentence, persons. Corrected therefore, the sentence will stand thus: In whatever persons in any state the supreme power resides, it is the right of those persons to make Laws.

8. The only word now remaining undisposed of, is the word 'right'. And what to think of this, indeed I know not: whether our Author had a meaning in it, or whether he had none. It is inserted, we may observe, in the latter part only of the sentence: it appears not in the former. Concerning this omission, two conjectures here present themselves: it may have happened by accident; or it may have been made by design. If by accident, then the case is, that the idea annexed to the word 'right' is no other than what was meant to be included in the former part of the sentence, in which it is not expressed, as well as in the latter, in which it is. In this case it may, without any change in the signification, be expressed in both. Let it then be expressed, and the sentence, take it altogether, will stand thus: In whatever persons the right of exercising supreme power in any state resides, it is the right of those persons to make Laws. If this conjecture be the true one, and I am apt to think it is, we see once more, and, I trust, beyond all doubt, that the consequent in this enthymeme is but a repetition of the antecedent. 'We may judge then, whether it is from any such consideration as that of 'the end and institution of civil states,' or any other consideration that we are likely to gain any further conviction of the truth of this conclusion, than it presents us of itself. 'We may also form some judgment beforehand, what use or meaning there is likely to be in the assemblage of words that is to follow.

9. What is possible, notwithstanding, however improbable, is, that the omission we have been speaking of was designed. In this case, what we are to understand is, that the word 'right' was meant to introduce a new idea into this latter part of the sentence, over and above any that was meant to be suggested by the former. 'Right' then, according to this construction, in the one place, is to be considered as put in contradistinction to fact in the other. The sense is then, that whatever persons do actually exercise supreme power, (or what, according to the antecedent of the enthymeme, is the same thing, the power of making laws) those persons have the right to exercise it. But, in this case, neither does what is given as a consequence in any respect follow from the antecedent, nor can any thing be made of it, but what is altogether foreign to the rest of the discourse. So much indeed, that it seems more consonant to probability, as well as more favourable to our

Author, to conclude that he had no meaning at all, than that he had this.

10. Let us now try what we can make of the remainder of the paragraph. Being ushered in by the word `for,' it seems to lay claim to the appellation of an argument. This argument, setting out, as we have seen, without an object, seems however to have found something like one at last, as if it had picked it up by the way. This object, if I mistake it not, is to persuade men, that the supreme power, (that is the person or persons in use to exercise the supreme power in a state) ought, in all points without exception, to be obeyed. What men intend, he says, to do when they are in a state, is to act, as if they were but `one man.' But one man has but one will belonging to him. What they intend therefore, or what they ought to intend, (a slight difference which our Author seems not to be well aware of) is, to act as if they had but one will. To act as if they had but one will, the way is, for them to `join' all their wills `together.' To do this, the most obvious way would be to join them `naturally:' but, as wills will not splice and dovetail like deal boards, the only feasible way is to join them `politically.' Now the only way for men to join their wills together politically, is for them all to consent to submit their wills to the will of one. This one will, to which all others are to be submitted, is the will of those persons who are in use to exercise the supreme power; whose wills again, when there happens to be many of them, have, by a process of which our Author has said nothing, been reduced (as we must suppose) into one already. So far our Author's argument. The above is the substance of it fairly given; not altogether with so much ornament, indeed, as he has given it, but, I trust, with somewhat more precision. The whole concludes, we may observe, with our Author's favourite identical proposition, or something like it, now for the twentieth time repeated.

11. Taking it altogether, it is, without question, a very ingenious argument: nor can any thing in the world answer the purpose better, except just in the case where it happens to be wanted. Not but that a veteran antagonist, trained up in the regular and accustomed discipline of legal fencing, such an one, indeed, might contrive perhaps, with due management, to give our Author the honour of the field. But should some undisciplined blunderer, like the Commissary's land lady, thrust in quart, when he should have thrust in tierce. I doubt much whether he might not get within our Author's guard. I `intend'? I `consent'? I `submit' myself? `Who are you, I wonder, that should know what I do better than I do myself? As to "submitting my will" to the wills of the people who made this law you are speaking of, what I know is, that I never "intended" any such thing: I abominate them, I tell you, and all they ever did, and have always said so: and as to my "consent," so far have I been from giving it to their law, that from the first to the last, I have protested against it with all my might.' So much for our refractory disputant. What I should say to him I know: but what our Author could find to answer to him, is more than I can imagine. <sup>(79)</sup>

12. Let us now return and pick up those other passages which we supposed to have a respect to the same design that seems to be in view in this. First comes the short introductory paragraph that ushers in the whole digression: a paragraph which, however short, and however imperfect with respect to the purpose of giving a general view of the contents of those which follow it, was, in despite of method, to expatiate upon this subject. Upon this subject, indeed, he does expatiate with a force of argument and energy of expression which nothing can withstand. `This', it begins, `will necessarily lead us into



a short enquiry concerning the nature of society and civil government.<sup>(80)</sup> This is all the intimation it gives of the contents of those paragraphs we have examined. Upon this before us it touches in energetic terms; but more energetic than precise.'And the natural' (it continues) 'and inherent right that belongs to the sovereignty of a state', (natural right, observe, that belongs to the sovereignty of a political society) 'wherever that sovereignty be lodged, of making and enforcing laws.'

13. This is not all. The most emphatical passage is yet behind. It is a passage in that short paragraph<sup>(81)</sup> which we found to contain such a variety of matter. He is there speaking of the several forms of government now in being. 'However they began', says he, 'or by 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.'

14. The vehemence, the , of this passage is remarkable. He ransacks the language: he piles up, one upon another, four of the most tremendous epithets he can find; he heaps Ossa upon Pelion: and, as if the English tongue did not furnish expressions strong or imposing enough, he tops the whole with a piece of formidable Latinity. From all this agitation, it is plain, I think, there is a something which he has very much at heart; which he wishes, but Fears, perhaps, to bring out undisguised: which in several places, notwithstanding, bursts out involuntarily, as it were, before he is well ready for it; and which, a certain discretion, getting at last the upper hand of propensity, forces, as we have seen, to dribble away in a string of obscure sophisms. Thus oddly enough it happens, that that passage of them all, which, if I mistake not, is the only one that was meant to be dedicated expressly to the subject, is the least explicit on it.<sup>(82)</sup>

15. A courage much stauncher than our Author's might have wavered here. A task of no less intricacy was here to be travelled through, than that of adjusting the claims of those two jealous antagonists, Liberty and Government. A more invidious ground is scarcely to be found any where within the field of politics. Enemies encompass the traveller on every side. He can scarce stir but he must expect to be assaulted with the war-hoop of political heresy from one quarter or another. Difficult enough is the situation of him, who, in these defiles, feels himself impelled one way by fear, and another by affection.

16. To return to the paragraph which it was the more immediate business of this chapter to examine: Were the path of obscurity less familiar to our Author, one should be tempted to imagine he had struck into it on the particular occasion before us, in the view of extricating himself from this dilemma. A discourse thus prudently indeterminate might express enough to keep fair with the rulers of the earth, without setting itself in direct array against the prejudices of the people. Viewed by different persons, it might present different aspects: to men in power it might recommend itself, and that from the first, under the character of a practical lesson of obedience for the use of the people; while among the people themselves it might pass muster, for a time at least, in quality of a string of abstract scientific propositions of jurisprudence. It is not till some occasion for making application of it should occur, that its true use and efficacy would be brought to light. The people, no matter on what occasion, begin to murmur, and concert measures of resistance. Now then is the time for the latent virtues of this passage to be called forth. The book is to be opened to them, and in this passage they are to be shewn, what of

themselves, perhaps, they would never have observed, a set of arguments curiously strung together and wrapped up, in proof of the universal expedience, or rather necessity, of submission: a necessity which is to arise, not out of the reflection that the probable mischiefs of resistance are greater than the probable mischiefs of obedience, not out of any such debateable consideration; but out of a something that is to be much more cogent and effectual: to wit, a certain metaphysico-legal impotence, which is to beget in them the sentiment, and answer all the purposes of a natural one. Armed, and full of indignation, our malecontents are making their way to the royal palace. In vain. A certain estoppel being made to bolt out upon them, in the manner we have seen, by the force of our Author's legal engineering, their arms are to fall, as it were by enchantment, from their hands. To disagree, to clamour, to oppose, to take back, in short, their wills again, is now, they are told, too late: it is what cannot be done: their wills have been put in hotchpot along with the rest: they have `united', they have `consented', they have `submitted'. Our Author having thus put his hook into their nose, they are to go back as they came, and all is peace. An ingenious contrivance this enough: but popular passion is not to be fooled, I doubt, so easily. Now and then, it is true, one error may be driven out, for a time, by an opposite error: one piece of nonsense by another piece of nonsense: but for barring the door effectually and for ever against all error and all nonsense, there is nothing like the simple truth.

17. After all these pains taken to inculcate unreserved submission, would any one have expected to see our Author himself among the most eager to excite men to disobedience? and that, perhaps, upon the most frivolous pretences? in short, upon any pretence whatsoever? Such, however, upon looking back a little, we shall find him. I say, among the most eager; for other men, at least the most enlightened advocates for liberty, are content with leaving it to subjects to resist, for their own sakes, on the footing of permission: this will not content our Author, but he must be forcing it upon them as a point of duty.

18. `Tis in a passage antecedent to the digression we are examining, but in the same section, that, speaking of the pretended law of Nature, and of the law of revelation, `no human laws', he says, `should be suffered to contradict these'.<sup>(83)</sup> The expression is remarkable. It is not that no human laws should contradict them: but that no human laws should be SUFFERED to contradict them. He then proceeds to give us an example. This example, one might think, would be such as should have the effect of softening the dangerous tendency of the rule: on the contrary, it is such as cannot but enhance it;<sup>(84)</sup> and, in the application of it to the rule, the substance of the latter is again repeated in still more explicit and energetic terms. `Nay,' says he, speaking of the act he instances, `if any human law should allow or enjoin us to commit it, we are BOUND TO TRANSGRESS that human law, or else we must offend both the natural and the divine.'

19. The propriety of this dangerous maxim, so far as the Divine Law is concerned, is what I must refer to a future occasion for more particular consideration.<sup>(85)</sup> As to the LAW of Nature, if (as I trust it will appear) it be nothing but a phrase;<sup>(86)</sup> if there be no other medium for proving any act to be an offence against it, than the mischievous tendency of such act; if there be no other medium for proving a law of the state to be contrary to it, than the inexpediency of such law, unless the bare unfounded

disapprobation of any one who thinks of it be called a proof; if a test for distinguishing such laws as would be contrary to the LAW of Nature from such as, without being contrary to it, are simply inexpedient, be that which neither our Author, nor any man else, so much as pretended ever to give; if, in a word, there be scarce an law whatever but what those who have not liked it have found, on some account or another, to be repugnant to some text of scripture, I see no remedy but that the natural tendency of such doctrine is to impel a man, by the force of conscience, to rise up in arms against any law whatever that he happens not to like. What sort of government it is that can consist with such a disposition, I must leave to our Author to inform us.

20. It is the principle of utility, accurately apprehended and steadily applied, that affords the only clue to guide a man through these straits. It is for that, if any, and for that alone to furnish a decision which neither party shall dare in theory to disavow. It is something to reconcile men even in theory. They are at least, something nearer to an effectual union, than when at variance as well in respect of theory as of practice.

21. In speaking of the supposed contract between King and people,<sup>(87)</sup> I have already had occasion to give the description, and, as it appears to me, the only general description that can be given, of that juncture at which, and not before, resistance to government becomes commendable; or, in other words, reconcileable to just notions; whether of legal or not, at least of moral, and, if there be any difference, religious duty.<sup>(88)</sup> What was there said was spoken, at the time, with reference to that particular branch of government which was then in question; the branch that in this country is administered by the King. But if it was just, as applied to that branch of government, and in this country, it could only be for the same reason that it is so when applied to the whole of government, and that in any country whatsoever. It is then, we may say, and not till then, allowable to, if not incumbent on, every man, as well on the score of duty as of interest, to enter into measures of resistance; when, according to the best calculation he is able to make, the probable mischiefs of resistance (speaking with respect to the community in general) appear less to him than the probable mischiefs of submission. This then is to him, that is to each man in particular, the juncture for resistance.

22. A natural question here is by what sign shall this juncture be known? By what common signal alike conspicuous and perceptible to all? A question which is readily enough started, but to which, I hope, it will be almost as readily perceived that it is impossible to find an answer. Common sign for such a purpose, I, for my part, know of none: he must be more than a prophet, I think, that can shew us one. For that which shall serve as a particular sign to each particular person, I have already given one his own internal persuasion of a balance of utility on the side of resistance.

23. Unless such a sign then, which I think impossible, can be shewn, the field, if one may say so, of the supreme governor's authority, though not infinite, must unavoidably, I think, unless where limited by express convention,<sup>(89)</sup> be allowed to be indefinite. Nor can I see any narrower, or other bounds to it, under this constitution, or under any other yet freer constitution, if there be one, than under the most despotic. Before the juncture I have been describing were arrived, resistance, even in a country like this, would come too soon: were the juncture arrived already, the time for resistance would be come already, under such a government even as any one should call despotic.

24. In regard to a government that is free, and one that is despotic, wherein is it then that the difference consists? Is it that those persons in whose hands that power is lodged which is acknowledged to be supreme, have less power in the one than in the other, when it is from custom that they derive it? By no means. It is not that the power of one any more than of the other has any certain bounds to it. The distinction turns upon circumstances of a very different complexion: on the manner in which that whole mass of power, which, taken together, is supreme, is, in a free state, distributed among the several ranks of persons that are sharers in it: on the source from whence their titles to it are successively derived: on the frequent and easy changes of condition between governors and governed; whereby the interests of the one class are more or less indistinguishably blended with those of the other: on the responsibility of the governors; or the right which a subject has of having the reasons publicly assigned and canvassed of every act of power that is exerted over him: on the liberty of the press; or the security with which every man, be he of the one class or the other, may make known his complaints and remonstrances to the whole community: on the liberty of public association; or the security with which malecontents may communicate their sentiments, concert their plans, and practise every mode of opposition short of actual revolt, before the executive power can be legally justified in disturbing them.

25. True then, it may be, that, owing to this last circumstance in particular, in a state thus circumstanced, the road to a revolution, if a revolution be necessary, is to appearance shorter; certainly more smooth and easy. More likelihood, certainly there is of its being such a revolution as shall be the work of a number; and in which, therefore, the interests of a number are likely to be consulted. Grant then, that by reason of these facilitating circumstances, the juncture itself may arrive sooner, and upon less provocation, under what is called a free government, than under what is called an absolute one: grant this; yet till it be arrived, resistance is as much too soon under one of them as under the other.

26. Let us avow then, in short, steadily but calmly, what our Author hazards with anxiety and agitation, that the authority of the supreme body cannot, unless where limited by express convention, be said to have any assignable, any certain bounds. That to say there is any act they cannot do, to speak of any thing of their's as being illegal, as being void; to speak of their exceeding their authority (whatever be the phrase) their power, their right, is, however common, an abuse of language.

27. The legislature cannot do it? The legislature cannot make a law to this effect? Why cannot? What is there that should hinder them? Why not this, as well as so many other laws murmured at, perhaps, as inexpedient, yet submitted to without any question of the right? With men of the same party, with men whose affections are already listed against the law in question, any thing will go down: any rubbish is good that will add fuel to the flame. But with regard to an impartial by-stander, it is plain that it is not denying the right of the legislature, their authority, their power, or whatever be the word it is not denying that they can do what is in question it is not that, I say, or any discourse verging that way that can tend to give him the smallest satisfaction.

28. Grant even the proposition in general: What are we the nearer? Grant that there are certain bounds to the authority of the legislature: Of what use is it to say so, when these bounds are what nobody has ever attempted to mark out to any useful purpose; that is, in

any such manner whereby it might be known beforehand what description a law must be of to fall within, and what to fall beyond them? Grant that there are things which the legislature cannot do; grant that there are laws which exceed the power of the legislature to establish. What rule does this sort of discourse furnish us for determining whether any one that is in question is, or is not of the number? As far as I can discover, none. Either the discourse goes on in the confusion it began; either all rests in vague assertions, and no intelligible argument at all is offered; or if any, such arguments as are drawn from the principle of utility: arguments which, in whatever variety of words expressed, come at last to neither more nor less than this; that the tendency of the law is, to a greater or a less degree, pernicious. If this then be the result of the argument, why not come home to it at once? Why turn aside into a wilderness of sophistry, when the path of plain reason is straight before us?

29. What practical inferences those who maintain this language mean should be deduced from it, is not altogether clear; nor, perhaps, does every one mean the same. Some who speak of a law as being void (for to this expression, not to travel through the whole list, I shall confine myself) would persuade us to look upon the authors of it as having thereby forfeited, as the phrase is, their whole power: as well that of giving force to the particular law in question, as to any other. These are they who, had they arrived at the same practical conclusion through the principle of utility, would have spoken of the law as being to such a degree pernicious, as that, were the bulk of the community to see it in its true light, the probable mischief of resisting it would be less than the probable mischief of submitting to it. These point, in the first instance, at hostile opposition.

30. Those who say nothing about forfeiture are commonly less violent in their views. These are they who, were they to ground themselves on the principle of utility, and, to use our language, would have spoken of the law as being mischievous indeed, but without speaking of it as being mischievous to the degree that has been just mentioned. The mode of opposition which they point to is one which passes under the appellation of a legal one.

31. Admit then the law to be void in their sense, and mark the consequences. The idea annexed to the epithet void is obtained from those instances in which we see it applied to a private instrument. The consequence of a private instrument's being void is, that all persons concerned are to act as if no such instrument had existed. The consequence, accordingly, of a law's being void must be, that people shall act as if there were no such law about the matter: and therefore that if any person in virtue of the mandate of the law should do anything in coercion of another person, which without such law he would be punishable for doing, he would still be punishable; to wit, by appointment of the judicial power. Let the law for instance, be a law imposing a tax: a man who should go about to levy the tax by force would be punishable as a trespasser: should he chance to be killed in the attempt, the person killing him would not be punishable as for murder: should he kill, he himself would, perhaps, be punishable as for murder. To whose office does it appertain to do those acts in virtue of which such punishment would be inflicted? To that of the Judges. Applied to practice then, the effect of this language is, by an appeal made to the Judges, to confer on those magistrates a controlling power over the acts of the legislature.

32. By this management a particular purpose might perhaps, by chance be answered: and let this be supposed a good one. Still what benefit would, from the general tendency of such a doctrine, and such a practice in conformity to it, accrue to the body of the people is more than I can conceive. A Parliament, let it be supposed, is too much under the influence of the Crown: pays too little regard to the sentiments and the interests of the people. Be it so. The people at any rate, if not so great a share as they might and ought to have, have had, at least, some share in chusing it. Give to the Judges a power of annulling its acts; and you transfer a portion of the supreme power from an assembly which the people have had some share, at least, in chusing, to a set of men in the choice of whom they have not the least imaginable share; to a set of men appointed solely by the Crown: appointed solely, and avowedly and constantly, by that very magistrate whose partial and occasional influence is the very grievance you seek to remedy.

33. In the heat of debate, some, perhaps, would be for saying of this management that it was transferring at once the supreme authority from the legislative power to the judicial. But this would be going too far on the other side. There is a wide difference between a positive and a negative part in legislation. There is a wide difference again between a negative upon reasons given, and a negative without any. The power of repealing a law even for reasons given is a great power: too great indeed for Judges: but still very distinguishable from, and much inferior to that of making one.<sup>(90)</sup>

34. Let us now go back a little. In denying the existence of any assignable bounds to the supreme power, I added,<sup>(91)</sup> 'unless where limited by express convention': for this exception I could not but subjoin. Our Author indeed, in that passage in which, short as it is, he is the most explicit, leaves, we may observe, no room for it. 'However they began', says he (speaking of the several forms of government) 'however they began, and by what right soever they subsist, there is and must be in ALL of them an authority that is absolute.' .. To say this, however, of all governments without exception; to say that no assemblage of men can subsist in a state of government, without being subject to some one body whose authority stands unlimited so much as by convention; to say, in short, that not even by convention can any limitation be made to the power of that body in a state which in other respects is supreme, would be saying, I take it, rather too much: it would be saying that there is no such thing as government in the German Empire; nor in the Dutch Provinces; nor in the Swiss Cantons; nor was of old in the Achaean league.

35. In this mode of limitation I see not what there is that need surprize us. By what is it that any degree of power (meaning political power) is established? It is neither more nor less, as we have already had occasion to observe,<sup>(92)</sup> than a habit of, and disposition to obedience: habit, speaking with respect to past acts; disposition, with respect to future. This disposition it is as easy, or I am much mistaken, to conceive as being absent with regard to one sort of acts; as present with regard to another. For a body then, which is in other respects supreme, to be conceived as being with respect to a certain sort of acts, limited, all that is necessary is, that this sort of acts be in its description distinguishable from every other.

36. By means of a convention then we are furnished with that common signal which, in other cases, we despaired of finding.<sup>(93)</sup> A certain act is in the instrument of convention specified, with respect to which the government is therein precluded from issuing a law

to a certain effect: whether to the effect of commanding the act, of permitting it, or of forbidding it. A law is issued to that effect notwithstanding. The issuing then of such a law (the sense of it, and likewise the sense of that part of the convention which provides against it being supposed clear) is a fact notorious and visible to all: in the issuing then of such a law we have a fact which is capable of being taken for that common signal we have been speaking of. These bounds the supreme body in question has marked out to its authority: of such a demarcation then what is the effect? either none at all, or this: that the disposition to obedience confines itself within these bounds. Beyond them the disposition is stopped from extending: beyond them the subject is no more prepared to obey the governing body of his own state, than that of any other. What difficulty, I say, there should be in conceiving a state of things to subsist in which the supreme authority is thus limited, what greater difficulty in conceiving it with this limitation, than without any, I cannot see. The two states are, I must confess, to me alike conceivable: whether alike expedient, alike conducive to the happiness of the people, is another question.

37. God forbid, that from any thing here said it should be concluded that in any society any convention is or can be made, which shall have the effect of setting up an insuperable bar to that which the parties affected shall deem a reformation: God forbid that any disease in the constitution of a state should be without its remedy. Such might by some be thought to be the case, where that supreme body which in such a convention, was one of the contracting parties, having incorporated itself with that which was the other, no longer subsists to give any new modification to the engagement. Many ways might however be found to make the requisite alteration, without any departure from the spirit of the engagement. Although that body itself which contracted the engagement be no more, a larger body, from whence the first is understood to have derived its title, may still subsist. Let this larger body be consulted. Various are the ways that might be conceived of doing this, and that without any disparagement to the dignity of the subsisting legislature: of doing it, I mean to such effect, as that, should the sense of such larger body be favourable to the alteration, it may be made by a law, which, in this case, neither ought to be, nor probably would be, regarded by the body of the people as a breach of the convention. <sup>(94)</sup>

38. To return for a moment to the language used by those who speak of the supreme power as being limited in its own nature. One thing I would wish to have remembered. What is here said of the impropriety, and evil influence of that kind of discourse, is not intended to convey the smallest censure on those who use it, as if intentionally accessory to the ill effects it has a tendency to produce. It is rather a misfortune in the language, than a fault of any person in particular. The original of it is lost in the darkness of antiquity. We inherited it from our fathers, and, maugre all its inconveniences, I am likely, I doubt, to transmit it to our children.

39. I cannot look upon this as a mere dispute of words. I cannot help persuading myself, that the disputes between contending parties between the defenders of a law and the opposers of it, would stand a much better chance of being adjusted than at present were they but explicitly and constantly referred at once to the principle of UTILITY. The footing on which this principle rests every dispute, is that of matter of fact; that is, future fact the probability of certain future contingencies. Were the debate then conducted under

the auspices of this principle, one of two things would happen: either men would come to an agreement concerning that probability, or they would see at length, after due discussion of the real grounds of the dispute, that no agreement was to be hoped for. They would at any rate see clearly and explicitly, the point on which the disagreement turned. The discontented party would then take their resolution to resist or to submit, upon just grounds, according as it should appear to them worth their while according to what should appear to them, the importance of the matter in dispute according to what should appear to them the probability or improbability of success according, in short, as the mischiefs of submission should appear to bear a less, or a greater ratio to the mischiefs of resistance. But the door to reconciliation would be much more open, when they saw that it might be not a mere affair of passion, but a difference of judgment, and that, for any thing they could know to the contrary, a sincere one, that was the ground of quarrel.

40. All else is but womanish scolding and childish altercation, which is sure to irritate, and which never can persuade. 'I say, the legislature cannot do this I say, that it can. I say, that to do this, exceeds the bounds of its authority I say, it does not.' It is evident, that a pair of disputants setting out in this manner, may go on irritating and perplexing one another for everlasting, without the smallest chance of ever coming to an agreement. It is no more than announcing, and that in an obscure and at the same time, a peremptory and captious manner, their opposite persuasions, or rather affections, on a question of which neither of them sets himself to discuss the grounds. The question of utility, all this while, most probably, is never so much as at all brought upon the carpet: if it be, the language in which it is discussed is sure to be warped and clouded to make it match with the obscure and entangled pattern, we have seen.

41. On the other hand, had the debate been originally and avowedly instituted on the footing of utility, the parties might at length have come to an agreement; or at least to a visible and explicit issue. 'I say, that the mischiefs of the measure in question are to such an amount. I say, not so, but to a less. I say, the benefits of it are only to such an amount. I say, not so, but to a greater.' This, we see, is a ground of controversy very different from the former. The question is now manifestly a question of conjecture concerning so many future contingent matters of fact: to solve it, both parties then are naturally directed to support their respective persuasions by the only evidence the nature of the case admits of; the evidence of such past matters of fact as appear to be analogous to those contingent future ones. Now these past facts are almost always numerous: so numerous, that till brought into view for the purpose of the debate, a great proportion of them are what may very fairly have escaped the observation of one of the parties: and it is owing, perhaps, to this and nothing else, that that party is of the persuasion which sets it at variance with the other. Here, then, we have a plain and open road, perhaps, to present reconciliation: at the worst to an intelligible and explicit issue, that is, to such a ground of difference as may, when thoroughly trodden and explored, be found to lead on to reconciliation at the last. Men, let them but once clearly understand one another, will not be long ere they agree. It is the perplexity of ambiguous and sophistical discourse that, while it distracts and eludes the apprehension, stimulates and inflames the passions.

But it is now high time we should return to our Author, from whose text we have been insensibly led astray, by the nicety and intricacy of the question it seemed to offer to our



view.

## CHAPTER V

### Duty of the Supreme Power to Make Laws

1. We now come to the last topic touched upon in this digression: a certain 'duty', which, according to our Author's account, the supreme power lies under: the duty of making laws.
2. 'Thus far', says he, 'as to the right of the supreme power to make laws; but farther, it is its duty likewise. For since the respective 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 its 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.'
3. Still as obscure, still as ambiguous as ever. The 'supreme power' we may remember, according to the definition so lately given of it by our Author, and so often spoken of, is neither more nor less than the power to make laws. Of this power we are now told that it is its 'duty' to make laws. Hence we learn what? that it is its 'duty' to do what it does; to be, in short, what it is. This then is what the paragraph now before us, with its apparatus of 'fors', and 'buts', and 'sinces', is designed to prove to us. Of this stamp is that meaning, at least, of the initial sentence, which is apparent upon the face of it.
4. Compleat the sense of the phrase, 'to make laws'; add to it, in this place, what it wants in order to be an adequate expression of the import which the preceding paragraph seemed to annex to it; you have now, for what is mentioned as the object of the 'duty', another sense indeed, but a sense still more untenable than the foregoing. 'Thus far', says our Author (recapitulating what he had been saying before) 'as to the right of the supreme power to make laws.' By this 'right' we saw, in the preceding chapter, was meant, a right to make laws in all cases whatsoever. 'But further', he now adds, 'it is its duty likewise.' Its duty then to do what? to do the same thing that it was before asserted to be its right to do to make laws in all cases whatsoever: or (to use another word, and that our Author's own, and that applied to the same purpose) that it is its duty to be 'absolute.'<sup>(95)</sup> A sort of duty this which will probably be thought rather a singular one.
5. Mean time the observation which, if I conjecture right, he really had in view to make,

is one which seems very just indeed, and of no mean importance, but which is very obscurely expressed, and not very obviously connected with the purpose of what goes before. The duty he here means is a duty, which respects, I take it, not so much the actual making of laws, as the taking of proper measures to spread abroad the knowledge of whatever laws happen to have been made: a duty which (to adopt some of our Author's own words) is conversant, not so much about issuing `directions', as about providing that such as are issued shall be `received'.

6. Mean time to speak of the duties of a supreme power; of a legislature, meaning a supreme legislature; of a set of men acknowledged to be absolute; is what, I must own, I am not very fond of. Not that I would wish the subordinate part of the community to be a whit less watchful over their governors, or more disposed to unlimited submission in point of conduct, than if I were to talk with ever so much peremptoriness of the `duties' of these latter, and of the rights which the former have against them.<sup>(96)</sup> what I am afraid of is, running into solecism and confusion in discourse.

7. I understand, I think, pretty well, what is meant by the word duty in (political duty) when applied to myself; and I could not persuade of myself, I think, to apply it in the same sense in a regular didactic discourse to those whom I am speaking of as my supreme governors. That is my duty to do, which I am liable to be punished, according to law, if I do not do: this is the original, ordinary, and proper sense of the word duty.<sup>(97)</sup> Have these supreme governors any such duty? No: for if they are at all liable to punishment according to law, whether it be for not doing any thing, or for doing, then are they not, what they are supposed to be, supreme governors.<sup>(98)</sup> those are the supreme governors, by whose appointment the former are liable to be punished.

8. The word duty, then, if applied to persons spoken of as supreme governors, is evidently applied to them in a sense which is figurative and improper: nor therefore are the same conclusions to be drawn from any propositions in which it is used in this sense, as might be drawn from them if it were used in the other sense, which is its proper one.

9. This explanation, then, being premised; understanding myself to be using the word duty in its improper sense, the proposition that it is the duty of the legislature to spread abroad, as much as possible, the knowledge of their will among the people, is a proposition I am disposed most unreservedly to accede to. If this be our Author's meaning, I join myself to him heart and voice.

10. What particular institutions our Author wished to see established in this view what particular duties he would have found for the legislature under this general head of duty, is not very apparent: though it is what should have appeared more precisely than it does, ere his meaning could be apprehended to any purpose. What increases still the difficulty of apprehending it, is a practice which we have already had more than once occasion to detect him in,<sup>(99)</sup> a kind of versatility, than which nothing can be more vexatious to a reader who makes a point of entering into the sentiments of his Author. He sets out with the word `duty' in his mouth; and, in the character of a Censor, with all due gravity begins talking to us of what ought to be. `Tis in the midst of this lecture that our Proteus slips aside; puts on the historian; gives an insensible turn to the discourse; and, without any warning of the change, finishes with telling us what is. Between these two points, indeed,

the is, and the ought to be, so opposite as they frequently are in the eyes of other men, that spirit of obsequious quietism that seems constitutional in our Author, will scarce ever let him recognize a difference. 'Tis in the second sentence of the paragraph that he observes that 'it is expedient that they' (the people) 'receive directions from the state' (meaning the governing body) 'declaratory of that its will'. 'Tis in the very next sentence that we learn from him, that what it is thus 'expedient' that the state should do, it does do. 'But since it is impossible in so great a multitude, to give particular injunctions to even particular man relative to each particular action, therefore, says he 'the state establishes (does *actually* establish) 'general rules (*the state generally, any state, that is to say, that one can mention, all states, in short, whatever do establish*) 'general rules for the perpetual information and direction of all persons in a//points, whether of positive or of negative duty. Thus far our Author; so that, for ought<sup>1</sup> appears, whatever he could *wish* to see done in this view *is* done. Neither this state of our own, nor any other, does he wish to see do any thing more in the matter than he sees done already; nay, nor than what is sure to be done at all events: so that happily the duty he is here so forward to lay on his superiors will not sit on them very heavy. Thus far is he from having any determinate instructive meaning in that part of the paragraph in which, to appearance, and by accident, he comes nearest to it.

11. Not that the passage however is absolutely so remote from meaning, but that the inventive complaisance of a commentator of the admiring breed might find it pregnant with a good deal of useful matter. The design of disseminating the knowledge of the laws is glanced at by it at least, with a shew of approbation. Were our Authors writings then as sacred as they are mysterious; and were they in the number of those which stamp the seal of authority on whatever doctrines can be fastened on them; what we have read might serve as a text, from which the obligation of adopting as many measures as a man should deem subservient to that design, might, without any unexampled violence, be deduced. In this oracular passage I might find inculcated, if not *totidem syllabis*, at least *totidem literis*, as many points of legislative duty as should seem subservient to the purposes of *digestion* and *promulgation*. Thus fortified, I might press upon the legislature, and that on the score of *duty*, to carry into execution, and that without delay, many a busy project as yet either unthought of or unheeded. I might call them with a tone of authority to their work: I [might] bid them go make provision forthwith for the bringing to light such scattered materials as can be found of the judicial decisions. of time past,--sole and neglected materials of common law;--for the registering and publishing of all future ones as they arise;--for transforming, by a digest, the body of the common law thus compleated, into statute-law;--for breaking down the whole together into *codes* or parcels, as many as there are classes of persons distinguishably concerned in it;--for introducing to the notice and possession of every person his respective code:--works which public necessity cries aloud for, at which professional interest shudders, and at which legislative indolence<sup>(100)</sup> stands aghast.

12. All these leading points, I say, of legislative oeconomy, with as many points of detail subservient to each as a meditation not unassiduous has suggested, I might enforce, were it necessary, by our Authors oracular authority. For nothing less than what has been mentioned, I trust, is necessary, in order that every man may be made to know, in the degree in which he *might* and *ought* to be made to know, what (in our Authors words) 'to

look upon as his own, what as anothers; 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 tranquility.<sup>2</sup> In taking my leave of our Author, I finish gladly with this pleasing peroration: a scrutinizing judgment, perhaps, would not be altogether satisfied with it; but the ear is soothed by it, and the heart is warmed.

13. I now put an end to the tedious and intricate war of words that has subsisted, in a more particular manner during the course of these two last chapters: a logomachy, wearisome enough, perhaps, and insipid to the reader, but beyond description laborious and irksome to the writer. What remedy? Had there been sense, I should have attached myself to the sense: finding nothing but words; to the words I was to attach myself, or to nothing. Had the doctrine been but *false*, the task of exposing it would have been comparatively an easy one: but it was what is worse, *unmeaning*, and thence it came to require all these pains which I have been here bestowing on it: to what profit let the reader judge.

'Well then',(cries an objector)'the task you have set yourself is at an end; and the subject of it after all, according to your own representation, teaches nothing;according to your own shewing it is not worth attending to.Why then bestow on it so much attention?'

In this viewTo do something to instruct, but more to undeceive, the timid and admiring studentto excite him to place more confidence in his own strength, and less in the infallibility of great names:to help him to emancipate his judgment from the shackles of authority:to let him see that the not understanding a discourse may as well be the writer's fault as the reader's:to teach him to distinguish between shewy language and sound sense:to warn him not to pay himself with words:to shew him that what may tickle the ear, or dazzle the imagination, will not always inform the judgment: to shew him what it is our Author can do, and has done: and what it is he has not done, and cannot do:to dispose him rather to fast on ignorance than feed himself with error:to let him see that with regard to an expositor of the law, our Author is not he that should come, but that we may be still looking for another. 'Who then', says my objector, 'shall be that other? Yourself?No verily.My mission is at an end, when I have prepared the way before him.

FINIS

1. I add here the word 'institutions', for the sake of including rules of Common Law, as well as portions of Statute Law.

2. *Membra Condividnitul* SAUND. Log. L. I. c. 46.

3. In practice, the question of Law has commonly been spoken of as opposed to that of fact but this distinction is an accidental one. That a Law commanding or prohibiting such a sort of action, has been established, is as much a fact, as that an individual action of that sort has been committed. The establishment of a Law may be spoken of as a fact, at least for the purpose of distinguishing from any consideration that may be offered as a reason for such Law.

4. *Arrogance*; our Author calls it the utmost arrogance, [IV Comm. p.50.] 'to censure what has, at least, a better chance to be tight, than the singular notions of any particular man': meaning thereby certain ecclesiastical institutions. Vibrating, as it should seem, between passion and discretion, he has thought it necessary, indeed, to insert in the sentence that, which being inserted, turns it into nothing: After the word 'censure', 'with contempt' he adds, 'and rudeness': as if there needed a professor to inform us, that to treat any thing with contempt and rudeness is arrogance. 'Indecency', he had already called it, 'to set up private judgment in opposition to public': and this without restriction, qualification, or reserve. This was in the first transport of a holy zeal, before discretion had come in to his assistance. This passage the Doctors Priestly [See Remarks, &c.] and Fumeaux, [See Letters to Mr Justice Blackstone, 1771. Second Edition.] who, in quality of Dissenting Ministers, and champions of dissenting opinions, saw themselves particularly attacked in it, have not suffered to pass unnoticed; any more than has the celebrated Author of the 'Remarks on the Acts of the 13th Parliament', [In the Preface.] who found it adverse to his enterprize, for the same reason that it is hostile to every other liberal plan of political discussion.

My edition of the Commentaries happens to be the first: since the above paragraph was written I have been directed to a later. In this later edition the passage about 'indecenty' is, like the other about 'arrogance', explained away into nothing. What we are now told is, that 'to set up private judgment in (virulent and factious) opposition to public authority' (he might have added or to private either) 'is indecenty'. (See the 5<sup>th</sup> edit. 8vo. p. 50, as in the 1st.) This we owe, I think, to Dr Furneaux. The Doctors Furneaux and Priestly, under whose well-applied correction our Author has smarted so severely, have a good deal to answer for: They have been the means of his adding a good deal of this kind of rhetorical lumber to the plentiful stock there was of it before. One passage, indeed, a passage deep-tinctured with religious gall, they have been the means of clearing away entirely; [See Furneaux, Letter VII.] and in the first place, they have done good service. They have made him sophisticate: they have made him even expunge: but all the Doctors in the world, I doubt, would not bring him to confession. See his answer to Dr Priestly.

5. There is only one way in which censure, cast upon the Laws, has a greater tendency to do harm than good; and that is when it sets itself to contest their validity: I mean, when abandoning the question of expediency, it sets itself to contest the right. But this is an attack to which old-established Laws are not so liable. As this is the last though but too common resource of passion and ill-humour; and what men scarce think of betaking themselves to, unless irritated by personal competitions, it is that to which recent Laws are most exposed. I speak of what are called written Laws: for as to unwritten institutions, as there is no such thing as any certain symbol by which their authority is attested, their validity, how deeply rooted soever, is what we see challenged without

remorse. A radical weakness, interwoven into the very constitution of unwritten Law.

6. One may well say rare. It is a matter of fact about which there can be no dispute. The truth of it may be seen in the multitude of Expositors which the Jurisprudence of every nation furnished, ere it afforded a single Censor. When Beccaria came, he was received by the intelligent as an Angel from heaven would be by the faithful. He may be styled the father of Censorial Jurisprudence. Montesquieu's was a work of the mixed kind. Before Montesquieu all was unmixed barbarism. Grotius and Puffendorf were to Censorial Jurisprudence what the Schoolmen were to Natural Philosophy.

7. A French Jurist of the last age, whose works had like celebrity, and in many respects much the same sort of merits as our Author's. He was known to most advantage by a translation of Demosthenes. He is now forgotten.

8. 'Burglary', [Comm. Ch. XVI. p.226.] says our Author, 'cannot be committed in a tent or a booth erected in a market fair; though the owner may lodge therein: for the Law regards thus highly nothing but permanent edifices; a house, or church; the wall, or gate of a town; and it is the folly of the owner to lodge in so fragile a tenement.' To save himself from this charge of folly, it is not altogether clear which of two things the trader ought to do: quit his business and not go to the fair at all: or leave his goods without any body to take care of them.

9. Speaking of an Act of Parliament, [I Comm. Ch. II. p. 178.] 'There needs', he says, 'no formal promulgation to give it the force of a Law, as was necessary by the Civil Law with regard to the Emperor's Edicts: because every man in England is, in judgment of Law, party to the making of an Act of Parliament, being present thereat by his representatives.' This, for aught I know, may be good judgment of Law; because any thing may be called judgment of Law, that comes from a Lawyer, who has got a name: it seems, however, not much like any thing that can be called judgment of common sense. This notable piece of *astutia* was originally, I believe, judgment of Lord Coke: it from thence became judgment of our Author: and may have been judgment of more Lawyers than I know of before and since. What grieves me is, to find many men of the best affections to a cause which needs no sophistry, bewildered and bewildering others with the like jargon.

10. His words are, [IV Comm. Ch. XVI. p.226.] 'There must be an actual breaking, not a mere legal *clausum fregit* (by leaping over invisible ideal boundaries, which may constitute a civil trespass) but a substantial and forcible irruption.' In the next sentence but two he goes on, and says, 'But to come down a chimney is held a burglarious entry; for that is as much closed as the nature of things will permit. So also to knock at a door, and upon opening it to rush in with a felonious intent; or under pretence of taking lodgings, to fall upon the landlord and rob him; or to procure a constable to gain admittance, in order to search for traitors, and then to bind the constable and rob the house; all these entries have been adjudged burglarious, though there was no actual breaking: for the Law will not suffer itself to be trifled with by such evasions.' ... Can it be more egregiously trifled with than by such reasons?

I must own I have been ready to grow out of conceit with these useful little particles, for, because, since, and others of that fraternity, from seeing the drudgery they are continually

put to in these Commentaries. The appearance of any of them is a sort of warning to me to prepare for some tautology, or some absurdity: for the same thing dished up over again in the shape of a reason for itself: or for a reason which, if distinct one, is of the same stamp as those we have just seen. Other instances of the like hard treatment given to these poor particles will come under observation in the body of this Essay. As to reasons of the first-mentioned class, of them one might pick out enough to fill a volume.

11. 'In what I have now said', says he, [IV Comm. Ch. IV. p.49.] 'I would not be understood to derogate from the rights of the national Church, or to favour a loose latitude of propagating any crude undigested sentiments in religious matters. Of Propagating, I say; for the bare entertaining them, without an endeavour to diffuse them, seems hardly cognizable by any human authority. I only mean to illustrate the excellence of our present establishment, by looking back to former times. Every thing is now as it should be: unless, perhaps, that heresy ought to be more strictly defined, and no prosecution permitted, even in the Ecclesiastical Courts, till the tenets in question are by proper authority previously declared to be heretical. Under these restrictions it seems necessary for the support of the national religion', (the national religion being such, we are to understand, as would not be able to support itself were any one at liberty to make objections to it) 'that the officers of the Church should have power to censure heretics, but not to exterminate or destroy them.'

Upon looking into a later edition (the fifth) I find this passage has undergone a modification. After 'Every thing is now as it should be', is added, 'with respect to the spiritual cognizance, and spiritual punishment of heresy.' After 'the officers of the Church should have power to censure heretics,' is added, 'but not to harass them with temporal penalties, much less to exterminate or destroy them.'

How far the mischievousness of the original text has been cured by this amendment, may be seen from Dr Furneaux, Lett. II. p. 30, 2nd edit.<sup>2</sup>

12. I Comm. 140. I would not be altogether positive, how far it was he meant this persuasion should extend itself in point of time: whether to those institutions only that happened to be in force at the individual instant of his writing: or whether to such opposite institutions also as, within any given distance of time from that instant, either had been in force, or were about to be.

His words are as follows: 'All these rights and liberties it is our birthright to enjoy entire; unless where the Laws of our country have laid them under necessary restraints. Restraints in themselves so gentle and moderate, as will appear upon further enquiry, that no man of sense or probity would wish to see them slackened. For all of us have it in our choice to do every thing that a good man would desire to do; and are restrained from nothing, but what would be pernicious either to ourselves or our fellow citizens.'

If the Reader would know what these rights and liberties are, I answer him out of the same page, they are those, 'in opposition to one or other of which every species of compulsive tyranny and oppression must act, having no other object upon which it can possibly be employed.' The liberty, for example, of worshipping God without being obliged to declare a belief in the XXXIX Articles, is a liberty that no 'good man,' no man

of sense or probity,' 'would wish' for.'

13. I Comm. 70. If no reason can be found for an institution, we are to suppose one: and it is upon the strength of this supposed one we are to cry it up as reasonable; It is thus that the Law is justified of her children.

The words are 'Not that the particular reason of every rule in the Law can, at this distance of time, be always precisely assigned; but it is sufficient that there be nothing in the rule flatly contradictory to reason, and then the Law will presume it to be well founded. And it hath been an ancient observation in the Laws of England,' (he might with as good ground have added and in all other Laws) 'That whenever a standing rule of Law, of which the reason, perhaps, could not be remembered or discerned, hath been [wantonly] broke in upon by statutes or new resolutions, the wisdom of the rule hath in the end appeared from the inconveniences that have followed the innovation.'

When a sentiment is expressed, and whether from caution, or from confusion of ideas, a clause is put in by way of qualifying it that turns it into nothing, in this case if we would form a fair estimate of the tendency and probable effect of the whole passage, the way is, I take it, to consider it as if no such clause were there. Nor let this seem strange. Taking the qualification into the account, the sentiment would make no impression on the mind stall: if it makes any, the qualification is dropped, and the mind is affected in the same manner nearly as it would be were the sentiment to stand unqualified.

This, I think, we may conclude to be the case with the passage above mentioned. The word 'wantonly' is, in pursuance of our Author's standing policy, put in by way of salvo. With it the sentiment is as much as comes to nothing. Without it, it would be extravagant. Yet in this extravagant form it is, probably, if in any, that it passes upon the Reader.

The pleasant part of the contrivance is, the mentioning of 'Statutes' and 'Resolutions' (Resolutions to wit, that is Decisions, of Courts of Justice) in the same breath; as if whether it were by the one of them or the other that a rule of Law was broke in upon, made no difference. By a Resolution indeed, a new Resolution, to break in upon a standing rule, is a practice that in good truth is big with mischief. But this mischief on what does it depend? Upon the rule's being a reasonable one? By no means: but upon its being a standing, an established one. Reasonable or not reasonable, is what makes comparatively but a trifling difference.

A new resolution made in the teeth of an old established rule is mischievous on what account? In that it puts men's expectations universally to a fault, and shakes whatever confidence they may have in the stability of any rules of Law, reasonable or not reasonable: that stability on which every thing that is valuable to a man depends. Beneficial be it in ever so high a degree to the party in whose favour it is made, the benefit it is of to him can never be so great as to outweigh the mischief it is of to the community at large. Make the best of it, it is general evil for the sake of partial good. It is what Lord Bacon calls setting the whole house on fire, in order to roast one man's eggs.

Here then the salvo is not wanted: a 'new resolution can never be acknowledged to be contrary to a standing rule,' but it must on that very account be acknowledged to be



wanton.' Let such a resolution be made, and 'inconveniences' in abundance will sure enough ensue: and then will appear what? not by any means 'the wisdom of the rule,' but, what is a very different thing, the folly of breaking in upon it.

It were almost superfluous to remark, that nothing of all this applies in general to a statute: though particular Statutes may be conceived that would thwart the course of expectation, and by that means produce mischief in the same way in which it is produced by irregular resolutions. A new statute, it is manifest, cannot, unless it be simply a declaratory one, be made in any case, but it must break in upon some standing rule of Law. With regard to a Statute then to tell us that a 'wanton' one has produced 'inconveniences,' what is it but to tell us that a thing that has been mischievous has produced mischief?

Of this temper are the arguments of all those doating politicians, who, when out of humour with a particular innovation without being able to tell why, set themselves to declaim against all innovation, because it is innovation. It is the nature of owls to hate the light: and it is the nature of those politicians who are wise by rote, to detest every thing that forces them either to find (what, perhaps, is impossible) reasons for a favourite persuasion, or (what is not endurable) to discard it.

14. III Comm. 268, at the end of Ch. XVII, which concludes with three pages against Reformation. Our Author had better, perhaps, on this occasion, have kept clear of allegories: he should have considered whether they might not be retorted on him with severe retaliation. He should have considered, that it is not easier to him to turn the Law into a Castle, than it is to the imaginations of impoverished suitors to people it with Harpies. He should have thought of the den of Cacus, to whose enfeebled optics, to whose habits of dark and secret rapine, nothing was so hateful, nothing so dangerous, as the light of day.

15. III Comm. 322. It is from the decisions of Courts of Justice that those rules of Law are framed, on the knowledge of which depend the life, the fortune, the liberty of every man in the nation. Of these decisions the Records are, according to our Author (I Comm. 71) the most authentic histories. These Records were, till within these five-and-forty years, in Law-Latin: a language which, upon a high computation, about one man in a thousand used to fancy himself to understand. In this Law-Latin it is that our Author is satisfied they should have been continued, because the pyramids of Egypt have stood longer than the temples of Palmyra. He observes to us, that the Latin language could not express itself on the subject without borrowing a multitude of words from our own: which is to help to convince us that of the two the former is the fittest to be employed. He gives us to understand that, taking it altogether, there could be no room to complain of it, seeing it was not more unintelligible than the jargon of the schoolmen, some passages of which he instances; and then he goes on, 'This technical Latin continued in use from the time of its first introduction till the subversion of our ancient constitution under Cromwell; when, among many other innovations on the body of the Law, some for the better and some for the worse, the language of our Records was altered and turned into English. But at the Restoration of King Charles, this novelty was no longer countenanced; the practisers finding it very difficult to express themselves so concisely or significantly in any other language but the Latin. And thus it continued without any

sensible inconvenience till about the year 1730, when it was again thought proper that the Proceedings at Law should be done into English, and it was accordingly so ordered by statute 4 Geo. II. c. 26.

'This was done (continues our Author) in order that the common people might have knowledge and understanding of what was alleged or done for and against them in the process and pleadings, the judgment and entries in a cause. Which purpose I know not how well it has answered; but am apt to suspect that the people are now, after many years experience, altogether as ignorant in matters of law as before.'

In this scornful passage the words novelty done into English apt to suspect altogether as ignorant sufficiently speak the affection of the mind that dictated it. It is thus that our Author chuckles over the supposed defeat of the Legislature with a fond exultation which all his discretion could not persuade him to suppress.

The case is this. A large portion of the body of the Law was, by the bigotry or the artifice of Lawyers, locked up in an illegible character, and in a foreign tongue. The statute he mentions obliged them to give up their hieroglyphics, and to restore the native language to its rights.

This was doing much; but it was not doing every thing. Fiction, tautology, technicality, circuitry, irregularity, inconsistency remain. But above all the pestilential breath of Fiction poisons the sense of every instrument it comes near.

The consequence is, that the Law, and especially that part of it which comes under the topic of Procedure, still wants much of being generally intelligible. The fault then of the Legislature is their not having done enough. His quarrel with them is for having done any thing at all. In doing what they did, they set up a light, which, obscured by many remaining clouds, is still but too apt to prove an ignis fatuus: our Author, instead of calling for those clouds to be removed, deprecates all light, and pleads for total darkness.

Not content with representing the alteration as useless, he would persuade us to look upon it as mischievous. He speaks of 'inconveniences'. What these inconveniences are it is pleasant to observe.

In the first place, many young practisers, spoilt by the indulgence of being permitted to carry on their business in their mother-tongue, know not how to read a Record upon the old plan. 'Many Clerks and Attornies', says our Author, 'are hardly able to read, much less to understand a Record of so modern a date as the reign of George the First.'

What the mighty evil is here, that is to outweigh the mischief of almost universal ignorance, is not altogether clear: Whether it is, that certain Lawyers, in a case that happens very rarely, may be obliged to get assistance: or that the business in such a case may pass from those who do not understand it to those who do.

In the next place, he observes to us, 'it has much enhanced the expense of all legal proceedings: for since the practisers are confined (for the sake of the stamp-duties, which are thereby considerably increased) to write only a stated number of words in a sheet; and as the English language, through the multitude of its particles, is much more verbose than

the Latin; it follows, that the number of sheets must be very much augmented by the change.

I would fain persuade myself, were it possible, that this unhappy sophism could have passed upon the inventor. The sum actually levied on the public on that score is, upon the whole, either a proper sum or it is not. If it is, why mention it as an evil? If it is not, what more obvious remedy than to set the duties lower?

After all, what seems to be the real evil, notwithstanding our Author's unwillingness to believe it, is, that by means of this alteration, men at large are in a somewhat better way of knowing what their Lawyers are about: and that a disinterested and enterprising Legislator, should happily such an one arise, would now with somewhat less difficulty be able to see before him.

16. V. infra, Ch. III. par. 7. p.464.

17. In the Seventh Chapter of the First Book. The King has 'attributes';[I Comm. 242.] he possesses 'ubiquity';[I Comm. Ch. VII. pp. 234, 238, 242. First Edition.] he is 'all-perfect and immortal.'[I Comm. Ch. VII. p. 260. First Edition.]

These childish paradoxes, begotten upon servility by false wit, are not more adverse to manly sentiment, than to accurate apprehension. Far from contributing to place the institutions they are applied to in any clear point of view, they serve but to dazzle and confound, by giving to Reality the air of Fable. It is true, they are not altogether of our Author's invention: it is he, however, that has revived them, and that with improvements and additions.

One might be apt to suppose they were no more than so many transient flashes of ornament: it is quite otherwise. He dwells upon them in sober sadness. The attribute of 'ubiquity,' in particular, he lays hold of, and makes it the basis of a chain of reasoning. He spins it out into consequences: he makes one thing 'follow' from it, and another thing be so and so 'for the same reason:' and he uses emphatic terms, as if for fear he should not be thought to be in earnest. 'From the ubiquity', says our Author (1 Comm. p. 260) 'it follows, that the King can never be nonsuit; for a nonsuit is the desertion of the suit or action by the non-appearance of the plaintiff in Court.' 'For the same reason also the King is not to appear by his Attorney, as other men do; for he always appears in contemplation of Law in his own proper person.'

This is the case so soon as you come to this last sentence of the paragraph. For so long as you are at the last but two, 'it is the regal office, and not the royal person, that is always present'. All this is so drily and so strictly true, that it serves as the groundwork of a metaphor that is brought in to embellish and enliven it. The King, we see, is, that is to say is not, present in Court. The King's Judges are present too. So far is plain downright truth. These Judges, then, speaking metaphorically, are so many looking-glasses, which have this singular property, that when a man looks at them, instead of seeing his own face in them, he sees the King's. 'His Judges', says our Author, 'are the mirror by which the

King's image is reflected.'

18. The word demonstration may here seem, at first sight, to be out of place. It will be easily perceived that the sense here put upon it is not the same with that in which it is employed by Logicians and Mathematicians. In our own language, indeed, it is not very familiar in any other sense than theirs: but on the Continent it is currently employed in many other sciences. The French, for example, have their *demonstrateurs de botanique d'anatomie, de physique experimentale, &c.* I use it out of necessity; not knowing of any other that will suit the purpose.

19. Let this be taken for a truth upon the authority of Aristotle I mean by those, who like the authority of Aristotle better than that of their own experience. , says that philosopher,  $\mu$  , , . (understand ) .Arise. Eth. ad Nic. L. I. c. 1.

20. Offences, the Reader will remember, may as well be offences of omission as of commission. I would avoid the embarrassment of making separate mention of such Laws as exert themselves in commanding. 'Tis on this account I use the phrase 'mode of conduct,' which includes omissions or forbearances, as well as acts.

21. Technical reasons: so called from the Greek , which signifies an art, science, or profession.

Utility is that standard to which men in general (except in here and there an instance where they are deterred by prejudices of the religious class, or hurried away by the force of what is called sentiment or feeling), Utility, as we have said, is the standard to which they refer a Law or institution in judging of its title to approbation or disapprobation. Men of Law, corrupted by interests, or seduced by illusions, which it is not here our business to display, have deviated from it much more frequently, and with much less reserve. Hence it is that such reasons as pass with Lawyers, and with no one else, have got the name of technical reasons; reasons peculiar to the art, peculiar to the profession.

22. The reason of a Law, in short, is no other than the good produced by the mode of conduct which it enjoins, or (which comes to the same thing) the mischief produced by the mode of conduct which it prohibits. This mischief or this good, if they be real, cannot but shew themselves somewhere or other in the shape of pain or pleasure.

23. See in the Synoptical Table prefixed to our Author's Analysis, the last page comprehending Book IV.

24. It is that which comprises his IVth Book, entitled PUBLIC WRONGS.

25. Fragmenta methodi naturalis.LINNAEI Phil. Bot. Tit. Systematica. par. 77.

26. This title affords a pertinent instance to exemplify the use that a natural arrangement may be of in repelling an incompetent institution. What I mean is the sort of filthiness that is termed unnatural. This our Author has ranked in his class of Offences against personal security', and, in a subdivision of it, intitled 'Corporal injuries.' In so doing, then, he has asserted a fact: he has asserted that the offence in question is an offence against personal security; is a corporal injury; is, in short, productive of unhappiness in

that way. Now this is what, in the case where the act is committed by consent, is manifestly not true. *Volenti non fit injuria*. If then the Law against the offence in question had no other title to a place in the system than what was founded on this fact, it is plain it would have none. It would be shad Law altogether. The mischief the offence is of to the community in this case is in truth of quite another nature, and would come under quite another class. When against consent, there indeed it does belong really to this class: but then it would come under another name. It would come under that of Rape.

27. I think it is Selden, somewhere in his Table-talk, that speaks of a whimsical notion he had hit upon when a school-boy, that with regard to Caesar and Justin, and those other personages of antiquity that gave him so much trouble, there was nota syllable of truth in any thing they said, nor in fact were there ever really any such persons; but that the whole affair was a contrivance of parents to find employment for their children. Much the same sort of notion is that which these technical arrangements are calculated to give us of Jurisprudence: which in them stands represented rather as a game at *Crambo* for Lawyers to whet their wits at, than as that Science which holds in her hand the happiness of nations.

Let us, however, do no man wrong. Where the success has been worse, the difficulty was greater. That detestable chaos of institutions which the Analyst last-mentioned had to do with is still more embarrassed with a technical nomenclature than our own.

28. III Comm. Ch. XXIII. p. 387.

29. II Comm. Ch. XXI, p.360.

30. The difference between a generous and determined affection, and an occasional, and as it were forced contribution, to the cause of reformation, may be seen, I think, in these Commentaries, compared with another celebrated work on the subject of our Jurisprudence. Mr Barrington, whose agreeable Miscellany has done so much towards opening men's eyes upon this subject Mr Barrington, like an active General in the service of the principal and professed purpose of it is, to expose the errors and Public, storms the strongholds of chicane, wheresoever they present themselves, and particularly fictions, without reserve. Our Author, like an artful partizan in the service of the profession, sacrifices a few, as if it were to save the rest.

Deplorable, indeed, would have been the student's chance for salutary instruction, did not Mr Barrington's work in so many instances, furnish the antidote to our Author's poisons.

31. I Comm. p.47.

32. To make sure of doing our Author no injustice, and to shew what it is that he thought would `naturally lead us into' this `enquiry,' it may be proper to give the paragraph containing the explanation above mentioned. It is as follows:'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' (he might have added, or at least supported) `by the supreme power. Sovereignty and legislature are indeed convertible terms; one cannot subsist without the other.' I Comm. p.

46.

33. 1 Comm. p.47.

34. v. supra p. 426.

35. 1 Comm. p.47.

36. 1 Comm. p.47. supra p. 426.

37. 1 Comm. p.47. supra p.425.

38. 1 Comm. p.47. supra p. 425.

39. 1 Comm. p.48. supra p. 426.

40. Comm. p.48. supra p.426.

41. 1 Comm. p.48. supra p.425.

42. 1 Comm. p.47. supra p.425.

43. 1 Comm. p. 46. supra p.426.

44. 1 Comm. p.46. supra p.426.

45. 1 Comm. p.52.

46. 1. A habit is but an assemblage of acts: under which name I would also include, for the present, voluntary forebearances.

2. A habit of obedience then is an assemblage of acts of obedience.

3. An act of obedience is any act done in pursuance of an expression of will on the part of some superior.

4. An act of POLITICAL obedience (which is what is here meant) is any act done in pursuance of an expression of will on the part of a person governing.

5. An expression of will is either parole or tacit.

6. A parole expression of will is that which is conveyed by the signs called words.

7. A tacit expression of will is that which is conveyed by any other signs whatsoever: among which none are so efficacious as acts of punishment annexed in time past, to the non-performance of acts of the same sort with those that are the objects of the will that is in question.

8. A parole expression of the will of a superior is a command.

9. When a tacit expression of the will of a superior is supposed to have been uttered, it

may be styled a fictitious command.

10. Were we at liberty to coin words after the manner of the Roman lawyers, we might say a quasi-command.

11. The STATUTE LAW is composed of commands. The COMMON LAW, of quasi-commands.

12. An act which is the object of a command actual or fictitious; such an act, considered before it is performed, is styled a duty, or a point of duty.

13. These definitions premised, we are now in a condition to give such an idea, of what is meant by the perfection or imperfection of a habit of obedience in a society as may prove tolerably precise.

14. A period in the duration of the society; the number of persons it is composed of during that period; and the number of points of duty incumbent on each person being given; the habit of obedience will be more or less perfect' in the ratio of the number of acts of obedience to those of disobedience.

15. The habit of obedience in this country appears to have been more perfect in the time of the Saxons than in that of the Britons: unquestionably it is more so now than in the time of the Saxons. It is not yet so perfect, as well contrived and well digested laws its time, it is to be hoped, may render it. But absolutely perfect, till man ceases to be man, it never can be.

A very ingenious and instructive view of the progress of nations, from the least perfect states of political union to that highly perfect state of it in which we live, may be found in Lord Kaims's *Historical Law Tracts*.

16. For the convenience and accuracy of discourse it may be of use, in this place to settle the signification of a few other expressions relative to the same subject. Persons who, with respect to each other, are in a state of political society, may be said also to be in a state of political union or connection.

17. Such of them as are subjects may, accordingly, be said to be in a state of submission, or of subjection, with respect to governors: such as are governors in a state of authority with respect to subjects.

18. When the subordination is considered as resulting originally from the will, or (it maybe more proper to say) the pleasure of the party governed, we rather use the word 'submission:' when from that of the party governing, the word 'subjection.' On this account it is, that the term can scarcely be used without apology, unless with a note of disapprobation: especially in this country, where the habit of considering the consent of the persons governed as being in some sense or other involved in the notion of all lawful, that is, all commendable government, has gained so firm a ground. It is on this account, then, that the term 'subjection,' excluding as it does, or, at least, not including such consent, is used commonly in what is called a BAD sense: that is, in such a sense as, together with the idea of the object in question, conveys the accessory idea of

disapprobation. This accessory idea, however, annexed as it is to the abstract term 'subjection,' does not extend itself to the concrete term 'subjects'a kind of inconsistency of which there are many instances in language.

47. It is true that every person must, for sometime, at least, after his birth, necessarily be in a state of subjection with respect to his parents, or those who stand in the place of parents to him; and that a perfect one, or at least as near to being a perfect one, as any that we see. But for all this, the sort of society that is constituted by a state of subjection thus circumstanced, does not come up to the idea that, I believe, is generally entertained by those who speak of a political society. To constitute what is meant in general by that phrase, a greater number of members is required, or, at least, a duration capable of a longer continuance. Indeed, for this purpose nothing less, I take it, than an indefinite duration is required. A society, to come within the notion of what is originally meant by a political one, must be such as, in its nature, is not incapable of continuing for ever in virtue of the principles which gave it birth. This, it is plain, is not the case with such a family society, of which a parent, or a pair of parents are at the head. In such a society, the only principle of union which is certain and uniform in its operation, is the natural weakness of those of its members that are in a state of subjection; that is, the children; a principle which has but a short and limited continuance. I question whether it be the case even with a family society, subsisting in virtue of collateral consanguinity; and that for the like reason. Not but that even in this case a habit of obedience, as perfect as any we see examples of, may subsist for a time; to wit, in virtue of the same moral principles which may protract a habit of filial obedience beyond the continuance of the physical ones which gave birth so it: I mean affection, gratitude, awe, the force of habit, and the like. But it is not long, even in this case, before the bond of connection must either become imperceptible or lose its influence by being too extended.

These considerations, therefore, it will be proper to bear in mind in applying the definition of political society above given (in par. 10) and in order to reconcile it with what is said further on (in par. 17).

48. The Kingdom of Naples is feudatory to the Papal See: and in token of fealty, the King, at his accession, presents the Holy Father with a white horse. The Royal vassal sometimes treats his Lord but cavalierly: but always sends him his white horse.

49. Upon recollection, I have some doubt whether this example would be found historically exact. If not, that of the defection of the Nabobs of Hindostan may answer the purpose. My first choice fell upon the former; supposing it to be rather better known.

50. 1. Disobedience may be said to be unconscious with respect to the fact, when the party is ignorant either of his having done the act itself, which is forbidden by the law, or else of his having done it in those circumstances, in which alone it is forbidden.

2. Disobedience may be said to be unconscious, with respect to the law; when although he may know of his having done the act that is in reality forbidden, and that, under the circumstances in which it is forbidden, he knows not of its being forbidden in these circumstances.



3. So long as the business of spreading abroad the knowledge of the law continues to lie in the neglect in which it has lain hitherto, instances of disobedience unconscious with respect to the law, can never be otherwise than abundant.

51. If examples be thought necessary, Theft may serve for an example of fraudulent disobedience; Robbery of forcible. In Theft, the person of the disobedient party, and the act of disobedience, are both endeavoured to be kept secret. In Robbery, the act of disobedience, at least, if not the person of him who disobeys, is manifest and avowed.

52. 1. In the third Volume of his TREATISE on HUMAN NATURE.

Our Author, one would think, had never so much as opened that celebrated book: of which the criminality in the eyes of some, and the merits in the eyes of others, have since been almost effaced by the splendour of more recent productions of the same pen. The magnanimity of our Author scorned, perhaps, or his circumspection feared, to derive instruction from an enemy: or, what is still more probable, he knew not that the subject had been so much as touched upon by that penetrating and acute metaphysician, whose works lie so much out of the beaten track of Academic reading. But here, as it happens, there is no matter for such fears. Those men, who are most alarmed at the dangers of a free enquiry; those who are most intimately convinced that the surest way to truth is by hearing nothing but on one side, will, I dare answer almost, find nothing of that which they deem poison in this third volume. I would not wish to send the Reader to any other than this, which, if I recollect aright, stands clear of the objections that have of late been urged, with so much vehemence, against the work in general.[By Dr BEATTIE, in his Essay on the Immutability of Truth.] As to the two first, the Author himself, I am inclined to think, is not ill disposed, at present, to join with those who are of opinion, that they nsight, without any great loss to the science of Human Nature, be dispensed with. The like might be said, perhaps, of a considerable part, even of this. But, after all retrenchments, there will still remain enough to have laid mankind under indelible obligations. That the foundations of all virtue are laid in utility, is there demonstrated, after a few exceptions made, with the strongest force of evidence: but I see not, any more than Helvetius saw, what need there was for the exceptions.

2. For my own part, I well remember, no sooner had I read that part of the work which touches on this subject, than I felt as if scales had fallen from my eyes, I then, for the first time, learnt to call the cause of the people the cause of Virtue.

Perhaps a short sketch of the wanderings of a raw but well-intentioned mind, in its researches after moral truth, may, on this occasion, be not unuseful: for the history of one mind is the history of many. The writings of the honest, but prejudiced, Earl of Clarendon to whose integrity nothing was wanting, and to whose wisdom little, but the fortune of living something later; and the contagion of a monkish atmosphere; these, and other concurrent causes, had listed my infant affections on the side of despotism. The Genius of the place I dwelt in, the authority of the state, the voice of the Church in her solemn offices; all these taught me to call Charles a Martyr, and his opponents rebels. I saw innovation, where indeed innovation, but a glorious innovation, was, in their efforts to withstand him. I saw falsehood, where indeed falsehood was, in their disavowals of innovation. I saw selfishness, and an obedience to the call of passion, in the efforts of the

oppressed to rescue themselves from oppression. I saw strong countenance lent in the sacred writings to monarchic government: and none to any other. I saw passive obedience deep stamped with the seal of the Christian Virtues of humility and self-denial.

Conversing with Lawyers, I found them full of the virtues of their Original Contract, as a recipe of sovereign efficacy for reconciling the accidental necessity of resistance with the general duty of submission. This drug of theirs they administered to me to calm my scruples. But my unpractised stomach revolted against their opiate. I bid them open to me that page of history in which the solemnization of this important contract was recorded. They shrunk from this challenge; nor could they, when thus pressed, do otherwise than our Author has done, confess the whole to be a fiction. This, methought, looked ill. It seemed to me the acknowledgment of a bad cause, the bringing a fiction to support it. 'To prove fiction, indeed,' said I, 'there is need of fiction; but it is the characteristic of truth to need no proof but truth. Have you then really any such privilege as that of coining facts? You are spending argument to no purpose. Indulge yourselves in the licence of supposing that to be true which is not, and as well may you suppose that proposition itself to be true, which you wish to prove, as that other whereby you hope to prove it.' Thus continued I unsatisfying, and unsatisfied, till I learnt to see that utility was the test and measure of all virtue; of loyalty as much as any; and that the obligation to minister to general happiness, was an obligation paramount to and inclusive of every other. Having thus got the instruction I stood in need of, I sat down to make my profit of it. I bid adieu to the original contract: and I left it to those to amuse themselves with this rattle, who could think they needed it.

53. A compact or contract (for the two words on this occasion, at least, are used in the same sense) may, I think, be defined, a pair of promises, by two persons reciprocally given, the one promise in consideration of the other.

54. The importance which the observance of promises is of to the happiness of society, is placed in a very striking and satisfactory point of view, in a little apologue of Montesquieu, entitled, *The History of the Troglodytes*. [See the Collection of his Works.] The Troglodytes are a people who pay no regard to promises. By the natural consequences of this disposition, they fall from one scene of misery into another; and are at last exterminated. The same Philosopher, in his *Spirit of Laws*, copying and refining upon the current jargon, feigns a LAW for this and other purposes, after defining a LAW to be a relation. How much more instructive on this head is the fable of the Troglodytes than the pseudo-metaphysical sophistry of the *Esprit des Loix*!

55. To this denomination, has of late been added, or substituted, the greatest happiness or greatest felicity principle: this, for shortness, instead of saying at length that principle which states the greatest happiness of all those whose interest is in question, as being the right and proper, and only right and proper and universally desirable, end of human action: of human action in every situation; and, in particular, in that of a functionary, or set of functionaries, exercising the powers of Government. The word utility does not so clearly point to the ideas of pleasure and pain as the words happiness and felicity do: nor does it lead us to the consideration of the number, of the interests affected: [to] the number, as being the circumstance which contributes, in the largest proportion, to the formation of the standard here in question; the standard of right and wrong, by which

alone the propriety of human conduct, in every situation, can with propriety be tried.

This want of a sufficiently manifest connection between the ideas of happiness and pleasure on the one hand, and the idea of utility on the other, I have every now and then found operating, and with but too much efficiency, as a bar to the acceptance, that might otherwise have been given, to this principle.

For further elucidation of the principle of utility, or say greatest happiness principle, it may be some satisfaction to the reader, to see a note, inserted in a second edition, now printing, of a later work of the Author's, intitled 'An Introduction to the Principles of Morals and Legislation'. In chapter 1, subjoined to paragraph xiii is a note in these words: 'The principle of utility' (I have heard it said) 'is a dangerous principle: it is dangerous on certain occasions to consult it.' This is as much as to say what? that it is not consonant to utility to consult utility; in short, that it is not consulting it, to consult it.

In the second edition, to this note is added the following paragraph.

Explanation, written 12th July, 1822, relative to the above note.

Not long after the publication of the Fragment on Government, Anno 1776, in which, in the character of an all-comprehensive and all-commanding principle, the principle of utility was brought to view, one person by whom observation to the above effect was made was Alexander Wedderburn, at that time Attorney or Solicitor General, afterwards successively Chief Justice of the Common Pleas, and Chancellor of England, under the successive titles of Lord Loughborough and Earl of Rosslyn. It was made not indeed in my hearing, but in the hearing of a person by whom it was almost immediately communicated to me. So far from being self-contradictory, it was (I now see and confess) a shrewd and perfectly true one. By that distinguished functionary, the state of the Government was perfectly understood; by the obscure individual, at that time, not so much as supposed to be so; his disquisitions had not been as yet applied, with any thing like a comprehensive view, to the field of Constitutional Law, nor therefore to those features of the English Government, by which the greatest happiness of the ruling one, with or without that of a favoured few, are now so plainly seen to be the only ends to which the course of it has at any time been directed. The principle of utility was an appellative, at that time employed by me, as it has been by others, to designate that which, in a more perspicuous and instructive manner, may as above be designated by the name of the greatest happiness principle. 'This principle' (said Wedderburn) 'is a dangerous one.' Saying so, he said that which, to a certain extent, is strictly true; a principle, which lays down, as the only right and justifiable end of Government, the greatest happiness of the greatest number how can it be denied to be a dangerous one? dangerous to every Government, which has for its actual end or object, the greatest happiness of a certain one, with or without the addition of some comparatively small number of others, whom it is a matter of pleasure or accommodation to him to admit, each of them, to a share in the concern, on the footing of so many junior partners. 'Dangerous' it therefore really was to the interest the sinister interest of all those functionaries, himself included, whose interest it was to maximize delay, vexation, and expence, in judicial and other modes of procedure, for the sake of the profit extractible out of the expence. In a Government which had for its end in view the greatest happiness

of the greatest number, Alexander Wedderburn might have been Attorney General and then Chancellor; but he would not have been Attorney General with 15,000 l. a year, nor Chancellor, with a Peerage, with a veto upon all justice, with 25,000 l. a year, and with 500 sinecures at his disposal, under the name of Ecclesiastical Benefices besides *et caeteras* Note of the Author's, 12th July, 1822.

56. This is what there would be occasion to shew at large, were what he says of Law in general, and of the Laws of nature, and revelation in particular, to be examined.

57. I Comm. p.48.

58. V. *infra*, par. 32 Monarchy, which is the government of one, 'is the most powerful form of government,' he says, 'of any:" more so than Democracy, which he describes as being the Government of all.

59. 1 Comm. p.50.

60. Par. 32.

61. 1 Comm. 489.

62. By the laws of GERMANY such and such states arc to furnish so many men to the general army of the empire: some of them so many men and one half; others, so many and one third; others again, If I mistake not, so many and one fourth. One of these half, third-part, or quarter-men, suppose, possesses himself of the Government: here then we have a kind of corruption of a Monarchy. Is this what our Author had in view?

63. A more suitable place to look for corruption in, if we may take his own word for it, there cannot be. 'Every man's reason,' he assures us [1 Comm. p.41.] 'is corrupt'; and not only that, but 'his understanding full of ignorance and error'. With regard to others, it were as well not to be too positive: hut with regard to a man's self, what he tells us from experience, it would be ill manners to dispute with him.

64. 1 Comm. p.48.

65. See HAWKESWORTH'S Voyages.

The condition of these imaginary sovereigns puts one in mind of the story of, I forget what King's Fool. The Fool had stuck himself up one day, with great gravity, in the King's throne with a stick, by way of a sceptre, in one hand, and a ball in the other: being asked what he was doing, he answered, 'reigning'. Much the same sort of reign, I take it, would be that of the members of our Author's Democracy.

66. V. *supra*, ch. I. par. VI.

67. What is curious is, that the same persons who tell you (having read as much) that Democracy is a form of Government under which the supreme power is vested in all the members of a state, will also tell you (having also read as much) that the Athenian Commonwealth was a Democracy. Now the truth is, that in the Athenian Commonwealth, upon the most moderate computation, it is not one tenth part of the

inhabitants of the Athenian state that ever at a time partook of the supreme power: women, children, and slaves, being taken into the account.[See, among Mr HUME'S Essays, that on the populousness of ancient nations.] Civil Lawyers, indeed, will tell you, with a grave face, that a slave is nobody; as Common Lawyers will, that a bastard is the son of nobody. But, to an unprejudiced eye, the condition of a state is the condition of all the individuals, without distinction, that compose it.

68. By fiscal power I mean that which in this country is exercised by what is called the Board of Treasury.

69. By dispensatorial power I mean as well that which is exercised by the Board of Treasury, as those others which are executed in the several offices styled with us the War Office, Admiralty Board, Navy Board, Board of Ordnance, and Board of Works: excepting from the business of all these offices, the power of appointing persons to fill other subordinate offices: a power which seems to be of a distinct nature from that of making disposition of any article of public property.

Power, political power, is either over persons or over things. The powers, then, that have been mentioned above, in as far as they concern things, are powers over such things as are the property of the public: powers which differ in this from those which constitute private ownership, in that the former are, in the main, not beneficial (that is, to the possessors themselves) and indiscriminate but fiduciary, and limited in their exercise to such acts as are conducive to the special purposes of public benefit and security.

70. 'The Lords spiritual and temporal' (p. 50) 'which', says our Author, 'is an aristocratical assembly of persons selected for their piety, their birth, their wisdom, their valour, or their property'

I have distributed, I think, these endowments, as our Author could not but intend they should be distributed. Birth, to such of the members of that assembly as have their seat in it by descent: and, as to those who may chance from time to time to sit there by *creation*, wisdom, valour, and property in common among the temporal peers; and piety, singly but entirely, among my Lords the Bishops. As to the other three endowments, if there were any of them to which these right reverend persons could lay any decent claim, it would be wisdom: but since worldly wisdom is what it would be an ill compliment to attribute to them, and the wisdom which is from above is fairly included under piety, I conclude that, when secured in the exclusive possession of this grand virtue, they have all that was intended them. There is a remarkable period in our history, at which, measuring by our Author's scale, these three virtues seem to have been at the boiling point. It was in Queen Anne's reign, not long after the time of the hard frost. I mean in the year 1711. In that auspicious year, these three virtues issued forth, it seems, with such exuberance, as to furnish merit enough to stock no fewer than a dozen respectable persons, who, upon the strength of it, were all made Barons in a day? Unhappily indeed, so little read was a right reverend and contemporary historian,[ See Bishop Burnet's History of his own Times. Vol. 2.] in our Author's method of 'discerning of spirits,' as to fancy, it was neither more nor less than the necessity of making a majority that introduced so large a body of new members thus suddenly into the house. But I leave it to those who are read in the history of that time, to judge of the ground there can be for so romantic an imagination. As to

piety, the peculiar endowment of the mitre, the stock there is of that virtue, should, to judge by the like standard, be, at all times, pretty much upon a level: at all times, without question, at a maximum. This is what we can make the less doubt of, since, with regard to ecclesiastical matters, in general, our Author, as in another place he assures us, has had the happiness to find, that `every thing is as it should be.' [Vol. 4. Chap. iv. p.49.]

71. p. 50

72. V. supra, par. 9.

73. Every body has heard the story of him who, from a fisherman, was made Archbishop, and then Pope. While Archbishop, it was his custom every day, after dinner, to have a fishing net spread upon his table, by way of a memento, as he used to say, of the meanness of his original. This farcical ostentation of humility was what, in those days, contributed not a little to the increase of his reputation. Soon after his exaltation to St Peter's chair, one of his intimates was taking notice to him, one day, when dinner was over, of the table's not being decked as usual. `Peace', answered the Holy Father, `when the fish is caught, there is no occasion for the net.'

74. In the House of Commons itself, is it by the opulent and independent Country gentlemen that the chief business of the House is transacted, or by aspiring, and perhaps needy Courtiers? The man who would persevere in the toil of Government, without any other reward than the favour of the people, is certainly the man for the people to make choice of. But such men are at best but rare. Were it not for those children of Corruption we have been speaking of, the business of the state, I doubt, would stagnate.

75. It is what he says of Theology with respect to the Sciences V. Augm. Scient. L. VIII. c. III, p. 97.

76. V. supra.

77. Which is done without any sort of ceremony, the quantities marked in the step with the negative sign, being as so many fluents, which are at a maximum, or a minimum, just as happens to be most convenient.

78. V. supra, par. 7.

79. One thing in the paragraph we are considering is observable; it is the concluding sentence, in which he brings together the ideas of law and will. Here then, in the tail of a digression, becomes nearer in fact, though without being aware of it, to the giving a just and precise idea of a law, than in any part of the definition itself from whence he is digressing. If, instead of saying that a law is a will, he had called it the expression of a will, and that sort of expression of a will which goes by the name of a command, his definition would, so far as this goes, have been clear as well as right. As it is, it is neither the one nor the other. But of this more, if at all, in another place. The definition of law is a matter of too much nicety and importance to be dispatched in a note.

80. I Comm. p.47.

81. 1 Comm. p. 48, supra, ch. II. par. 11.

82. Another passage or two there is which might seem to glance the same way: but these I pass over as less material, after those which we have seen.

83. I Comm. p.42.

84. It is that of murder. In the word here chosen there lurks a fallacy which makes the proposition the more dangerous as it is the more plausible. It is too important to be altogether past over: at the same time that a slight hint of it, in this place, is all that can be given. Murder is killing under certain circumstances. Is the human law then to be allowed to define, in dernier resort, what shall be those circumstances, or is it not? If yes, the case of a 'human law allowing or enjoining us to commit it,' is a case that is not so much as supposable: if no, adieu to all human laws: to the fire with our Statutes at large, our Reports, our Institutes, and all that we have hitherto been used to call our law books; our law books, the only law books we can be safe in trusting to, are Puffendorf and the Bible.

85. According to our Author, indeed, it should be to no purpose to make any separate mention of the two laws; since the Divine Law, he tells us, is but 'a part of' that of Nature.[1 Comm. p.42.] Of consequence, with respect to that part, at least, which is common to both, to be contrary to the one, is, of course, to be contrary to the other.

86. This is what there would be occasion to shew more at large in examining some former

parts of this section.

87. Ch. I.

88. See Ch. V. par. 7.

89. This respects the case where one state has, upon terms, submitted itself to the government of another: or where the governing bodies of a number of states agree to take directions in certain specified cases, from some body or other that is distinct from all of them: consisting of members, for instance, appointed out of each.

90. Notwithstanding what has been said, it would be in vain to dissemble, but that, upon occasion, an appeal of this sort may very well answer, and has, indeed, in general, a tendency to answer, in some sort, the purposes of those who espouse, or profess to espouse, the interests of the people. A public and authorized debate on the propriety of the law is by this means brought on. The artillery of the tongue is played off against the law, under cover of the law itself. An opportunity is gained of impressing sentiments unfavourable to it, upon a numerous and attentive audience. As to any other effects from such an appeal, let us believe that in the instances in which we have seen it made, it is the certainty of miscarriage that has been the encouragement to the attempt.

91. V. supra, par. 26.

92. V. supra, ch. 1. par. 13.

93. V. supra, par. 22.

94. In Great Britain, for instance, suppose it were deemed necessary to make an alteration in the Act of Union. If in an article stipulated in favour of England, there need be no difficulty; so that there were a majority for the alteration among the English members, without reckoning the Scotch. The only difficulty would be with respect to an article stipulated in favour of Scotland; on account, to wit, of the small number of the Scotch members, in comparison with the English. In such a case, it would be highly expedient, to say no more, for the sake of preserving the public faith, and to avoid irritating the body of the nation, to take some method for making the establishment of the new law, depend upon their sentiments. One such method might be as follows. Let the new law in question be enacted in the common form. But let its commencement be deferred to a distant period, suppose a year or two: let it then, at the end of that period, be in force, unless petitioned against, by persons of such a description, and in such a number as might be supposed fairly to represent the sentiments of the people in general: persons, for instance, of the description of those who at the time of the Union, constituted the body of electors. To put the validity of the law out of dispute, it would be necessary the fact upon which it was made ultimately to depend, should be in its nature too notorious to be controverted. To determine therefore, whether the conditions upon which the invalidation of it was made to depend, had been complied with, is what must be left to the simple declaration of some person or persons; for instance the King. I offer this only as a general idea: and as one amongst many that perhaps might be offered in the same view. It will not be expected that I should here answer objections, or enter into details.

95. I Comm. p.49.

96. With this note let no man trouble himself who is not used, or does not intend to use himself, to what are called metaphysical speculations: in whose estimation the benefit of understanding clearly what he is speaking of, is not worth the labour.

1. That may be said to be my duty to do (understand political duty) which you (or some other person or persons) have a right to have me made to do. I then have a DUTY towards you: you have a RIGHT as against me.

2. What you have a right to have me made to do (understand a political right) is that which I am liable, according to law, upon a requisition made on your behalf, to be punished for not doing.



3. I say punished: for without the notion of punishment (that is of pain annexed to an act, and accruing on a certain account, and from a certain source) no notion can we have of either right or duty.

4. Now the idea belonging to the word pain is a simple one. To define or rather (to speak more generally) to expound a word, is to resolve, or to make a progress towards resolving, the idea belonging to it into simple ones.

5. For expounding the words duty, right, power, title, and those other terms of the same stamp that abound so much in ethics and jurisprudence, either I am much deceived, or the only method by which any instruction can be conveyed, is that which is here exemplified. An exposition framed after this method I would term paraphrasis.

6. A word may be said to be expounded by paraphrasis, when not that word alone is translated into other words, but some whole sentence of which it forms a part is translated into another sentence, the words of which latter are expressive of such ideas as are simple, or are more immediately resolvable into simple ones than those of the former. Such are those expressive of substances and simple modes, in respect of such abstract terms as are expressive of what Locke has called mixed modes. This, in short, is the only method in which any abstract terms can, at the long run, be expounded to any instructive purpose: that is in terms calculated to raise images either of substances perceived, or of emotions; sources, one or other of which every idea must be drawn from, to be a clear one.

7. The common method of defining the method *per genus et differentiam*, as logicians call it, will, in many cases, not at all answer the purpose. Among abstract terms we soon come to such as have no superior genus. A definition, *per genus et differentiam*, when applied to these, it is manifest, can make no advance: it must either stop short, or turn back, as it were, upon itself, in a circle or a repetition.

8. 'Fortitude is a virtue;' Very well: but what is a virtue? 'A virtue is a disposition:' Good again: but what is a disposition? 'A disposition is a...;' and there we stop. The fact is, a disposition has no superior genus: a disposition is not a..., any thing: this is not the way to give us any notion of what is meant by it. 'A power,' again 'is a right.' and what is a right? It is a power. An estate is an interest, says our Author somewhere; where he begins defining an well might he have said an interest was an estate. As well, in short, were it to define in this manner, a conjunction or a preposition. As well were it to say of the preposition through, or the conjunction because; a through is a ..., or a because is a and so go on defining them.

9. Of this stamp, by the bye, are some of his most fundamental definitions: of consequence they must leave the reader where they found him. But of this, perhaps, more fully, and methodically on some future occasion. In the meantime I have thrown out these loose hints for the consideration of the curious.

97. 1. One may conceive three sorts of duties: political, moral, and religious; correspondent to the three sorts of sanctions by which they are enforced: or the same point of conduct may be a man's duty on these three several accounts. After speaking of the one of these to put the change upon the reader, and without warning begin speaking of another, or not to let it be seen from the first which of them one is speaking of, cannot but be productive of confusion.

2. Political duty is created by punishment; or at least by the will of persons who have punishment in their hands; persons stated and certain, political superiors.

3. Religious duty is also created by punishment: by punishment expected at the hands of a person certain, the Supreme Being.

4. Moral duty is created by a kind of motive, which from the uncertainty of the persons to apply it, and of the species and agree in which it will be applied, has hardly yet got the name of punishment: by various mortifications resulting from the ill-will of persons uncertain and variable, the community in general: that is, such individuals of that community as he, whose duty is in question, shall happen to be connected with.

5. When in any of these three senses a man asserts a point of conduct to be a duty, what he asserts is the existence, actual or probable, of an external event: viz, of a punishment issuing from one or other of these sources in consequence of a contravention of the duty: an event extrinsic to, and distinct from, as well the conduct of the party spoken of, as the sentiment of him who speaks. If he persists in asserting into be a duty, but without meaning it should be understood that it is on any one of these three accounts that he looks upon it as such; all he then asserts is his own internal sentiment: all he means then is, that he feels himself pleased or displeased at the thoughts of the point of conduct in question, but without being able to tell why. In this case he should e'en say so: and not seek to give an undue influence to his own single suffrage, by delivering it in terms that purport to declare the voice either of God, or of the law, or of the people.

6. Now which of all these senses of the word our Author had in mind; in which of them all he meant to assert that it was the duty of supreme governors to make laws, I know not. Political duty is what they cannot be subject to: and to say that a duty even of the moral or religious kind to this effect is incumbent on them, seems rather a precipitate assertion.

In truth what he meant was neither more nor less, I suppose, than that he should be glad to see them do what he is speaking of; to wit, 'make laws:' that is, as he explains himself, spread abroad the knowledge of them. Would he so? So indeed should I; and if asked why, what answer our Author would give I know not; but I, for my part, have no difficulty. I answer, because I am persuaded that it is for the benefit of the community that they (its governors) should do so. This would be enough to warrant me in my own opinion for saying that they ought to do it. For all this, I should not at any rate say that it was their duty in a political sense. No more should I venture to say it was in a moral or religious sense, till I were satisfied whether they themselves thought the measures useful and feasible, and whether they were generally supposed to think so.

Were I satisfied that they themselves thought so, God then, I might say, knows they do. God, we are to suppose, will punish them if they neglect pursuing it. It is then their religious duty. Were I satisfied that the people supposed they thought so: the people, I might say, in case of such neglect, the people, by various manifestations of its ill-will, will also punish them. It is then their moral duty.

In any of these senses it must be observed, there can be no more propriety in averring it

to be the duty of the supreme power to pursue the measure in question, than in averring it to be their duty to pursue any other supposable measure equally beneficial to the community. To usher in the proposal of a measure in this peremptory and assuming guise, may be pardonable in a loose rhetorical harangue, but can never be justifiable in an exact didactic composition. Modes of private moral conduct there are indeed many, the tendency whereof is so well known and so generally acknowledged, that the observance of them may well be stiled a duty. But to apply the same term to the particular details of legislative conduct, especially newly proposed ones, is going, I think, too far, and tends only to confusion.

98. I mean for what they do, or omit to do, when acting in a body: in that body in which, when acting, they are supreme. Because for any thing any of them do separately, or acting in bodies that are subordinate, they may any of them be punished without any disparagement to their supremacy. Not only any may be, but many are: it is what we see examples of every day.

99. V. supra, ch. II. par. 11, ch. III. par. 7, ch. IV. par. 10.

100. Had I seen in those days what even body has seen since, instead of *indolence* I should have put corruption.