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THE
ELEMENTS OF MORALITY,
INCLUDING
POLITY.

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ELEMENTS OF MORALITY,
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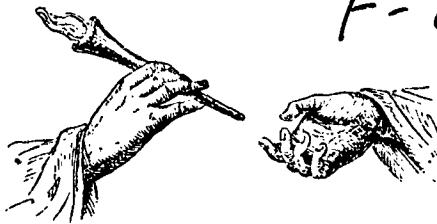
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BY

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Λαμπάδια ἔχοντες διαδωσουσιν ἀλλήλοις.

FOURTH EDITION, WITH A SUPPLEMENT.

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PREFACE TO THE FOURTH EDITION.

It has been said, in criticism of the present work, that writers of this school draw from a double fountain; utility and internal conviction;—the *tendencies* of actions, and the *feelings* with which we regard them.

To this I reply, that all Systems of Morality *must* draw from a double fountain: man's external circumstances, and his internal nature. On the one hand, Rules cannot be given for actions without regarding the tendencies of the actions; on the other hand, the feelings with which we regard actions are necessarily referred to in considering their moral character.

The two sources must always flow into our Morality, but one of them or the other may be made the *principal* one in framing the System. Some moralists employ themselves mainly in deducing the Rules of action from considering the tendencies of actions to produce human pleasure or pain; as Paley and Bentham: others take pains to show that man has a faculty by which he appre-

hends a higher Rule of action than the mere tendency to produce pleasure; as Butler.

But though these two sources of morality are thus separate, they are not really independent; and it is, as I conceive, important to present them in a mode which shows their connexion and relation. This the language commonly current among men, and especially our own language, enables us to do, in the following manner:—

Man's external circumstances may be considered as leading to rules of human society, in virtue of which individual men have certain *Rights*: the conviction of man's internal nature is expressed by saying that he must do what is *right*. The two words, the substantive and the adjective, are closely connected, though they are very far from identical, or correlative, or coextensive. For man's Rights are considered as among the things which are right; though to give men their legal Rights is a small part only of moral rightness.

I conceive that the relation of the two sources of Morality is most truly presented by making the establishment of Rights among men the starting-point of Morality; and by proceeding, from these Rights, to the higher form of Morality which man's moral nature points to and requires: and this is, in fact, the historical course which man follows in his moral progress.

Hence, in the present work, Rights are, in the first place, established, by regarding the tendencies of human

actions;—by considering the need of a certain measure of peace, comfort, order, tranquillity, and security, for any mode of life which can be social and human; and therefore, the necessity of controlling those impulses in man which tend to destroy this peace, comfort and order. (B. I. Chap. III.)

In order to determine, on this ground, *what* Rights must exist among men, it is therefore necessary to consider what are the principal impulses to human action; or, as we may term them, *The Springs of Human Action*. This is done in Chapter II. of the First Book.

The classification and arrangement of the Springs of Human Action have been treated of by various writers: and it may be a matter of interest to compare our classification and arrangement with those of previous moralists. This is now done in Chapter I. of the *Supplement* annexed to the present edition.

The doctrine, that man's moral nature is expressed by saying that we must do what is right, and that this rule assumes the existence of Rights, has been objected to, as reasoning in a circle. This objection is considered in Chap. II. of the *Supplement*.

Also several of the special Rules and Doctrines delivered in the work have been objected to on various grounds. Some of these objections are considered in Chap. II. of the *Supplement*.

I am very sincerely grateful to those writers who by their criticisms have enabled me to remedy any faults of expression, reasoning, or fact, which I may have committed. If these criticisms had been expressed with less acrimony, and if they had not sometimes consisted in quoting expressions without any regard to the context, they would have been, as seems to me, more suitable to the character of the subject; but the manner in which they have been delivered has not prevented my weighing them carefully. I have not thought it necessary to refer more particularly to the quarters from which they have been urged. For, as I have elsewhere said, in all subjects the more *impersonal* our controversies can be made, the better they will answer all good ends: and controversies on Morality are most likely in this way to be really moral.

I have, in Chapter III. of the *Supplement*, given a Review of Paley's *Principles of Moral Philosophy*, principally so far as its systematic character is concerned. So long as the work is employed as a part of University education, (as it still is by the University of Cambridge), it cannot be improper to point out, temperately, its defects, both in Logic and in Principle.

I am aware that many persons will ask, what Principle we would substitute for Paley's, and will expect an answer as brief and pointed as Paley's admirers are ready to give. According to him, they will say, Virtue

is the promotion of Human Happiness: what is it, according to you?

We might answer, with Bishop Butler, that according to us, Virtue is a course of action conformable to the whole Constitution of Human Nature. But this answer would probably require further developing, to be satisfactory. We may unfold it a little further, by saying that man, being a creature constituted of Desires, Affections, Reason, Conscience, the rule of his being is, to act conformably to the relations of these elements; so that Reason shall control Desire and Affections, and Conscience shall indefinitely exalt the views of Reason: or otherwise, thus; that man, (besides being an animal,) is an intellectual, social, moral, religious and spiritual creature; and must be governed by rules derived from these characters.

Such views are not new or unfamiliar. They are, for instance, the principles on which Grotius proceeds in his Treatise *De Jure Belli et Pacis*, except that he dwells especially upon the attribute *social*; as, with his objects, it was natural that he should do.

The work of Grotius, to which I have just referred, shows how closely connected are the two subjects, Morality and International Law. From a conviction of this connexion I introduced into the Elements of Morality, a Treatise on International Law, which though brief, will be found, I trust, to include the main points

of the subject. At the present moment, the Moralist has the unusual satisfaction of being able to note new steps made by great belligerent nations in the way of softening the Laws of War. I have not denied myself the pleasure of putting this result in a form suited to the mode of treatment employed in this book. This I have done in Chapter IV. of the *Supplement*.

In the text of this Fourth as in the Third Edition, I have seen no reason for making any but very slight changes. I am well aware how inadequately the work is fitted to the office of teaching Morality. Every moral Treatise must be inadequately fitted to that office, because Rule and Precept cannot raise men's hearts and minds so high as they ought to rise in the region of Morality. When the Moralist has used the strongest, the loftiest, the most searching and animating expressions which he can think of, to direct and urge men to moral excellence,—to a constant course of Love and Truth, of Justice and Wisdom;—in short, to a godlike being and a heavenly life;—he must still feel how feeble, scanty, and cold are the words which he has used. But the difficulty is still greater, for an author who attempts to construct a *system*, in times like these, when the bases of moral systems are matters of lively and vehement, and even (I fear I must say) of angry and virulent debate. For such a writer is compelled to avoid many of the forms of language in which he would

naturally clothe his exhortations on such subjects, for fear of being accused of declamation, extravagance, baseless assumption, and false reasoning. I may however venture to say, that the strongest exhortations to virtue, in the simplest and most natural language would come in with perfect coherence and consistency, as the sequel of the principles here laid down. And though, if I were to pursue a course of moral teaching, I might carry my applications of Morality much further than they are here carried, I should, in doing so, have to change nothing of the doctrines here stated as the foundation of Morality. All the best and most effective moral reflections and exhortations of the best Moralists and Divines of all ages, proceed upon such a view of human nature, human duties, and human prospects as is here given; and I gladly refer to such examples of the best utterances of the moral nature of man as a practical supplement to the defects and deficiencies of the Moral Teaching here attempted.

TRINITY LODGE, CAMBRIDGE,
April 19, 1864.

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PREFACE TO THE SECOND EDITION.

THOUGH the following work has been received in some quarters far more favourably than I had ventured to anticipate, other persons have urged against it objections which show that they have much misapprehended its object and plan. I will therefore make a few remarks which I hope may bring the scheme and purpose of the work clearly into view.

Morality has its root in the Common Nature of man ; and no Scheme of Morality can be true, except a scheme which agrees with the *Common Sense* of mankind, so far as that Common Sense is consistent with itself : including in the term *Common Sense*, both men's *convictions* as to what is right, and their *sentiments* as to what is morally good.

Now the Common Sense of mankind has in every age led them to two seemingly opposite Schemes of Morality :—that which makes *Virtue*, and that which makes *Pleasure*, the rule and guide of human action ;—the system of the *Stoic* and of the *Epicurean*, with their successors down to our own times. On the one side, men urge the claims of *Rectitude* or *Rightness*, of *Duty*, of *Conscience*, of the *Moral Faculty* ; on the other side they declare *Utility*, *Expediency*, *Interest*, *Enjoyment*, and the like, to be the proper guides of men's actions.

Moreover the Common Sense of mankind suggests, against each of those opposite systems, a sweeping argument, which is, in controversy, repeated more and more vehemently on each side ;

each side having a triumphant persuasion that its own argument is irresistible; and the Common Sense of mankind alternately assents to each argument as convincing.

Against the latter system, that Pleasure is the proper guide of human action, it is urged that such a system does not express the nature and feelings of man;—that we admire and approve virtue when proposed as our guide, and condemn and reject pleasure as something degrading and brutish, when put in opposition to virtue:—that with regard to great transgressions of what is right, odious vices, atrocious crimes, we do not convey what men mean, if we only say that such actions are opposed to utility:—that there is a feeling of remorse for crime, altogether different from the feeling of regret for miscalculated consequences. This argument, presented in various forms, is so constantly and cordially assented to, that the rule of mere pleasure or utility has never been generally accepted as a measure of real *Morality*.

And against the opposite scheme, that virtue is our proper guide, it has been urged that the mere name or notion of Virtue cannot be a sure guide, since Virtue is a matter of opinion:—that Conscience cannot be a real means of determining what is right, because Conscience determines different things to be right, in different countries, ages, persons:—that actions which the Conscience of man in one century or nation determines to be odious vices or atrocious crimes, Conscience at another time and place has regarded as innocent or even laudable:—that to refer us to an internal Moral Faculty, is to refer us to mere caprice or prejudice. And this argument has been of efficacy enough to prevent the morality of conscience from being generally adopted as a *System*.

These two arguments are so convincing in their effect upon men's minds, that I do not conceive that any system can stand, against which either of them can be justly urged. In order to frame a scheme of morality which shall fall in with the Common Sense of mankind, we must, I conceive, conform it to both the considerations thus urged. On the one hand, the distinction of right and wrong, of moral good and evil, of virtue and vice, must be a *peculiar distinction*, different from the mere distinction of pleasure and pain, gain and loss;—on the other hand, this distinc-

tion must be one *not* immediately apprehended by any *peculiar sense* or faculty, which belongs to each individual, and which may vary in its results in each ; but must be a distinction discerned by some use of the faculty of Reason which is common to all mankind, so that men may have the means of coming to an agreement on such subjects. The sentiment of approbation with which we regard what is right and good may be different from any result of *reasoning* ; but there must be *reasons* why actions are right and good.

When I attempt to proceed further in the direction thus pointed out by the Common Sense of mankind ; I am led to ask whether there are any actions or qualities of actions which are universally regarded by mankind with approbation, as right and good ; and again, whether there are any moral rules or moral truths which are accepted by the Common Sense of mankind as universally valid and true, and from which we can reason concerning right and wrong.

To this we may reply, that there *are* such universally approved qualities of actions, namely, those which are commonly called *virtues* ; for instance, Veracity, Justice, Benevolence ;—that there are also such rules universally accepted as valid ; for instance, *Speak the truth : Give to each his own : Be kind to friends :—* I may add that these latter precepts may be expressed as propositions ; for we can say, *It is right to be truthful, honest, kind* ; and thus there *are* moral truths which are generally assented to.

I remark also that, at this point, the sentiment of approval, and the conviction of truth, which are, both, contained (as I have said) in the Common Sense of mankind on moral subjects, point to one common result. We admire and approve Veracity, Justice, Benevolence ; we also assent to the truths that it is right to be truthful, just, kind. Here, therefore, we appear to have certain principles of Reason, which may be also accepted as the dictates of a Moral Faculty ; and thus, we have a basis for a Moral System on grounds undisturbed by either of the opposing arguments which have been mentioned. Here are moral principles on which the agreement among men is universal, and from which we can reason to other moral truths.

To this it may be objected, *first*, that there is not such an agreement: and *next*, that the principles cannot be made the ground of reasoning. These two objections I have to explain, and then, to remove.

It may be said, in urging the former objection, that the excellence of such virtues as Veracity, Justice, and Benevolence is by no means universally assented to:—men treat other men, when they regard them as their enemies, with the extreme of unkindness and violence, rob them, and deceive them by falsehood and fraud; and admire and applaud themselves and each other for such acts. Thus the general authority of the precepts which require men to be truthful, just, and kind, is practically rejected; and with regard to enemies, is not even speculatively admitted. And even without going to cases in which men are thus under the influence of hostile feelings, there are exhibited in the laws and manners of different nations, the widest differences of opinion as to what conduct Truth, Justice, and Humanity require: and the same might be said of the other virtues. So that there is not among men that agreement respecting fundamental moral principles which we have asserted.

To this I reply, that the difficulty of determining what actions Truth, or Justice, or Humanity requires in a given case, does not make an exception to the principle, that we are to do what Truth, Justice, and Humanity require. The principle may be universally assented to, however difficult be its interpretation or application in a given case. And this is in fact so: all mankind agree that we must be truthful, just, humane, even when they differ about what we ought to do. The excellence of these virtues, the authority of these precepts, is universally acknowledged, though the results of them may be different in the minds of different persons. And as to that part of the objection, which states that we do not apply these precepts to our enemies, and do not treat *them* with Truthfulness, Justice, and Humanity; I reply, that when the moral faculties of mankind are fully unfolded, they do universally allow that enemies are to be treated with Truthfulness, Justice, and Humanity, no less than friends; though the rules of action in detail may be very different towards enemies,

(if we must necessarily have enemies,) and towards friends. And if, at an earlier period of men's moral progress, they look upon enemies as having no claims to be treated with Truth, Justice, and Humanity, this is because they have only turned their thoughts to the virtues which affect their friends. They approve, it may be, of Fraud or Violence used towards enemies; but this is because they look upon such a course as showing Fidelity and Kindness to friends: and thus, the qualities which they admire, are still the virtues of Fidelity and Kindness, though they limit the sphere of their virtues. The Romans at first had *stranger* and *enemy* as synonymous; but afterwards, they learnt to admire the poet when he said *Homo sum, humani nihil a me alienum puto*. And it is evident that the latter was truly the voice of man's moral nature. For that which we look for, as principles universally assented to by men, must be principles which we assent to when we think and speak in the name of the human species, not of any fraction or segment of it, separated by hostility from the other parts. And thus, the authority of such virtues as Truth, Justice, Humanity, and the like, over the human species, is assented to by all men, when they are in a condition to judge on such matters. *Truthful, just, humane*, are words which are universally used and accepted as terms of praise. Even if in certain cases, men think that there are allowable exceptions to the rules which enjoin Truth, Justice, Humanity, still they do not deny that it is universally right to be truthful, just, and humane. And thus we have an agreement among men with regard to certain fundamental principles of morality.

But, in reply to this, may be urged that which we noticed in the second objection to our proposed basis of Morality:—namely, that such principles as these are too vague and loose to reason from. It may be said that a verbal agreement in employing the terms *truthful, just, humane*, and the like, as terms of praise, does not prove that men really agree in approving any definite qualities in human actions: that Veracity, Justice, Humanity, are indefinite and variable notions, changing with each changing mood and condition of man, and having only a mere nominal permanency and coherence:—that to say that Veracity, Justice, Humanity, are

Virtues, cannot help us to any rules of action, except we know what it is that constitutes a Virtue :—that though men may agree that it is *right* to be truthful, just, and humane, this helps us not, in determining what is right in any special case ; because we can find no measure of the particular kinds of *Rightness* which we call Veracity, Justice, Humanity, except by finding a Measure of Rightness in general ; and that such a general Standard is necessary as the basis of any Moral System.

Now, these last objections I hold to be erroneous : and it is in denying their force, and in establishing a System of Morality in the way which those objections declare to be impossible, that the peculiar character of the present work consists. And I must briefly notice the course which I take, in rejecting the arguments thus urged.

I agree with the objectors, that we must, in the first place, fix, not indeed any Measure or Standard of *Rightness* or *Virtue*, by reference to any other thing, but that, as clearly as we can, we must fix what is meant and implied in the adjective *right*. When that is determined, there is no great additional difficulty with regard to other fundamental terms of Morality : for actions which are *right*, are also *virtuous* ; and *Virtue* is the habitual disposition which produces such actions : and in like manner we say of actions which are *right* in us, that they are our *Duty* ; they are what we *ought* to do.

Now what is the character which we designate in an action, by saying that it is *right*? In so describing it, there is *this* Idea conveyed :—we render a *reason* for it, which reason is *paramount* to all other considerations. If the action be right, it is no valid reason against doing it, that it is unpleasant or dangerous. We are not to do what is pleasant and wrong. We are to do what is unpleasant if it be right. All mankind acknowledge this, as the Rule of their Common Moral Nature :—that is, of their Common Nature by which they know that there is a meaning in *right* and *wrong*. And thus *right*, absolutely used, implies the *Supreme* Rule :—it implies an ultimate and final reason of man's actions : a universal and absolute rule of man's being.

The supreme and universal rule of man's being is the rule

which is supremé in its authority over all his faculties, powers, and impulses:—and this supreme rule will separate itself into partial rules according to the faculties, powers, and impulses which it has to govern. And by the very condition that it is a supreme and absolute rule, joined with the conditions which man's constitution supplies, we see, with irresistible evidence, the authority of certain fundamental moral truths; we thus discern the necessary existence of certain virtues as parts of this supreme rule of human action.

For instance: man lives in society with man; *his* actions and *theirs* have a mutual reference: his actions derive their effect, derive their meaning, from his own actions and those of his fellow men; and not present actions only, but past and future. He has the faculty of Speech, which is the means by which a man's past actions mainly, his future actions entirely, are connected with the actions (internal actions, hopes and fears, as well as external actions) of other men. His whole being cannot be under a Supreme Rule, a rule of right and wrong, except the use of this faculty, the faculty of Speech,—as declaring his purposed future actions, for instance—be under such a rule. There must be, for the use of Speech, a rule of right and wrong:—a universal and supreme rule. But the ultimate and supreme distinction of the use of Speech is that of truth and falsehood. And it is plain that there can be no ultimate and supreme rule on this subject, except that rule which makes truth to be right and falsehood to be wrong. And thus, one part of the supreme rule is, that Truth is right: that it is right to speak the Truth: that Veracity is a Virtue.

And in like manner, when we consider man as a social being, constantly and universally desiring, using, and appropriating the things which exist in the world—having them as Possessions and Property—it is plain that there can be no universal rule of his actions, except there be a universal rule respecting Property:—and that the universal rule, being the rule of his being as well as of his external actions, must affect his desires of property, and his regards towards it on all occasions. And as the universal rule of Property must be that each man must have his own, (for this is

involved in the meaning of *Property*,) the rule of man's internal being must be in harmony with this rule: and the man must desire that each have his own. And this disposition is Justice, which thus is seen to be a Virtue.

And in like manner, other virtues are seen to be necessary parts of the Supreme Rule, by taking into account other parts of the constitution of man:—Humanity, by considering his Affections:—Purity, by considering his Bodily Desires:—Order and Rule in general, by considering his Reason.

And thus the answer to the objection urged against the recognition of certain Virtues,—Veracity, Justice, Humanity, and the like—as the basis of Morality, on the grounds of their vague character, would be this:—that Veracity, Justice, Humanity, are not merely vague, indefinite and insecure notions;—that we have certain definite Ideas of such Virtues which necessarily arise in our minds, when we consider the constitution of human nature, with its various elements and faculties, as subject to a supreme and universal Rule;—that the praise of being truthful, or just, or humane, is a praise which has always the same meaning as to the general Idea, though there may be different views as to how far the Idea is exemplified in any special case;—that the measure of each virtue is to be found in a due regulation of that part of the constitution of man to which that virtue specially relates;—and that the ground of this regulation is, that without such partial regulation of portions of the constitution of man, there could be no general and universal rule of man's being,—no absolute right and wrong,—and thus, no moral nature at all. There must be such Virtues as Veracity, Justice, Humanity, and others, in order that there may be such a thing as Virtue;—in order that man may be a moral creature.

This view of the nature and foundation of Morality agrees, I think, with the common notions of mankind; who, in pronouncing Veracity, Justice, Humanity, to be Virtues, are guided and determined by a conviction that these virtues are due and right regulations of the Faculty of Speech, the Desire of external things, and the Affections: and not by an apprehension of any extraneous purposes which these virtues are to answer. And when

we attempt to carry this view further into detail, and to determine how far special acts are right or wrong, we still follow the course which men follow in their ordinary judgments of one another's actions, or their own. *An action is right, if it be, or at least so far as it is, truthful, just, humane. This is the ordinary sense of mankind. But again: *Is* a certain act truthful? To know that, we must consider what we mean by *Truth*; and how far it is found in the case which we have before us: and the like of Justice, of Humanity, of Purity, and of other Virtues.

This is the course followed in the ensuing pages:—and that it is not a mere vague and indefinite mode of treating the subject, which can lead to no positive results, appears further in the course of the Treatise itself: for I have there, following entirely, as I conceive, the course pointed out by the system, been conducted to determinations on special points of Morality, as definite, and I think as well supported by reasons, as those of any previous moralists.

In my first edition, I said a few words implying an analogy between the relations of Truths to each other in Morality, and in that subject in which the nature and foundation of Truth is supposed to be best studied, Geometry. The suggestion of any such analogy appears to be received by many readers with great impatience; and as none of my conclusions depend upon the analogy, I willingly withdraw all discussion of it. Neither do I consider that it is of any consequence to claim for fundamental principles of Morality, such as I have stated (that it is right to be truthful, just, humane, and the like) the name of *Axioms*. But I must say, at the same time, that a very baseless objection has been urged against this application of the word. It has been said that the Moral Precepts *Be truthful*, *Be just*, *Be kind*, cannot be called *Axioms*, and have no analogy with *Axioms*, inasmuch as they are not propositions at all, but commands. Now this objection overlooks altogether the peculiar and distinctive character of Morality. It is the very essence of moral truth, that it implies Command. To say that *It is right* to be kind, is to say to man's moral ear, *Be kind*. When the Ideas of Rightness, of Duty, of Virtue, of a Law of our nature, are once apprehended, it is seen

that they involve an obligation to act*. Moral Principles are preceptive in their nature. They are necessarily imperative, even when they are merely assertions. Their *categorical* form involves an *epitactic* meaning.

If it be asked, to which of our English Moralists the Scheme of Morality here presented most nearly approaches, I reply, that it follows Butler in his doctrine, that by the mere contemplation of our human faculties and springs of action, we can discern certain relations which must exist among them, by the necessity of man's moral being. He maintains that, by merely comparing appetite and reflection or conscience, as springs of action, we see that the latter is superior in its nature, and ought to rule †. This truth, I, with him, conceive to be self-evident; and I endeavour to express it by stating, as a fundamental Moral Principle, that *the Lower Parts of our Nature are to be governed by the Higher*. And I conceive that there are several other Moral Principles which are, in like manner, self-evident. For instance, considering men as social beings, capable of mutual understanding expressed in speech, and also as moral beings, subject to a rule of right and wrong, I conceive it to be self-evident that the rule of their being must include veracity: the question whether it shall or shall not be man's duty to speak the truth, appears to me to be capable of being answered, like the other, "from the economy and constitution of human nature." If we compare the Idea of Truth with the Idea of Moral Rules for man, we see that the former is necessarily included in the latter ‡. And in the same manner, if we consider men as

* So Butler, Sermon III. "Your obligation to obey this law is its being the Law of your nature. That your conscience approves of and attests to such a course of action, is itself alone an obligation."

† Butler, Sermon III. "Which is to be obeyed, appetite or reflection? Cannot this question be answered from the economy and constitution of human nature, merely, without saying which is strongest? or need this at all come into consideration? Would not the question be *intelligibly* and fully answered by saying that

the principle of reflection or conscience being compared with the various appetites, passions, and affections in men, the power is manifestly superior and chief without regard to strength? and how often soever the latter happens to prevail, it is mere *usurpation*."

‡ Butler, in his *Dissertation on Virtue* (at the end), puts Justice and Veracity, as I conceive, on this footing; and he there also notices that this view is not disturbed by the difficulties which may exist as to what veracity requires in special case.

creatures desiring and appropriating the things of the external world, and also as beings living under a moral rule, we see that it must be a part of the moral rule that *each should not desire what is the property of another*. And in like manner, it is self-evident, that each man should abstain from violence and anger towards others;—that man *must love his fellowmen*: it is evident, I say, on a thoughtful consideration of man's moral and social condition, that this must be a part of the general rule of his being, however much there may be, under particular circumstances, cases in which anger on moral grounds is permitted by the rule. As I have already said, this obligation of universal love was assented to as a truth, however striking, yet self-evident, by the shout of the Roman theatre, uttered at a period when the Romans had outgrown the original narrowness and ferocity of their character.

If the evident truth of such moral principles be fully assented to, it is of little consequence whether or not we term them *Axioms*. But we may observe that there is nothing inconsistent with their being *Axioms*, in their requiring calm reflection, steady thought, and a developement of the moral ideas, in order to a full apprehension of their evidence and generality; for such reflection, thought, and developement of the (geometrical) ideas, are requisite to the full apprehension even of geometrical *Axioms*; and the like is true in other portions of human knowledge. We may very reasonably call it an *Axiom* that *Veracity is a Duty*, if it be a truth which becomes more and more evident exactly as the *Ideas of Duty* and of *Veracity* become more and more clear in our minds.

And the *Maxims* which we have stated:—that *the Lower Parts of Human Nature must be governed by the Higher*;—that *truth must be spoken*;—that *we must not desire what is another's*;—that *man is to be loved as man*;—and it may be, some others, have also this further character of *Axioms*,—that we do not and cannot deduce them, in their full evidence and extent, from any more fundamental principles of which they are the consequences and applications. They are primary principles, and are established in our minds simply by a contemplation of our moral nature and condition; or, what expresses the same thing, by *intuition*.

It may be objected to this, that these principles, or at least

some of them, are supported by reasoning; for instance, the principle that *truth must be spoken*, may be shown to be necessary to the comfort and well-being of men in society; since men must needs be constantly dependent upon one another, and if they could not reckon upon this dependence, in virtue of the general acceptance of the Rule of veracity, they must be put to the greatest inconvenience, and suffer much misery. But upon this we may observe, that such a consideration of the intolerable consequences which would follow if the maxim were not true, does not necessarily prevent its being a primary principle, intuitively apprehended. For with regard to other axioms also, one mode of bringing before our minds their necessary truth is, to try to picture to ourselves what would be the consequence of supposing them not true. Thus, in some books of geometry, there are attempts to explain what the consequences would be if two straight lines *could* enclose a space: and it is easily shown that if we imagine the opposite principle to be untrue, the grossest and most intolerable incongruities in the relations of lines to one another must necessarily be admitted.

Moreover, no consideration of the evil consequences which would ensue if such cardinal and moral maxims as the above were false, can be the ground of our belief in them; for no such consideration can prove these maxims true, in that full and pervading application which men spontaneously give them. For men not only assent to the maxim that *truth must be spoken*, in promises and the like; but when they are led to consider what is a fit maxim for man as a moral being, whose will, purpose, thought, as well as his acts, must be governed by a rule of right and wrong, they do not hesitate to decide that in will, purpose, and thought, as well as in act, falsehood is forbidden him; that he must be truthful in his heart, and a lover of truth, in order to be such as he ought to be. And the like universality and fulness of application men give to all other fundamental moral maxims. It is indeed this application to man's will, purposes, thoughts, desires, affections, which especially makes them to be *moral* principles, and not merely rules of external action.

Certain moral principles being, as I have said, thus seen to be

true by intuition, under due conditions of reflection and thought, are unfolded into their application by further reflection and thought. When we have come to the conviction that Truth, Justice, and the like, are the rule of our being, we have to consider, *What is Truth*, and *What is Justice*, in special cases. In pursuing this inquiry, we have to attend both to the external conditions and to the internal essence of moral action; and we are thus led to perceive that between the external conditions and the internal essence, there is a kind of necessary and universal antithesis;—the antithesis which occurs in so many forms and in so many places, of *Idea* and *Fact*. Man is to do what the Supreme Rule of his being requires, under the circumstances. The Supreme Rule of his being, an *internal* principle, governs his thoughts, habits, purposes; but yet, his thoughts, habits, purposes, depend upon *external* circumstances also; his very being is what it has been made by his education and his history; by the history of his family and his nation; and thus, by the history of the world, of which that of his nation is a branch. There is thus a *factual* or historical side of every moral question, as well as a purely *moral* side; there are in it external elements, given by man's history, as well as internal rules, given by man's moral constitution. Thus every moral question is, on one side, historical. *What a man ought to do*, at every step, depends in some way upon what he already *has done*, and *has*, and *is*. And hence our absolute solutions of moral questions, and our applications of moral rules, must all be, in some measure, imperfect, partial, and hypothetical.

For instance, Morality must, in some measure at least, depend upon Law. It is wrong to steal, to covet, to desire what is another's. But the law alone can determine what *is* another's. *That* is a historical question; and that *datum*, as given by law and history, must enter into our moral discussions. But yet the legal historical *datum* is not an absolute and final point:—for the law may be an unjust law; the history may be a series of wrong-doing; and thus, law and history may be judged, and may be modified, by morality. But again, however much modified, there will still remain a law and a history as Facts, as external elements, as the conditions by which the Idea of Justice is to be limited and exem-

plified. And thus, the antithesis of Idea and Fact in moral questions can never be got rid of, however the boundary line between the two opposite regions may change.

I may once more remark, that this method of deciding questions of Morality which I have thus described, and which I have followed in the present work, is that which men ordinarily follow, when they examine such questions by the spontaneous exercise of their common faculties. I think it must be obvious to any one, on consideration, that men, when they have to determine whether any course of action is to be approved and admired, do not (except when biassed by special adopted systems) inquire whether such a course tends either to general or to particular interest and gratification; but whether it exhibits Justice, Veracity, Kindness, Purity, and Wisdom. If they are satisfied that an action is just, faithful, benevolent, pure, wise, they willingly believe indeed that it tends to promote human happiness and the happiness of the actor in the long run (as we also teach); but even if they are not able to see this, and if there appear to be, so far as human eyes can discern, an overbalance of pain and inconvenience in the act, still, if it be thus an example of virtue, they approve and admire it. Butler expresses the Common Judgment of mankind, when he says, that we are not competent judges of what is, taking all its remotest consequences into account, for the good of the world; and that God has given us other ways of discerning our duty*.

I have treated some questions of Morality under the Title of *Cases of Conscience*; such questions being all included in this question: *What is our Duty under given circumstances?* a question which no moralist can avoid discussing. I have given, as the general solution of such questions, that we must, in all cases, do that which most tends to promote our moral culture. But I have not given this as a sufficient and satisfactory solution, easily applicable in every case. On the contrary, I have stated that the application of such a rule is difficult, and sometimes dangerous; and requires to be directed and applied by means of narrower rules.

* Sermon XII. *Upon the Love of our Neighbour.* See the Preface to my Edition of his Three Sermons.

And this is so, in virtue of that element of external circumstances, facts and conditions, which, as I have just said, enters so largely into all moral questions: besides the difficulty of judging of our own moral character and its probable future modification. There is a great difficulty in many cases of conscience, precisely because the external historical element must be regarded; but there is no morality possible, if this element be either disregarded, or regarded as supreme and uncontrollable.

In order further to exemplify the external element of Fact and History which is the condition of man's moral action, I have given a sketch of the actual Law of Ancient Rome and of Modern England in Book IV. This sketch was, in the former edition, placed as Book II., and thus preceded the exposition of Morality which forms Book II. in the present Edition. I have made this transposition for this among other reasons, that the parts of the work in their former order might possibly suggest an erroneous view of the grounds of Morality; as if *Jus*, or Positive Law, were the foundation of moral truths, instead of being merely a condition of the application of moral results to actual cases.

The former edition was, indeed, subjected to a curious kind of criticism on this head. It was asserted, in spite of all that the Author could say to the contrary, that in the system then published, Morality was entirely deduced from positive Law; and then, the Author was blamed because his Law did not fairly lead to his Morality. It might have been hoped and expected that those who complained of the want of a logical sequence from the Law to the Morality which the work contained, might have been willing to attend to the Author's repeated declarations that such a sequence was no part of his plan.

In national as well as in individual conduct, all moral questions have an historical as well as a moral side: and with the increased complexity and extent of the historical element, increases also the difficulty of solving the question in any other than an historical shape. Many questions of national polity cannot be stated in a general and hypothetical form without both disfiguring the question, and leaving out, in each case, conditions essential for the answer. This remark applies especially to questions relative to

the relation of *Church and State*, which must be, in each country, questions peculiarly historical. On this ground I have in the present edition omitted the general statements formerly given respecting the Relation of Church and State, and have given to the few remarks on this subject which I have now introduced, an historical turn. I am well aware how imperfectly the subject is here treated; but I have perhaps said enough to point out its place in a system of *Morality and Polity*.

Paley has introduced into his *Morality* discussions on Forms of Prayer and on the Christian Sabbath. Following him in this respect, I had, in the former edition, introduced the arguments which bear upon these ordinances, and also upon others which have the same right as these to appear in a system of *Morality*. In the present edition I have excluded all that relates to Christian Ordinances; perceiving that the discussion of such matters is not a part of the *Moralist's* proper province, and involves him in various unnecessary difficulties. I trust that none of my readers will regret the absence of these discussions.

I have corrected a few other passages in the First Edition, to which objections were made with some reason. For instance, I had said in Article 271 of the First Edition, that *Things are to be sought only as means to Moral Ends*; meaning, that *Things are to be sought UNIVERSALLY as means to Moral Ends*, as I have now stated it (Art. 164). But though I have thus removed the appearance of enjoining the suppression of all our natural desires of things for their own sake,—an impossible and unmeaning injunction—I conceive that *that* would be a very lax and low *Morality* which should leave our natural desires and affections, in all ordinary cases, to themselves, as being something out of its province. I conceive, on the contrary, that all gratifications or restraints of the desires, all acts of affection and thought, have their share in the formation of the habits and character; and may have, and therefore ought to have, a moral value given to them. I conceive, as I have here said (Art. 340), that the more our *Morality* becomes pervasive and efficacious, the more does the circle of things morally indifferent narrow and dwindle. I conceive that, as Religion teaches us, whatever we do, to do it to the glory of God, so the

Morality of mere reason teaches us, whatever we do, to do it so as to help onwards that elevation and purification of our moral nature which is the best mode that reason can discern of promoting the glory of our Creator.

I have been led, by such considerations as those above stated, to lay down, as the Fundamental Points of Morality, these Virtues or Principles;—(162) Humanity, Justice, Truth, Purity, Order, Earnestness, and Moral Purpose. These appear to me, as I have said, to possess an axiomatic authority as Moral Principles:—to be virtues of which the excellency and obligation are clearly seen, in proportion as the Idea of Virtue is clearly apprehended and applied to the various faculties and impulses which enter into the constitution of man. These Principles appear to me also to occupy the whole sphere of man's Duty, so far as it offers itself to the eye of human reason; and therefore to afford a proper framework for a system of rational Morality.

I conceive (as I stated also in the First Edition,) that there is a great convenience in the Division of the general trunk of Morality into five branches: the Morality of Reason; the Morality of Religion; Jurisprudence; Polity; International Law. These five provinces, though intimately connected, appear to be distinct, and their boundaries tolerably well defined. The questions belonging to each, and even the general style of treating the questions in each, are different. I hope in particular that the separation of the Morality of Religion from that of mere Reason will be approved of. This separation enables us to trace the results of the moral guidance of human Reason consistently and continuously, while we still retain a due sense of the superior authority of Religion; and it leads us to see that in many places this guidance of human Reason is insufficient without religion, and that Religion is the higher guide which we need;—the necessary supplement to a mere rational Morality.

By introducing such a subject as Jurisprudence, I have necessarily been led to questions and expressions of a professional kind, and in which therefore an unprofessional person is in great danger of error. I hope it will be recollected, as an excuse for this proceeding, not only that this branch of the subject has a necessary place in my system, but also that almost all preceding writers of

Moral Systems have discussed jural as well as moral questions ; commonly mingling the two kinds of discussion together. This portion of my work had, in the First Edition, the great advantage of being read and remarked on by Mr William Empson : and I have taken the liberty of using some of his remarks, especially in the Notes on the Fourth Book. The same Book has, in this Second Edition, had the further advantage of the revision of Mr Robert Leslie Ellis, Fellow of Trinity College, Cambridge, especially with reference to the Roman Law. The only drawback to the pleasure which I feel in mentioning the friendly services which I have received from these gentlemen, arises from the fear that this part of the work may be still too imperfect to be worthy of having their names put in connection with it.

Besides some of the common English law-books, I have referred to some American ones, especially Chancellor Kent's *Commentaries on American Law*, Judge Story's *Commentaries on Equity*, and his *Conflict of Laws*. In the Fifth Book on Polity, I have made free use of many excellent works of my contemporaries ; especially Mr Hallam's *Middle Ages*, and *English Constitution* ; Mr Allen's *Inquiry into the Royal Prerogative* ; Sir Francis Palgrave's *History of the English Commonwealth* ; Mr Jones's work on *Rent* ; and (particularly in the Chapter on the Representative System) Lord Brougham's *Political Philosophy*.

TRINITY LODGE,
Oct. 14, 1848.

BOOK I.



INTRODUCTION.

ELEMENTARY NOTIONS AND DEFINITIONS.

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ELEMENTARY NOTIONS AND DEFINITIONS.

CHAPTER I.

THE REASON.

1 IN the present work I have to speak of the Actions of man, and of those Faculties by which he acts as man. These faculties belong to man in virtue of the Human Nature which is common to all men. They are Human Faculties, and give rise to Human Actions.

I and my readers share in this common Human Nature; and hence, instead of saying that *man* acts thus and thus, or has such and such faculties, I shall often say that *we* act thus, or that *we* have such faculties.

2 Man has faculties of Sensation, by which he perceives and observes *Things*, or objects without him; and faculties of Reflection, by which he is aware of *Thoughts*, or actions within him.

These faculties of Sensation and Reflection are inseparably combined in their operation. We cannot observe external Things without some degree of Thought; nor can we reflect upon our Thoughts, without being influenced in the course of our reflection by the Things which we have observed.

3 Man, thus combining Observation and Reflection, is led to regard external things as grouped and classed, in his thoughts. He contemplates objects under *general* and *abstract* forms; and

thus has Conceptions or Notions of them, and applies to them Names. Thus bread, fruit, flesh, are classed together and indicated by the general name of *food*; food, clothing, tools, arms, are all included in the general name *property*. Such terms are abstract, as well as general: in calling many different things *food*, we designate one certain use of the things, abstracting it from the things themselves, and neglecting their other qualities. In like manner, when we call many different things *property*, we abstract one special view of the things so described, from all various circumstances which may belong to them.

4 When we consider things under these general and abstract aspects, they can be denoted by Names, as we have said. Names indicate a class of things, or relations of things, which have all a single general and abstract aspect. The Conception is *that*, in our thoughts, which we express or signify by the Name.

Man not only contemplates things, or objects, and their relations; but he contemplates also Changes of things and of their relations, or Facts. Thus he observes that the stars move round the pole, or that Brutus stabs Cæsar. Or the absence of change may be a Fact; as, that the pole-star does not move.

Facts, as well as things, are described by general and abstract words. Things are described by Substantives; Facts, by Verbs, or words which assert.

5 When the relations or changes so asserted really exist or occur, the assertions are *true*. We can, by various processes, of observation and reflection, satisfy ourselves that some assertions are true and some false. We can be certain and sure of such truth and such falsehood. We may convince ourselves and convince others of it; but we may also mistake in such conviction. Man has means of knowing Truth, but is also liable to Error.

Truth and Error are concerned about many General Relations of objects, which belong to them in the view in which we apprehend them. For example, we apprehend objects as existing in Space and Time; as being One or Many; Like or Unlike; as moving, and affecting each other's motions; and many other relations.

We can, in thought, separate these General Relations from the objects and facts. Such general relations are Space, Time, Number, Resemblance, Cause and Effect, and the like. These general relations thus separated may be termed *Ideas*; but the term *Idea* is often used more loosely, to designate all abstract objects of thought.

6 Objects and facts being regulated by these Ideas, we can,

by the nature of our Ideas themselves, as for example the Ideas of Space, Time, Number, and the like, connect one fact with another by necessary consequence. Thus, we observe the fact that the stars move uniformly about the pole; we observe also their distances from each other. We can connect, with these facts, the times and places of their rising and setting, by a necessary process of thought. Such a process of thought is *reasoning*. We can reason, so that from the north polar distance of the star, and the latitude of the place of observation, we can deduce the interval of time between the star's rising and setting.

7 When we thus reason concerning things existing under these general relations of Space, Time, Number, and the like, we proceed upon, and necessarily assume, certain grounds, or Fundamental Principles, respecting these relations. And these Principles, the origin and basis of our reasoning, may be separately asserted, as *Axioms*. Such Principles are the Axioms of Geometry.

8 By observation of the external world according to the general relations of Space, Time, Number, Resemblance, Cause and Effect, and the like, we become acquainted with this external world, so as to trace its course, at least in some degree. We apprehend several facts, or objects, as conforming to a general Rule or *Law*. Thus, the Stars in general conform to the Law, that they revolve uniformly about the pole. The Planets conform to certain other Laws, which were discovered by the Chaldean and Greek astronomers. Such Laws are *Laws of Nature*.

When we discover such a constancy and sequence in events, we believe some of the events to be the consequences of the others. We are then led forwards to future, as well as backwards to past events. We believe that some events will *certainly* happen, that others are *probable*. We believe it certain that the Sun will rise to-morrow, and probable that he will shine.

9 We can, in our thoughts, separate Laws of Nature from the Facts which conform to them. When we do this, the Law is represented by the Ideas and Conceptions which it involves. Thus the Law of a Planet's motion round the Sun, as to space, is represented by the conception of an Ellipse, the Sun being in its Focus. Laws so abstracted from Facts are *Theories*.

10 The operations by which we frame and deal with Ideas and Conceptions, and all other acts of thought, are ascribed to the *Mind*; they are *mental* operations and acts.

The mental operations which have been noticed; namely, to

conceive objects in a general and abstract manner (3); to apply names to them (4); to reason (6); to apprehend first principles of reasoning (7); to conceive general rules (9); to apprehend facts as conformable to general rules (8); are functions belonging to man, exclusively of all other animals. They are ascribed to a faculty specially human, the *Reason*.

The substantive *Reason*, thus used, has a wider sense than the verb *to reason*. The Reason is not only the faculty by which we reason from fundamental principles, when we have anyhow attained or assumed these; it is also the faculty by which we apprehend fundamental principles. By our Reason, we not only reason from the axioms of Geometry, but also see the truth of the axioms.

The special substantive, *a reason*, denotes a step in reasoning.

11 Of the processes which have been mentioned as belonging to the Reason, some are also ascribed to the *Understanding*, but not all. The Reason and the Understanding have not been steadily distinguished by English writers. The most simple way to use the substantive *Understanding* in a definite sense, is to make it correspond, in its extent, with the verb *understand*. To understand anything, is to apprehend it according to certain *assumed* ideas and rules; we do not include, in the meaning of the word, an examination of the ground of the ideas and rules, by reference to which we understand the thing. We understand a Language, when we apprehend what is said, according to the established vocabulary and grammar of the language; without inquiring how the words came to have their meaning, or what is the ground of the grammatical rules. We *understand* the sense, without *reasoning* about the etymology and syntax. Again, we understand a Machine when we perceive how its parts will work upon one another according to the known laws of mechanics, without inquiring what is the ground of these laws.

Reasoning may be requisite to understanding. We may have to reason about the syntax, in order to understand the sense: we may have to reason upon mechanical principles, in order to understand the machine. But understanding leaves still room for reasoning: we may understand the elliptical theory of Mars' motions, and may still require a reason for the theory. Also we may understand what is not conformable to Reason; as when we understand a man's arguments, and think them unfounded in Reason.

We understand a thing, as we have said, when we apprehend it

according to certain assumed ideas and rules. We reason, in order to deduce rules from first principles, or from one another. But the rules and principles, which must be expressed when we reason, may be only implied when we understand. We may understand the sense of a speech, without thinking of rules of grammar. We may understand the working of a machine, without thinking of propositions in the sciences of geometry and mechanics.

The Reason is employed both in understanding and in reasoning; but the Principles which are explicitly asserted in reasoning, are only implicitly applied in understanding. The Reason includes, as we have said, both the Faculty of seeing First Principles, and the Reasoning Faculty by which we obtain other Principles which are derivative. The Understanding is the Faculty of applying Principles however obtained.

The Reason, of which we here speak, is the *Speculative Reason*. We shall hereafter have to speak of the Practical Reason also.

12 The term *Intellect* is derived from a verb (*intelligo*) which signifies *to understand*: but the term itself is usually so applied as to imply a Faculty which recognizes Principles explicitly as well as implicitly; and abstract as well as applied; and therefore agrees with the Reason rather than the Understanding; and the same extent of signification belongs to the adjective *intellectual*.

13 Man not only can contemplate external things; he can also *act* upon them and with them. He can gather the fruits of the earth, and make bread. He can take such things to himself, as his property, or give them to another man, as a reward.

The word *Action* may be applied, in the most general manner, to all exercise of the external or internal faculties of man. But we do not always so use the word. We often distinguish external *action* from internal *thought*, though thought also is a kind of activity. We also often distinguish *actions* from *words*, as when we say A man's actions contradict his words. Yet in a more general sense, we include a man's words in his actions. We say that a man's actions correspond with his words, when he performs what he has promised; though the performance itself should be words; as when he has promised to plead a cause.

14 We direct our thoughts to an action which we are about to perform: we *intend* to do it: we make it our *aim*: we place it

before us, and act with *purpose* (*propositum*): we *design* it, or mark it out beforehand (*designo*).

15 Will, or Volition, is the last step of intention, the first step of action. It is the internal act which leads to external acts.

An action that proceeds from my will or volition is *my* act. But if it do not proceed from my will, it is not my act, though my limbs may be employed in it; as for instance, if my hand, moved by another man whose strength overmasters mine, strikes a blow. In such a case, I am not a Free Agent. Human Actions suppose the Freedom of the Agent. In order to act, a man must be so circumstanced that his volitions take effect on his limbs and organs, according to the usual constitution of man.

The Will is stimulated to action by certain Springs of Action, of which we shall afterwards speak.

16 Among the Springs of Action, are Rules or Laws. There are Laws of Human Action, as well as Laws of Nature (8). But while the Laws of Nature are assertions only, as; Mars *revolves* in an ellipse; a solar eclipse *will* take place at the new moon; the Laws of human action are *commands*: as, *Steal* not; or, *Thou shalt* not steal: *We must* be temperate. These imperative Laws of Human Action, we shall call *Rules*. Such Rules, when adjusted with due regard to the Springs of Action, direct the Will.

17 Actions may lead to events, as causes to effects: they may have consequences, immediate or remote. To steal, is an action which may have the gain of a shilling for its immediate, and a whipping for its remote consequence.

An *End* is a consequence intended, aimed at, purposed, designed (14). When we act with purpose, we have an end, to which the action is a *Means*. To possess the fruit being my end, I purposely cultivate the plant as the means.

18 The Rules of Action (16) may command actions as means to an end: thus: *Steal* not, *that thou be not whipt*. Be temperate, *in order to be healthy*.

19 We have often a *Series* of Actions each of which is a means, towards the next, as an end. We dig the ground, that we may make the plant to grow; we make a spade, that we may dig the ground; we take a branch of a tree, to make a handle for the spade.

20 To discern the consequences of actions; to act with purpose; and to consider our actions as means to an end; are pro-

cesses which are ascribed to the Reason, as well as the mental operations which have already been spoken of (10).

As possessing Reason, man is called *rational* or *reasonable*. But the latter term is often used in a more special sense; meaning, agreeable to such rules and measures as man, by the use of his reason, may discover.

21 The Reason, when employed in such processes as have been noticed already (10), is the *Speculative* Reason: we oppose to this the *Practical* Reason, which guides us in applying Rules to our actions, and discerning the consequences of actions (20). The Speculative Reason tends to speculative Truth; in which kind of truth ideas, conceptions, and abstract propositions are contemplated: the Practical Reason guides us to truth, so far as truth concerns our actions. By the Practical Reason, we apprehend objects and facts in a manner conformable to their true relations; and hence, we discern the true consequences of our actions, though the relations and the actions are not explicitly contemplated. This true apprehension of the relations of things may be only implied, not explicitly contemplated, in the Act of the Will, by which we take such means as lead to our ends.

22 The ideas, relations, rules, conceptions of ends and means, and the like, which are implicitly involved in the exercise of the Practical Reason, may be *unfolded*, so as to be matter of contemplation. In this manner, the Practical Reason is developed into the Speculative Reason. Such a developement of the human mind is produced by the exercise of Thought.

23 Animals, as well as man, conform their actions to the true relations of objects (21), and perform actions which look like means to ends (17). Thus, bees build cells in hexagonal forms, so as to fill space; and birds build nests, so as to shelter themselves and their young. But in the case of animals, the tendency to action cannot be unfolded into ideas, and conceptions of ends. Bees have no conceptions of hexagons, separate from their cells. Birds do not contemplate an end, when they build a nest: for they build nests in a state of captivity, where there is no end to be answered. The tendencies to such actions are implanted in the constitution of the animal, but are not capable of being unfolded into ideas, as in a rational nature they are (22). Hence such tendencies are called *Instincts*, and are distinguished from Practical Reason.

24 Instinct, as well as Reason, operates through the Will, to direct the actions. In both cases, the Will is stimulated into

action by certain Appetites and Desires, which we shall term *Springs of Action*.

We use the term *Springs of action*, rather than *Principles of action*, because the term *Principles* is used equivocally, not only for Operative Principles, which produce action, but for Express Principles, which assert Propositions.

The Springs of Action of which we have to speak, are the Motive Powers of man's conscious nature, and might hence be called *Motives*. They first put man in motion; that is, in the state of internal motion which leads to intention and will. But in common language, the term *Motive* is rather used to designate the special object of the intention, than the general desire which impels us to intend. When a man labours hard for gain, his spring of action being the desire of having, his Motive is to get money. But he may do the same thing, his Motive being to support his family, and then his spring of action is his family affections.

CHAPTER II.

THE SPRINGS OF HUMAN ACTION.

25 THE Springs of Action in man may be enumerated as follows: The Appetites or Bodily Desires; the Affections; the Mental Desires; the Moral Sentiments; and the Reflex Sentiments. We shall consider them in order.

1 *The Appetites.*

26 The Appetites or Bodily Desires are common to man and brutes. The strongest and most obvious of them are the Appetites for Food (Hunger and Thirst), by which the individual is sustained; and that by which the species is continued. These appetites are tendencies towards certain bodily things, and cravings for these things when they are withheld.

But besides these, there are many other bodily Desires which may be classed with the Appetites, and which are powerful springs of action. Such are the desire of rest after labour, the desire of sleep after long waking, the desire of warmth and shelter, the desire of air and exercise.

These Desires are *Natural Wants*; they are Needs of man's nature. Man cannot exist at all, except they are satisfied in some degree; and cannot exist in a healthy and stable condition, except they are satisfied in an adequate degree.

27 Moreover, by the constitution of man, certain Pleasures are conjoined with the satisfying of these wants; and the Springs of Action, of which we now speak, include the Desire of these Pleasures. Thus, man has not only an appetite for food, but a desire of delicious food, and a Sense of Taste, by which he relishes such food. He has, in like manner, a pleasure in sweet odours, and a desire of this pleasure; and similarly for the other senses.

Man uses various Arts, to satisfy his natural wants, and to gratify his desires for the pleasures of sense, of which we have spoken. As such gratifications, through means of art, become habitual, they also become Wants, and are termed *Artificial Wants*. These Artificial Wants, no less than Natural Wants, are powerful Springs of Action among men.

2 *The Affections.*

28 The Affections are tendencies or cravings directed towards conscious individuals; not, like the Desires, tendencies and cravings for bodily objects. The Bodily Desires tend to things, Affections to Persons.

But the Affections are not mere tendencies or cravings, they are internal Emotions or Feelings: being directed to persons, not to things, they mould the thoughts in a way quite different from what the Appetites do.

29 The two principal affections are Love, and Anger. The term Love, is sometimes used to describe the Bodily Desires, as when we talk of a Love of wine, or a Love of the pleasures of the table. But the more direct and proper sense of the word, is that in which it denotes an affection towards a person. A man's love of his wife and children is more properly Love, than his love of wine or of music.

30 The most important of the Affections which thus come under the name of Love are;—the Love of the mother and of the father towards the children, Maternal and Paternal Love;—the Love of children towards their parents, Filial Love;—the Love of brothers and sisters towards each other, Fraternal Love; the special and distinguishing affection of man towards woman, and woman towards man, which tends to the conjugal union; this is

often expressed by the word *Love*, without any epithet; its natural sequel is Conjugal Love. Also, among the kinds of Love we must enumerate Friendship, and our Love of our Companions; likewise the Affection, so far as it partakes of the nature of Love, with which we regard our fellow-citizens, our fellow-countrymen, our fellow-men.

31 The Affection of Anger also appears in various forms. Anger comes into play against any one who assaults or threatens us, in man as in other animals; and this Affection, giving vehemence and rapidity to our actions, aids us in self-defence. Anger in this form, is the natural repulsion and return to any harm which falls upon us or approaches us, and is called *Resentment*, as being the sentiment which is a natural re-action to the hostile sentiment of another person.

32 The Affections conspire with the Desires. We are angry with those who take from us, or prevent our obtaining, what we desire. We love those who aid us in gratifying our desires. These affections are modified according to the circumstances under which they thus arise, and they hence receive special names. Men feel *Gratitude* towards those who have conferred benefits upon them. As they feel sudden *Resentment* against a sudden attack, they feel *Permanent Anger* against those who have inflicted or endeavour to inflict pain or harm upon them, or whose desires come in conflict with theirs. When this feeling is no longer a burst of emotion, but a settled and steady feeling, it is *Hatred*, *Malice*, or *Ill-will*. When malice prompts men to return pain and harm to those from whom they have received pain or harm, it is *Revenge*.

All these Affections belong to the *irascible* part of man's nature.

33 The Affections, as has been said, are directed towards persons. In speaking of the affections, we suppose him who feels them to live as a man among men. He is *in Society*; and his desires and affections are excited, determined, and modified by the circumstances of his social condition. These circumstances may be various, both for the individual, and for the general body of the society. There are various Forms and Stages of Society. We may conceive, as the original form, a society in which there are no Affections except the Family Affection, and no Appetites except the Natural Wants. But as the society becomes more numerous, and Artificial Wants increase, many other kinds of relation and dependence grow up among the individuals who compose the society, and the Affections are modified by these new conditions.

34 In speaking of other Desires and Affections which we still have to notice, we continue to suppose man existing in society; and we shall have to consider mainly, at first, those Desires and Affections which have reference to the intercourse of a man with other men.

3 *The Mental Desires.*

35 The Appetites are of the nature of Instincts, in that they tend to their objects, without their objects being present to the mind as abstract notions. But yet when we bring into view abstract notions, the bodily desires may be described as tendencies to such abstractions. Thus Hunger and Thirst may be described as the Desire of *Food*: which is, as we have seen (3), an abstract notion. All the Bodily Desires may be included in the Desire of *Pleasure*, which is a still more abstract notion.

As the development of the human mind goes on by the exercise of thought (22), the objects of desire are all presented to the mind as abstract notions, more or less general. In this way, the Bodily Desires may be presented in a general and abstract form. But besides these general and abstract forms of Bodily Desires, there are other Desires which cannot be conceived in any other way than with reference to abstractions; as the Desire of *Fame*, the Desire of *Knowledge*. These we shall call *Mental Desires*.

36 We now speak of those Springs of Action which result from the operations of the mind. Among such operations, besides those which have been referred to, we must place *Memory*, by which past facts and objects are recalled to the mind, and subjected to its view, in the same manner as if they were present; and *Imagination*, by which the distant, the absent, and the future are represented to the mind, under combinations and aspects imposed by the mind itself. These faculties fill up the abstract outline of the objects of desire, with particulars and images, by means of which they obtain a far stronger hold upon the purpose and will, than the mere abstraction of itself could have. By their means, the desire of a general and abstract object impels us, not merely with the force residing in the ultimate generality, but with a power belonging to the whole series of the successive steps of generalization, from objects of sense upwards.

37 Every object of desire as contemplated by the mind may be described by a general term as a *Good*. *Quicquid petitur petitur sub specie boni*. This is the most general aspect of the objects of

desire. Opposed to the objects of desire, are objects which we shun, as Pain, Constraint, and the Want or Privation of objects of desire. These are *Evils*. The mind, furnished with the stores of Memory, and exercising the powers of Imagination, can contemplate remotely future, as well as immediate gratifications, arising from the attainment of objects of desire. Such objects, contemplated as future, are *wished for*; if the attainment of our wishes is deemed probable, they are *hoped*. The infliction of future evils, if probable, is *feared*. Evil so contemplated is *Danger*. *Hope* and *Fear* are springs of action no less powerful than present Desire.

38 We must now consider the particular Mental Desires separately.

In order that we may distinguish and enumerate the more important and more elementary of the Mental Desires, we may remark, that Desires, operating merely as tendencies to action, and not unfolded by the exercise of thought, so as to become tendencies to mental objects, (abstractions,) are like Instincts (23). Hence we may consider those Desires as distinct, which look like the developments of different Instincts. The Instincts of animals are a kind of image of the Desires of man; and we may consider those as so many distinct Elementary Desires, of which we find so many images in the Instincts of animals. And the Desires of which we shall speak, being also the most universal and most powerful of those by which man's actions are determined, are those which we have especially to notice among the Springs of Action.

The Mental Desires of which we shall first speak, are the Desire of Safety, the Desire of Having, the Desire of Society, the Desire of Superiority; the Desire of Knowledge.

39 *The Desire of Safety*. All the bodily desires may be included under one general expression, as *the Desire of Personal Wellbeing*, or the like. But in order to frame rules of action, we must refer to something more limited and definite than this. Moreover, in our view of the springs of human action, we are to suppose man to be in Society, and to have his desires determined by the circumstances of his social condition (34).

Now if the desires alone be taken into our account, a man living among men is liable to have his desires frustrated, and to suffer harm, pain, wounds, and even death, through the operation of the conflicting desires of other men. We can conceive a condition in which men are in a perpetual state of war and violence, like hostile beasts of prey. But the desires of man, when his irascible affections are not inflamed by conflict, tend towards a

state of things the opposite of this. He desires peace and tranquillity. He hopes for these; he fears their opposites. These desires, hopes, and fears are so strong, that man's life is scarcely tolerable if they are not in some degree gratified. Man requires, as indispensable to his human condition, a removal of his fears of violence and harm to his body, arising from the conflicting desires of other men. This feeling we may call *the Desire of Safety*. It is one of the strongest, most universal and most constant of all the desires of men.

40 We find Instincts of animals which correspond to this Spring of action in man. Such an Instinct is variously described, as the *Instinct of Self-defense*, or of *Self-preservation*, the *instinctive Love of Life*, and the like. This Instinct stimulates all the faculties of animals in the most energetic manner; is able to master their strongest appetites and affections; and often calls into play an almost incredible sagacity and strength.

41 In man, the instinctive love of life, the instinctive desire to avoid privation, pain, and constraint, are expanded and unfolded by memory, reflection and foresight. Life, ease, comfort, peace, tranquillity, become objects to which man tends with conscious thought, as well as from blind impulse. Nor can he be at all satisfied, except he can look forwards to the future, as well as the present enjoyment, of these advantages. He must not only have present Safety, but *Security* for the future. When, however, we speak of *the Desire of Safety*, as one of the principal elementary Mental Desires, we may understand Security to be included in the expression.

42 We have mentioned Constraint as one of the things which men desire to avoid. Even when unaccompanied with pain or danger, extraneous force, compelling or restraining our motions, is felt as a grievous infliction. We cannot act so as to make our actions our own, without acting freely; and the Desire of Free Agency, which we naturally feel, is confirmed and made more urgent, by our perceiving that such freedom is necessary to all properly human action. Hence the Love of personal Liberty is one of the powerful Springs of human action; but so far as it is of an elementary nature, it is included in the Desire of Safety and Security from bodily harm of which we now speak.

43 The Safety, Security and Liberty of the body, which man thus requires, as conditions without which he cannot exist satisfactorily, are easily endangered by the angry affections of other men, stimulated by their desires, conflicting with his. By such

conflicts Malice is produced (32); and malicious intention shews itself in deeds of force and violence, or in other kinds of attempts upon the safety and liberty of the man. Others become his Enemies, and he becomes theirs. And the natural Enmity, as well as the Society of mankind, modifies their other desires.

44 *The Desire of Having.* The Desire of Having, so far as it refers to the means of subsistence, is a developement of the instinct of self-preservation, which impels animals to seek food and other necessaries of life. But even in animals, we see a desire of having which goes beyond this: for some animals have an instinct of hoarding and storing; and this instinct is very different from mere desire of food. It often controls present appetite, and leads the animal to hide what it cannot use as food, as well as what it can. In man the Desire of Having is apparent in all stages of Society (33). Food, clothing, weapons, tools, ornaments, houses, carriages, ships, are universally objects of his desire. In the first place, indeed, man desires these things as a means of gratifying his natural appetites, or his affections; of supporting and sheltering his family; of repelling and mastering his enemies. But the desire to possess such objects, as it exists in man, goes beyond the measure of their obvious use. He delights to consider them as connected with himself in a permanent and exclusive manner, and to look upon them as *his*, as his *own*. The things which he thus looks upon as his own, he is disturbed at the prospect of losing, and is angry at any one who attempts to take them from him. Nor can he be at ease in his thoughts, or act steadily and tranquilly, except he be allowed to possess in quiet and security what he thus has as his. He needs to hold it as his *Property*.

45 The objects to which the desire of possessing applies are called *Things*, as contrasted with *Persons*. In considering the rules of human action, Things are contemplated as morally passive, the objects of possession and use; capable only of being given, received, acted with or on: Persons are active, or capable of action; and are considered as conscious, intelligent, intentional agents.

Things, as objects of possession, are contemplated under various aspects of generality and abstraction. In a general way, they are termed *Possessions*, *Wealth*, *Riches*. There is one particular kind of Possession which is used in transferring all other kinds, and which hence measures and represents all other kinds. This is *Money*, which most commonly has the form of copper, silver, or gold, and which is especially called *Riches*.

46 Wealth or Property includes all objects which are subservient to the satisfaction of our wants; and thus the desire which regards property is strengthened by the progress of Artificial Wants (32). Again, most of the relations of society imply some intercourse with regard to property, some giving and receiving. The progress of society, with the extension and multiplication of these social relations, give additional operation to property, and increase its hold on men's minds. And thus, in a society in which artificial wants and social relations are extended and multiplied, still more than in more simple states of society, there can be no tranquillity, peace, or comfort, except man can possess in security and quiet that which he regards as his Property.

Without Property, and the recognition of Property in Society, even man's free agency cannot exist. If another may at any moment take from me my food, my clothing, my tools, I can no longer, with any confidence or steadiness labour, or travel, or reckon upon being able to live from day to day. In order to act, I must act on, or with things; and I must for that purpose have secure property in things.

47 The Desire of Society appears in man in two very conspicuous forms; the *Desire of Family Society* and the Desire of Civil Society. These may be treated of as elementary desires; we have images of them in the instincts of animals;—of the former, in pairing animals, of the latter, in gregarious animals.

That man has a Desire of Family Society, in addition to his mere bodily desires, is plain. In the rudest tribes, the man and his wife are bound together by this desire. They wish for and seek habitual companionship and help, not merely occasional pleasure. The woman can hardly subsist through the time of child-bearing, or the child be supported, without the existence of the ties of family. When the family circle is completed by the addition of children, this desire of companionship is awakened and gratified in a wider sphere. The desires which first led to the existence of the Family are refined, as well as extended, by the existence of the Family. A desire of a general sympathy among the members of the Family, purifies and elevates the operation of the mere bodily desires. There are added to the gratification of the desires, innumerable new pleasures growing out of the offices of mutual love to which the family gives occasion.

These gratifications are so congenial to the nature of man, so universally and constantly sought, so uneasily and impatiently dispensed with, that no form of man's existence can be tolerable or

stable in which men in general are not able to enjoy or to hope for them. There can be no peace, comfort, tranquillity, or order in a state of society in which there are not permanent conjugal unions.

The existence of permanent marriages is requisite, as has been said, for the sustentation of the mother and the child during its earliest age. It is requisite no less for the instruction of the child in the use of language, in the direction of its actions by rules, and in the other manifestations of a social and rational human nature. And thus the existence of marriage is requisite not only to continue the race of mankind, but also to transmit from generation to generation the social and rational character of man. And this necessity is perceived by man, when his reflection is called into play; and thus the Regard for Marriage which men feel is confirmed, and the Desire of Family Society strengthened in its general influence upon man.

48 *The Desire of Civil Society* also is an important spring of action in the nature of man. The other desires which we have mentioned, the desire of safety, and the desire of property, may be supposed to give rise to a desire of civil society, as of a means by which such objects may be secured. But there appears to exist in man a Desire of Society of a more unconscious and elementary kind; of which, as has been said, we have an image in the instincts of gregarious animals. Man also is a gregarious, or more properly, a social animal. He is nowhere found, nor can he exist, in any other state than in Society, of some form or other. Indeed, the same conditions of his being which make him necessarily exist as a member of a family, make him also, after a few generations, necessarily exist as a member of a family in a larger sense; of a tribe, a clan, a nation. And though, in cases in which the free agency of the individual comes into play, these ties of family may be loosened or broken; man still only passes from one form of society to another, and his state is ever social. The existence of a Language is, of itself, undeniable evidence of a recognized society among those who have this bond of union: for those who use the same language have common classifications of things and actions, common generalizations and abstractions; which imply, in a great degree, common judgments and common rules of action. Society, bound together by such ties, is a Community.

Men, connected by this bond, have a pleasure in their mutual society. They are pleased with the companionship and intercourse which take place at the social board, in the street, the market,

the council-room. Men desire to act, and are fitted to act, in common; declaring and enforcing rules by which the conduct of all shall be governed: they thus act as governors, legislators, judges, subjects, citizens. Without such community of action, and such common rules really enforced, there can be no tolerable comfort, peace, or order. Without civil society, man cannot act as man.

49 The Mental Desires which we have mentioned, include the Appetites and Affections, and may take the place of them in some of our future reasonings. The Desire of Personal Safety, and the Desire of Having, include the Desires of all bodily objects requisite for the support, ease and comfort of the individual. The Desire of Family Society includes the Love of Wife, Parents, Children, Brothers, Sisters, and the like. The affection of Anger is an attendant upon all our Desires; for we are angry with those who interfere with our Desires; angry with those who threaten our Safety, our Property, or our Family enjoyments.

50 There is another Spring of Action intimately connected with the existence of society, and in some measure implied in what has been said; but which we must also speak of separately: I mean, *the Need of a Mutual Understanding* among men. I speak of this as a *Need*, rather than a Desire; for Mutual Understanding is rather a necessity of man's condition, than an object of his conscious desire. We see this necessity even in animals, especially in those which are gregarious. In their associated condition, they derive help and advantage from one another: and many of them, especially those that live, travel, or hunt in companies, are seen to reckon upon each other's actions with great precision and confidence. In societies of men, this mutual aid and mutual reliance are no less necessary than among beavers or bees. But in man, this aid and reliance are not the work of mere Instinct. There must be a Mutual Understanding by which men learn to anticipate and to depend upon the actions of each other. This mutual understanding presupposes that man has the power of determining his future actions; and that he has the power of making other men aware of his determination. It presupposes Purpose as its matter (14), and Language as its instrument (4). The verb *to understand*, as has been said (11), has especial reference to the use of language.

When we have determined a future action by intention or settled purpose, we communicate the intention to another person who is concerned in the result, by a *Promise*. The person to whom my promise is made, (*the Promisee*,) understands my pur-

pose, and is led to reckon in his actions upon my purposed action; and I understand him to regulate his actions by this reckoning.

51 A large part of the actions which take place among men, are regulated by their mutual understanding, established by promises, or in some other way. In most forms of society, each person depends for food, for clothing, for shelter, for safety, for comfort, for enjoyment, or for the greater part of these, upon a mutual understanding with other men. There is a mutual dependence, the result of a mutual understanding.

One of the ways in which this result is carried into effect is, by the establishment of different employments and occupations, businesses and offices, among different classes of men. One man employs himself solely in preparing food for men; others, in preparing clothing; and again; one, in preparing clothing for the feet; another, clothing for the body. Again, one man's business is to protect the other from foreign foes; he is a soldier: another's occupation is to decide disputes which occur within the society; he is a judge. Persons are placed in such situations by general understanding, express or implied; and each man, in his actions, reckons upon the others discharging their offices according to their respective trades and professions. This mutual understanding is a universal bond, which could not be removed without the community falling to pieces; it is force of cohesion, permeating the structure of society, so that if this force were to cease to act, the whole mass would crumble into dust. We therefore place this Need of a Mutual Understanding among the principal springs of human action.

52 *The Desire of Superiority* may be placed among the elementary Desires, since it is seen to exist as an instinct in many of the bolder animals, manifesting itself in the exertions which they make in their conflicts with one another. In such cases, this desire is often mixt up with the instinct of self-defense and the impulses of anger, as in the combats of pugnacious animals; but in racing and hunting, we see, in dogs and horses, a desire of superiority, showing itself as a distinct spring of action; and the like may be observed in other similar cases.

In man, this desire of superiority appears on a wider scale, the subjects of comparison being vastly more numerous and complicated. A man desires to know himself more swift, more strong, more skilful than another; hence the contests of the palestra, and even wanton combats for life or death. A man desires to be

more wealthy than his neighbours ; and hence accumulates riches by labour, agriculture, trade or traffic. But man not only wishes to surpass, but to guide and control other men. He wishes that they should *obey* when he *commands*. He has a Desire of Power. To this object, strength and skill and riches may all be as means to ends. The desire of being superior as regards those circumstances, may be the desire of being more powerful than others, with whom we compare ourselves.

53 This desire of being superior to others in the advantages which we possess, and especially in power, is very general among men. Most men would wish to be strong, skilful, rich ; but especially to be powerful, so that other men should conform to their will and do their bidding. But all cannot be superior to others. If each desire to be the strongest, there can be no repose or order, except these conflicting desires balance each other. All cannot be superior ; but none need be inferior, for all may be equal. The universal Desire of Superiority cannot be gratified ; but if it be transformed into a universal Impatience of Inferiority, it may become the regulating force of society.

When we say that none need be inferior, for all may be equal ; it is not meant that all may have *equal shares* of the objects of human desires ; but that each may equally have what is *his*, not holding it at the will or command of another man. The equality of which we speak, is the establishment of equal rules, not the establishment of a rule of equal division. Such a rule as the latter, would be inconsistent with the nature of property : for that which is a man's property, is his with its increase, and passes from him if he give or destroy it ; so that the shares of different individuals, even if equal at first, cannot continue equal. But Equal Rules may be established ; and the impatience of inferiority, which is natural to man, will not be satisfied with any rules which have not the aspect of equality. It is true, that this equality of rules may be modified by external circumstances ; as we have just seen, that the equality of shares must be disturbed by passing changes : but still, the desires of men constantly point to equal rules, as those which alone are tolerable ; and there can be no permanent tranquillity in a community, except under the sway of rules, which are equal for all ; so far as the nature of man, and the previous condition of the society, allow of rules at the same time steady and equal. And thus, the Desire of Superiority, transformed into the Desire of Equal Rules, is one of the powerful springs of human action.

54 *The Desire of Knowledge* may also be enumerated among the elementary desires. Of this Desire, also, we see a sort of image, in the curiosity and prying propensities of many animals: but in them, these propensities are generally subservient to the actions by which sustenance is obtained or danger avoided.

In man, the Desire of Knowledge is identical with the desire or propensity of the mind to unfold itself (22); and with the desire which we have to contemplate our own conceptions, as distinctly and connectedly as is possible for us. Man, by his rational nature, is constantly impelled to think, to reason, to classify, to trace causes and consequences; to do this, is to know; and to continue to do it, is to go on from knowledge to knowledge.

55 Knowledge influences human actions, not so much by the exertions which it impels men to make for the purpose of acquiring knowledge, as by the different aspects which it gives to the other objects of desire. An ugly pebble may be a most desirable possession, if we know how to extract from it a cure for disease. The desire to possess a particular piece of ground, may become very vehement, by our knowing that it is the heritage left us by our ancestors. Our impatience of the constraint which a body of men impose upon us, may be much inflamed, by our knowing that such constraint is inconsistent with ancient maxims of law, or with rules of reason, or with the true destination of man. In such cases, our desires and actions are influenced by our knowledge, that is, by our *Reason*. Our knowledge, thus considered as a Spring of Action, is identical with the Reason, by which we contemplate abstract and general conceptions, and thus determine for ourselves rules and ends of action. This is a task which it is our object to perform in the present work.

4 *The Moral Sentiments.*

56 That which is conformable to Rules of Action is *right*. What we mean by *right*, will be considered more particularly afterwards: but before we proceed to that question, we may observe, that our judgment of actions as *right*, or as *wrong*, the opposite of right, is accompanied with certain Affections, or Sentiments. That which is right we *approve*; that which is wrong we *disapprove*. What is wrong, naturally excites a modification of Anger, which we term *Indignation*. Wrong done to ourselves excites instant Resentment (31); but our Anger against wrong as wrong, when we do not consider it as affecting ourselves, is Indignation. And in like manner, what is right is the natural object

of a kind of love, namely, of *Esteem*. These Affections, Approbation and Disapprobation, Indignation and Esteem, are the *Moral Sentiments*.

Though the Moral Sentiments thus partake of the nature of the Affections, they differ in this respect, that they have for their objects in the first instance, not Persons, but Actions. We love a friend ; we approve his acts of benevolence. We are angry with a man who picks our pocket, and disapprove of his act.

But the Sentiment is transferred from the action to the agent ; and thus the Moral Sentiments combine with and modify our other affections, and are powerful Springs of Action. We befriend a man, or we choose him for our friend, and do him good offices, not because he is our brother, but because we approve his actions, and therefore love him, and would treat him as our brother. We help to inflict pain or even death upon a man, not because he has done us especially any harm, but because he has committed an act of which we strongly disapprove, and which excites a strong indignation against him.

There are Sentiments which partake of the nature of Esteem or Approval, but imply no settled Moral Rule, and include feelings of surprise and conscious inferiority in ourselves. Such are *Admiration*, and *Awe*.

5 *Reflex Sentiments.*

57 Besides the Moral Sentiments which impel us to act in one way or another to other men, accordingly as we approve or disapprove their actions, there are also certain Sentiments which have a reference to men's judgment of us and their affections towards us ; and these Sentiments are also Springs of Action. These we shall term *Reflex Sentiments*, for they imply Reflex Thought. In order to regard another man's Sentiments concerning me, I must form a conception of his Sentiments as the image of my own ; and of myself as the object of those sentiments.

58 *The Desire of being loved* is one of these Reflex Sentiments. In minds so far unfolded by thought as to be capable of reflex processes, this Sentiment commonly accompanies love ; but it belongs to a stage of mental developement higher than mere elementary love. Yet we see traces of it in the behaviour of those animals which seek to be fondled and caressed.

59 *The Desire of Esteem* is a powerful and extensive Spring of Action. We desire that other men should think that what we do is right. Hence, this desire assumes some generally established

Rule of what is right. Without ourselves esteeming what is right, we cannot conceive Esteem, and thus cannot truly feel the Desire of Esteem. But in this case, we may still feel the *Desire of Admiration*, the *Desire of Honour*, the *Love of Fame*, the *Love of Glory*, and the like Reflex Sentiments; which do not imply our own approval of the Rule by which others judge. Yet these are very powerful Springs of action in many men.

60 Finally, there is a reflex Sentiment which we may term the *Desire of our own Approval*. This implies that we have adopted a Rule according to which we judge Actions to be right, and that we desire to conform our own actions to this Rule. Such a Desire is a Spring of Action, which must balance all others, in order that the Rule may be really valid. What the nature of such a Rule must be, we shall have to consider: in the meantime, we may remark, that the Desire of our own Approval, of which we now speak, is included in the meaning of the term *Conscience*.

Among the Reflex Sentiments, we may place all those Springs of Action which are designated by some compound of the word *Self*; as *Self-Love*, *Self-Admiration*. These, for the most part, are elementary Springs of Action, combined and modified by reflex habits of thought. Thus Self-Love may be understood to include the Desire of Property, of Bodily comfort, and the like, along with a distinct consideration of One's Self. In this view, Self-Love is rather a habit of regarding and providing for the elementary Desires, than a distinct Desire. It is sometimes spoken of as a General Regard for our own Good; because, as we have said (37), the term *Good* is so used as to include the objects of all the elementary Desires.

6 General Remarks.

61 It appears by what has been said, that the different kinds of Springs of Action are distinguished by the nature of their objects. The Appetites have for their objects, Things; the Affections, Persons; the Mental Desires have Abstractions: the Moral Sentiments, Actions; and the Reflex Sentiments have for their objects the thoughts of other persons, or our own, about ourselves.

The Springs of Action which we have enumerated do not operate upon man as Forces operate upon inert Matter. They all operate through the Will. A man is moved by these Springs, when he *will* do that to which they impel him. Different springs

of action may operate at the same time, and with opposite tendencies. The Desire of Safety would keep the sailor or soldier at home, but the Desire of Gain, or the Love of Glory, sends him to the sea or to the war. In either case, it is through his Will that the Desires act. He stays at home because he wills to do so; or he goes forth because he wills it. Acts of Will are *Volitions*.

62 In determining his actions, man is seldom impelled merely by the most elementary Springs of Action, bodily desire and affection. By the progress of thought in every man, bodily desires are combined with mental desires, and elementary affections with moral sentiments.

The men who most seek the pleasures of eating, seek at the same time the pleasures of society. The most blind maternal love generally takes the form of approving, as well as loving, its darling. And thus, in man, the Desires and Affections are unfolded by thought, so as to involve abstract conceptions and the notion of a Rule. The Reason, to which such steps belong (10), is at work, in all the actions which the Springs of Action produce.

63 Reason is conceived as being in all persons the same in its nature. Different men desire different things, love different persons; but that which is seen to be true in virtue of the Reason, is true for all men alike. The influence of desire or affection may be mistaken for the result of Reason, for man is liable to error (5); and so far, the decisions of Reason may be different in different men. But such decisions are not all really reasonable. So far as men decide conformably to Reason, they decide alike. His Appetites, and Desires, and Affections are peculiar to each man; but his Reason is a common attribute of all mankind: and each man has his Reason in virtue of his participation of this common faculty of discerning truth and falsehood.

But though each man's Desires and Affections belong specially to himself, while Reason is a common faculty in all men; we consider our Reason as being *ourselves*, rather than our Desires and Affections. We speak of Desire, Love, Anger, as mastering *us*, or of *ourselves* as controlling them. If we decide to prefer some remote and abstract good to immediate pleasures, or to conform to a rule which brings us present pain, (which decision implies the exercise of Reason,) we more particularly consider such acts as our *own* acts. Such acts are deemed especially the result, not of the impulse of our desires, but of our own volition.

If we ask why we thus identify ourselves with our rational part,

rather than with our desires and affections ; we reply, that it is because the Reason alone is capable of that reflex act by which we become conscious of ourselves. To have so much thought as to distinguish between ourselves and our springs of action, is to be rational ; and the Reason, which can make this distinction, necessarily places herself on one side, and places the Desires, which make no such distinction, on the other. It is by the Reason that we are conscious ; and hence we place the seat of our consciousness in the Reason.

64 The habit of identifying ourselves with our Reason, and not with our Desires, is further indicated by the term *Passion*, which is applied to Desire and Affection when uncontrolled by Reason ; as if man in such cases were passive, and merely acted on ; and as if he were really active, only when he acts in conformity with his Reason. Thus, we speak, of a man being *in a Passion*, meaning an uncontrolled fit of anger ; and *having a Passion* for an object, meaning an uncontrolled desire.

Still, it is to be recollected that man, under the influence of such Passions, is not really passive. When he acts under such influences, he adopts the suggestions of Desire or Affection, and rejects the control of Reason ; but this is what he does in all violations of reasonable Rules. Passion does not prevent a man's knowing that there is a Rule, and that he is violating it. To say that Passion is irresistible, is to annihilate Reason, and to exclude the most essential condition of Human Action.

65 We have spoken of various elements of man's being, separately : of the Reason and the Understanding (ch. I.) ; of the Appetites, Affections, Desires, Moral Sentiments, and Reflex Sentiments ; (ch. II.) of the Will (61), and of the modifications which the Affections, Desires, &c. undergo by the operation of thought (62). We might further speak of the mode in which repeated acts of thought, repeated emotions of Affection or Desire, form internal *Habits* ; and of the manner in which the general *Disposition*, composed of all these elements, whether it be an occasional or habitual, a natural or acquired Disposition, affects the Will, and, through that, the Actions.

But while we attend to all these separate Springs of Action, their mutual operation and endless modifications, we are not to regard them as separate Forces, or as independent and distinct Things. They are all *in us* as in a peculiar complex unity. The Appetites are manifestly attributes of the *Body* ; but the remaining elements, the Affections, Desires, Moral Sentiments, Reason,

Will, are considered as existing and operating in our *Soul*: and it is in the *Soul* that the formation of Habits and Dispositions takes place. The *Soul* is the central and fundamental unity in which all the internal elements of human action inhere, reside, act upon each other, and are moulded and modified by all which happens to the man.

CHAPTER III.

MORAL RULES EXIST NECESSARILY.

66 IN enumerating and describing, as we have done, certain Desires, as among the most powerful Springs of human action, we have stated (39) that man's life is scarcely tolerable if these Desires are not in some degree gratified: that man cannot be at all satisfied without some security in such gratification (41); that without property, which gratifies one of these Desires, man's free agency cannot exist (45); that without marriage, which gratifies another, there can be no peace, comfort, tranquillity, or order (47). And the same may be said of all those Springs of Action which we enumerated as Mental Desires. Without some provision for the tranquil gratification of these Desires, Society is disturbed, unbalanced, painful; we may even say, intolerable. We cannot conceive a condition of such privation to be the genuine condition of social man. The habitual gratification of the principal Desires above mentioned must be a part of the Order of the Society. There must be Rules which direct the course and limits of such gratification. Such Rules are necessary for the Peace, and even for the Existence, of Society.

67 Man acts as man, when he acts under the influence of Reason, and Reason directs us to Rules. Rules of action are necessary, therefore, for the action of man as man. We cannot conceive man as man, without conceiving him as subject to Rules, and making part of an Order in which Rules prevail. He must act freely, therefore he must have Security. He must act by means of external things, therefore he must have Property. He must act with reference to other men's intentions, therefore there must be Contracts. He must act with reference to Parents, Wife and Children, therefore there must be Families. We cannot conceive man divested of free agency, of relation to external things,

of communication with other men, of the ties of blood and affection. We must therefore conceive him as existing in Security, with Property, Contracts and Family, subsisting about him; existing, therefore, under Rules by which these things are established; and thus, such Rules are necessary for the action of man as man.

Such Rules being established, that which is conformable to them is *right*, and the Rules are *moral* Rules. We must afterwards endeavour to establish such Rules in detail; but in the mean time, we have shewn in general that the establishment of Moral Rules is necessary for the peace of society and for the action of man as man.

68 That Rules, determined by the Reason to be reasonable, are the necessary guides of Desire and Affection, is also apparent from a consideration of the nature of Reason. We cannot help recognizing, in the Reason, an authority to repress and resist Appetite and Desire, when the two come in conflict. The Reason is the light of man's constitution, which reveals to him himself, and enables him to choose between different objects. And this light, by being light, is fit to guide us. As in the world without, so in the world within us, the light, by guiding us, proves that it is its office to guide us.

69 It has been said by some that the Rules of human action, by which men in Society are governed, are the results of mutual Fear, by which the conflicting Desires of different persons are balanced. But this is not a true view of the subject. Mutual fear and conflicting desires prevail among wild animals; but yet animals have not among them Moral Rules of action. Brute beasts cannot properly be said to steal from one another, to wrong one another, to be morally guilty. They cannot transgress a Moral Rule; because they have not Reason, by which they may conceive a Moral Rule. Mutual fear and conflicting desire cannot give rise to a Rule, when there does not exist the Reason; which, presenting the objects of desire and fear under the general and abstract forms of conceptions, must supply the materials for a Rule. It is therefore not Fear and Desire, but Reason, which is the source of Moral Rules.

70 Moral Rules balance the repulsive tendencies of the Desires. The Desires, so far as they are desires of external objects in each person, tend to disunite men; for they make each person the sole centre of his own springs of action. Further, they tend to bring man into conflict and opposition; for two men desire

the same field, the same house, the same wife. But there are also human endowments which draw men together, as the Affections of Family and of Civil Society. The mutual understanding of men, expressed in Language, enables them and leads them to act in union, and to help each other. The objects of desire being assigned by general Rules, the repulsive influences are controlled, the attractive are confirmed in their effect. General Rules being established, the Desires are sources, not of opposition, but of agreement. All men, when they think and feel calmly, sympathise with my Desire to keep my own; all men approve of General Rules, and of those who conform to them. The Reflex Sentiments strengthen this mutual attraction. The Desire to be approved, and the Desire to be esteemed, draw men together. These Sentiments, resulting from settled Moral Rules, remove discord, and establish concord. They tend to make men unanimous.

And, reasoning in the opposite order, we may say that such Rules as tend to produce this effect, agree with that character of Moral Rules, which we have shown to belong to them. Such Rules, with regard to the Affections and Desires, as tend to control the repulsive, and confirm the attractive forces which operate in human Society; such as tend to unite men, to establish concord, unanimity, sympathy; agree with that which is the general character of Moral Rules, and have a claim to be regarded as Moral Rules. And as there is a Universal Human Reason, common to all men, so far as it is unfolded in each man, and to which each man's reason must conform; so is there a Universal Moral Sympathy, common to all men, so far as it is unfolded in each man; a Conscience of mankind, to which each man's Conscience must conform.

But in order to arrive at such Moral Rules as we have spoken of, we must proceed by a series of several steps, and upon this course we now enter.

CHAPTER IV.

RIGHT, ADJECTIVE, AND *RIGHT*, SUBSTANTIVE.

71 In order to establish Rules of human action we must consider more exactly the import of the terms *right* and *wrong*, which we have already used (56).

It has been said (18) that Rules of Action may direct actions to be performed as means to an end. Examples of such Rules are these: Be temperate, in order to be healthy: Labour, that you may gain money.

The adjective *right* signifies *conformable to Rule*; and is used with reference to the object of the Rule. To be temperate, is the *right* way to be healthy. To labour, is the *right* way to gain money.

In these cases the adjective *right* is used *relatively*; that is, relatively to the object of the Rule.

72 It has been said also (19) that we may have a Series of actions, each of which is a means to the next as an end. A man labours, that he may gain money: he wishes to gain money, that he may educate his children: he would educate his children, in order that they may prosper in the world.

In these cases, the inferior ends lead to higher ones, and derive their value from these. Each subordinate action aims at the end next above it, as a good (37). In the series of actions just mentioned, a man's gain is regarded as a good, because it tends to the education of his children. Education is considered as valuable, because it tends to prosperity.

And the Rules which prescribe such actions, derive their imperative force and validity, each from the Rule above it. The Superior Rule supplies a reason for the inferior. The Rule, *to labour*, derives its force from the Rule, *to seek gain*: This Rule receives its force (in the case we are considering) from the Rule, *to educate our children*: this again has for its reason, *to forward the prosperity of our children*.

73 But besides such Subordinate Rules, there must be a *Supreme Rule of Human Action*. For the succession of Means and Ends, with the corresponding series of subordinate and superior Rules, must somewhere terminate. And the inferior ends would have no value, as leading to the highest, except the highest end had a value of its own. The superior Rules could give no validity to the subordinate ones, except there were a Supreme Rule from which the validity of all of these were ultimately derived. Therefore there is a Supreme Rule of Human Action.

That which is conformable to the Supreme Rule, is *absolutely right*; and is called *right*, simply, without relation to a special end.

The opposite to right is *wrong*.

74. The Supreme Rule of Human Action may also be described by its Object.

The Object of the Supreme Rule of human action is spoken of as the *True End of human action, the Ultimate or Supreme Good, the Summum Bonum.*

75 There are various other ways of expressing the opposition of right and wrong, and the Supreme Rule of Human Action; namely, the Rule to do what is right and to abstain from doing what is wrong. We say, we *ought* to do what is right; we *ought not* to do what is wrong. To do what is right is our *Duty*; to do what is wrong is a transgression, an offense, a violation of our Duty.

76 The question *Why?* respecting human actions, demands a reason, which may be given by a reference from a lower Rule to a higher. *Why* ought I to be frugal or industrious? In order that I may not want a maintenance. *Why* must I avoid want? Because I must seek to act independently. *Why* should I act independently? That I may act rightly.

Hence, with regard to the Supreme Rule, the question *Why?* admits of no further answer. *Why* must I do what is right? Because it *is* right. *Why* should I do what I ought? Because I ought. The Supreme Rule supplies a reason for that which it commands, by *being* the Supreme Rule.

77 Rightness and Wrongness are, as we have already said, the *Moral* qualities of actions. The Rules which, in subordination to the Supreme Rule, determine what is right and what is wrong, are *Moral Rules*. The doctrine which treats of actions as right and wrong, is *Morality*.

Since, as we have seen (58), Moral Rules are necessary, according to the constitution of human nature; Man is necessarily a Moral Being.

78 We have now to establish Moral Rules; and for that purpose, we must consider in what kind of Terms they must be expressed. Among those Terms, must be *Rights*; and Rights must exist, as we proceed to show.

Rules of human action must be expressed by means of words denoting those abstract and general Conceptions which include the principal objects of human desire and affection. And, in order that these Conceptions may regulate men's actions, they must be Conceptions of something which really exists among men. If they are not this, they cannot, by their operation, balance, moderate, check and direct the desires and affections which tend to really existing objects. For instance, my desire to possess what another has, may be checked and controlled by the Conception of *Property*; by my looking upon it as his Property. But this could not hap-

pen, if there were no such thing as Property. If Property had not been a reality among men, the conception of it could never have had the power, which in human Society it constantly has had, to suppress or moderate the greater part of the acts to which the bodily desires, and the desire of having, would naturally impel men. In like manner, the Conceptions of Promises, of Contract, of Marriage, and the like, restrain or limit most of the acts to which the uncontrolled desires and affections would give rise. This must necessarily be, in order that Rules of action may operate upon men; but this could not be, if the things thus conceived did not really exist among men.

Further: the conceptions on which Rules of action depend must not only be realized among men, but their results must also be assigned and appropriated to particular men. The realities which are conceived as Property, as Personal Security, as Contract, as Marriage, must be attached to persons, and vested in them, as attributes or possessions. We must be able to conceive such things, as being one man's or another man's: as *my* property, *your* debt, *his* wife. Without this condition, the Rules of which we speak could not produce their effect of counteracting and balancing the Desires and Affections. For the Desires and Affections are tendencies to action, residing in Persons. Each Person's Desires have a tendency to himself: the Affections have Persons for their objects; the Desires of things also give rise to Affections towards Persons. Since all these tendencies to action are thus directed to and from Persons, the Rules of action, which balance these tendencies, must also point to Persons. My desire to take away what another man has, and my anger against him for withholding it from me, must be balanced by the thought that it is *his* Property. To use a mathematical image, the centers of the forces, attractive and repulsive, which we have termed *Springs of Action*, are in Persons; and therefore the Conceptions by which these forces are kept in equilibrium must also point to Persons.

The Rules of Action, being Moral Rules, must necessarily be subordinate to the Supreme Rule of human action; and combining this condition with the two others of which we have spoken, we are led to this conclusion: That in order that Moral Rules may exist, there must be abstract Conceptions, including the principal objects of human desire and affection; which abstract Conceptions must be Realities, vested in particular Persons as attributes or possessions, according to Rules subordinate to the Supreme Rule of Human Action.

But Abstractions vested in particular Persons, as possessions, by Rules subordinate to the Supreme Rule, are *Rights*; and our conclusion may be expressed by saying, *That in order that Moral Rules may exist, Men must have Rights.*

We have already given examples of Rights; such as a man's Right to his Personal Safety, to his Property, to his Debts, to his Wife. Without supposing the existence of such Rights, no Moral Rules can be given.

79 What has been said in general (66 and 78), to prove the necessary existence of Moral Rules, and therefore, of Rights, among men; may be further illustrated by considering, separately, the principal Springs of Action of which we have spoken; and especially the Mental Desires; for these include the Appetites and the Affections (49). It is evident that the Desire of Personal Safety (39) requires that there should exist a Right of Personal Safety. Without such a Right, the Desire would give rise to a constant tempest of Anger and Fear, arising from the assaults, actual or apprehended, of other men. But a Right of Personal Safety, when actually established, holds in check the impulses which give rise to such assaults, and reduces the tempest to a calm. In this calm, man, free from extreme agitations of Fear and Anger, can act with a reference to Rules founded on other men's Rights; and can thus, and no otherwise, exercise his rational and moral nature. And in like manner; the Desire of Having requires that there should exist a Right of Property: for without the establishment of such a Right, the possession of any objects of desire would, in like manner, give rise to Fear and Anger; and to an agitation of men's minds, in which rational and moral action could not take place. But a Right of Property once established, there may be a state of repose, in which the Reason and the Moral Sentiments can act. Again, the Need of Mutual Understanding requires that a Right of Contract should exist. If no man could depend upon the actions of other men, every man's actions must be performed in a tumult of vague conjectures, hopes and fears, like the actions of a man when surrounding objects are whirled about him by shifting winds. Each man having no certainty as to what another man would do, Society must be dissolved by the repulsion of conflicting Desires and mutual Fears. But if the Right of Contract be established, so that one man can depend upon what another has contracted to do, as something certain; the mutual Fears are removed; the objects included in the Contracts, and the intentions of the Contractors, become stable

things; and man can act with reference to fixed moral Rules, as his moral nature requires. Again, the Desire of Family Society requires the establishment of Family Rights; that is, of those peculiar Rights, respecting the Members of the Family, to which the Desires point. The Husband must have an exclusive Right to the Society of the Wife, as a Wife. The Father must have Rights over his Children, which other men have not. Without these ties, which bind Families together in a manner in some respects exclusive, ungoverned bodily Desire and irregular Affection would tend to transient and capricious unions of man and woman; and these would lead to storms of angry rivalry, and the pains of deserted affection. Moreover, on this supposition, the suffering mother and the starving child have no one to depend on: the child has no one to educate him; to introduce him into Human Society; to bring him acquainted with the Rules of Action of mankind; and thus to evoke his rational and moral nature. In the bosom of the Family, when its inclosure is protected by Family Rights, the woman and the child are sustained through seasons of helplessness, the desires of Family Society are gratified, and the moral nature of man is unfolded; and thus Family Rights necessarily exist.

In the same manner, the Desire of Civil Society requires a peculiar Class of Rights, which we shall call the Rights of Government. For the actual establishment of Rights is the actual enforcement of Rules; and this requires that the office of enforcing Rules should be committed to some special body of men, as the guardians of the Rules. In order that Rights may really exist in a society, the Governors of the Society must have the Right of enforcing the Rules by which such Rights are defined. If such a Right be not vested in the Governors, other Rights, however they may be nominally acknowledged, do not really exist in the Society. If Personal Security and Property, and Contract, and Marriage be spoken of as actual realities, but if, notwithstanding this, the Right of Government to enforce the consequences of these realities be not upheld; there are, in fact, no real Rights in such a Society; and in proportion as the unreality of the Rights of Government becomes manifest, the Society loses its social character; and the moral character of man cannot find its sphere of action in such a condition.

80 There are other Rights, required by other Desires: but none of so primary and universal a character as those which I have now mentioned. The Desire of Knowledge requires Rights

which, under the names of the Right of Self-Culture, the Right of Education, the Right of Freedom of Opinion, and the like, may come to be of importance, in the Stages of Society in which men's habits of thought are much developed; but which may be omitted in our primary system of Rights. The desire of Superiority, as we have said (53), requires that men, in a Society, shall have their Rights assigned by equal Rules; and thus strengthens such Rights when they exist. The Reflex Sentiments have also, in some Stages of Society, their corresponding Rights. Thus, men have a Right to their Reputation allowed them in the Laws of many Societies.

But the primary and universal Rights of men are those *five* which we first enumerated: *the Right of Personal Security; the Right of Property; the Right of Contract; Family Rights; and the Rights of Government.*

81 The opposite of Rights are *Wrongs*. A man's Rights may be infringed, transgressed, violated, by the actions of other men. Thus, a man infringes my Right to Personal Safety by striking me; my Right to my Property, by stealing it; my Right to a Contracted Debt, by not paying me. He who thus violates a man's Rights, does him a *Wrong*.

The word *Injury* is also especially used to designate the infraction of a Right. This is sometimes used merely to express harm; but in correct language *harm* is distinguished from *wrong*, *damnum* from *injuria*.

82 It has been said that Rights must be Realities in human Society. Rights are made Realities in human Society by its conduct as a Society. The conceptions of Personal Security, Property, Contract, Marriage, and the like, are realized among men by their actions. Men, existing in the condition of a Society, regulate their conduct by these conceptions: they appropriate to each his Rights: for the most part they respect each other's Rights; and they constrain, expel, or otherwise punish, those who by their actions contradict these realities, or disturb the appropriation of them. The appropriation of Rights is established and declared by *the Law*; or by Custom, which is Law expressed in actions instead of words; and the Law also gives Rights validity or reality, by assigning *Punishment* to those who violate them.

83 Punishment is itself a Reality, and thus gives reality to the Rights which Laws establish. The various forms of Punishment; constraint, bodily pain, loss of possessions, exile, death; are among the most common and palpable of the real things from

which the human affections and desires recoil. And by the existence of Law, supported, when necessary, by Punishment, Personal Safety, Property, Contracts, Marriage, become things no less real than the most palpable objects of bodily desire. Through the reality of such things, human Society, instead of being a mere struggle of appetites, desires, and affections, tending to and from different quarters, is a balanced system, governed by a coherent body of Rules. And all these Rules spring, not from Desire or Affection, which know nothing of Rules, or of the terms in which Rules are expressed; but from Reason, which, apprehending Rules, directs us to right actions, as those which are conformable to the Supreme Rule; and to Rights, as the Terms in which Subordinate Rules must be expressed.

84 From what has been said, it will be seen that the adjective *right* has a much wider signification than the substantive *Right*. Every thing is *right* which is conformable to the Supreme Rule of human action; but that only is a *Right* which, being conformable to the Supreme Rule, is realized in Society, and vested in a particular person. Hence the two words may often be properly opposed. We may say that a poor man has no *Right* to relief, but it is *right* he should have it. A rich man has a *Right* to destroy the harvest of his fields, but to do so would not be *right*.

85 To a Right, on one side, corresponds an *Obligation* on the other. If a man has a Right to my horse, I have an *Obligation* to let him have it. If a man has a Right to the fruit of a certain tree, all other persons are under an *Obligation* to abstain from appropriating it. Men are obliged to respect each other's Rights.

86 My *Obligation* is to give another man his Right; my *Duty* is to do what is right (75). Hence *Duty* is a wider term than *Obligation*; exactly as *right*, the adjective, is wider than *Right*, the substantive.

We have here fixed the term *Obligation** to a narrower sense than is sometimes given to it; but it will be found most convenient to use the word in the way now defined, according to

* The term *Obligation* is so commonly used as coextensive with *Duty*, that I shall in general, when I use it in the narrower sense here defined, join with it some epithet (as *positive Obligation*, *legal Obligation*, *perfect Obligation*). I hope this phraseology will satisfy those who still

wish to have the term used with its habitual latitude. They will allow that though we are under an *Obligation* (that is, a moral *Obligation*) to practise Charity, we are under no positive, legal, or perfect *Obligation* to relieve any special needy person.

which it is a correlative to *Right*. We shall also use the participle *obliged*, with the same limitation.

87 Hence there is a difference between *obliged* and *ought*. I *ought* to do my Duty ; I am *obliged* to give a man his Right. I am not *obliged* to relieve a distressed man, but I *ought* to do so.

There are other phrases which are employed on such subjects. We speak of a man being *bound* in conscience to tell the truth, and *bound* in law to pay his debts. But when the word *bound* is used simply, it more generally refers to Duty, than to (positive) Obligation.

88 *Duty* has no correlative, as *Obligation* has the correlative *Right*. What it is our Duty to do, we must do because it is right, not because any one can demand it of us. We may, however, speak of those who are particularly benefited by our discharge of our Duties, as having a *Moral Claim* upon us. A distressed man has a *Moral Claim* to be relieved, in cases in which it is our Duty to relieve him.

89 The distinctions just explained are sometimes expressed by using the terms *Perfect Obligation* and *Imperfect Obligation* for *Obligation* and *Duty* respectively : and the terms *Perfect Right* and *Imperfect Right*, for *Right* and *Moral Claim* respectively. These phrases have the inconvenience of making it appear as if our Duties were something more imperfect than our legal Obligations ; and as if they were of the nature of Obligations to particular persons, instead of being Rules of Action for ourselves. We may, however, say that we have a *moral* Obligation wherever we have a Duty.

We must suppose Rights to exist before we can treat of Duties ; for as we have said (78), the terms which express Rights are necessarily employed in laying down Moral Rules. We must suppose the Rights of Property, and the Laws of Property, before we can lay down the Moral Rules, Do not steal, or Do not covet another man's Property.

90 Hence the Doctrine of Duties, which is *Morality*, presupposes a Doctrine of Rights and Obligations.

There is no term in the English language which denotes the *Doctrine of Rights and Obligations*. In Latin, French, and German, the same term which denotes a Right denotes also the Doctrine of Rights. Thus we say *Jus meum*, and *Studium Juris* : *mon Droit* and *l'étude du Droit* : *mein Recht*, and *die Kenntniss des Rechts*. In English, we say *my Right*, *their Rights*, but we do not use the term in the other sense. Instead of this, we employ

various phrases : thus *Jus Naturæ* has sometimes been translated, *The Law of Nature* ; sometimes, *The Rights of Nature*, *Natural Rights*, *Natural Justice*. But no one of these phrases fully expresses the Doctrine of Rights : for Rights are not Law only, nor Justice only ; (meaning by Law the Law as it exists in Society, and by Justice, that which is right), they are both Law and Justice ; Law because Justice ; Justice expressed in Law.

Hence, when we have occasion to speak of the *Doctrine of Rights and Obligations* in a single word, we shall borrow the Latin term *Jus* : and by the adjective *jural*, we shall denote that which has reference to the *Doctrine of Rights and Obligations* ; as by the adjective *moral* we denote that which has reference to the Doctrine of Duties. We have already in the English language several derivatives from the term *Jus*, in the technical sense which we adopt : as *Jurist*, *Jurisprudence*, *Jurisdiction* ; so that the word need not sound strange in our ears. *Jus* is the study of the *Jurist*. The term *Jurisprudence* has sometimes been applied by English writers to describe the *Doctrine of Rights and Obligations* in general : but the corresponding Latin Term is often written in separate words *Juris Prudentia*, a knowledge of *Jus*. It seems unreasonable and inconvenient to make the English name of this Doctrine so much more complex than its names in other languages. The word *Jus* is also implied in the word *Injury*. The words *just* and *Justice* are connected with the same root ; but by these, we express moral, not merely jural, notions.

91 *Rights*, and the difference of *right* and *wrong*, being once brought into view, there are many terms both moral and jural, which can be explained by reference to those fundamental notions. *Duties* are Actions, or Courses of Action, considered as being right. *Virtues* are the Habits of the Soul by which we perform Duties. And *Virtue*, used generally, includes all special Virtues ; as *Duty* includes all special Duties. Virtue and Duty are the objects of our Moral Sentiments (56). We approve Duty, but we esteem and admire and love Virtue. Virtue is the natural object of Love, and is in this view called *Goodness*.

Actions which are opposite to right are *Violations* of Duties, *Transgressions*, *Offenses*. As transgressions of Law, they are *Crimes*. They are of various degrees of *Guilt*. Some are *atrocious* or *heinous* Crimes : others are slighter *Offenses*, more *excusable* and *pardonable*.

The transgression of a Duty, considered as a Habit, is a *Vice* : and *Vice* in general includes all special Vices.

The sentiment of disapproval of Offenses or Vices admits of various modifications. Some vices are *hateful*, some, *despicable*: some render the perpetrator *odious*, some make him *contemptible*. Some things we more lightly *blame*, others we more strongly *condemn*, or look upon with *detestation* and *horror*.

92 The sentiments with which we regard Virtue and Vice, Virtues and Vices, Acts of Duty and Violations of Duty, are applied to the internal acts which determine the external action. Thus we speak of a *good intention*, a *laudable purpose*, a *vicious thought*.

These Sentiments are extended also to the persons who perform the acts, external or internal. Men, as well as actions, are called on the one hand *good*, *virtuous*, *praiseworthy*, *admirable*, *excellent*; on the other hand, *bad*, *vicious*, *blameable*, *abominable*, *wicked*. When men's actions are right, both they and their actions are *moral*; if the contrary, *immoral*.

Virtues and Vices have been spoken of as Habits: but they may also be considered as the results of the *Dispositions* and *Characters* of men. Considered as a Disposition, Vice is *Depravity*, or *Wickedness*.

93 The consideration of Virtue and Vice, with reference to Religion, will come before us in a succeeding part of this work. But we may here remark, that Virtue, which is conformable to the Supreme Law of our Nature, is the *Will of God*, the Author of our Nature. Hence, the Law of Duty is the Command of God.

Transgressions of Duty, considered as Offenses against God, are *Sins*. God upholds the Law of Duty by Rewards and Punishments, which are assigned to the Souls of men (65).

94 Rights, as we have said (82), are established in Society by the Law; that is, in each Society by the Law of that Society. When this Law is not merely a Rule, tacitly understood and naturally growing into being, but expressly declared and really enforced, it is termed *Positive Law*, in distinction from *Natural Law*, or *the Law of Nature**. Society when it thus declares and enforces Laws, acts as a *State*; not merely as an assemblage of individuals, but as a Collective Agent. A state has an organization by which it acts. It has a Government, Tribunals, stated modes of action. It has Governors, Magistrates, Judges, Executive Officers, and all requisite provisions for the Administration of the Law. When

* I do not mean here to imply that there is any special body of Law which deserves to be called *the Law of Nature*.

need arises, in consequence of men's actions, and transactions one with another, a man charged with a crime is *apprehended*; or of two persons who allege conflicting Rights, one institutes a *Suit* against the other. The case is brought before a *Court* or *Tribunal*, in which the Judge takes cognizance of such matters; and is tried. *Evidence* is adduced: *Witnesses* are heard. The accused man is found *guilty*; or is *acquitted*, if it do not appear that he is guilty. Between the two contending parties *Judgment* is given. The *Sentence* of the Court is carried into effect. And thus, Rights are realized, and Remedies are provided for Wrongs.

CHAPTER V.

IMMUTABLE MORALITY AND MUTABLE LAW.

95 IT has been stated (78) that Moral Rules must be expressed by reference to Men's Rights; and thus they necessarily depend upon Rights actually existing. Further, it has been stated (94) that Men's Actual Rights are determined by Positive Law; Men's Rights in each Community are determined by the Positive Law of that Community. But the Laws of Different Communities are different; and the determination of Men's Rights by various States are various. Personal Security, Property, Contract, Marriage, are regulated by very different Rules in one State, and in another. Private War, Slavery, Polygamy, Concubinage, have been permitted by the Laws of some States; and many other practices which are forbidden by our Laws. And it seems to follow from this, that Morality which depends on the Laws, must prescribe different Rules, in the States in which such practices are permitted, and in those in which they are forbidden.

But on the other hand, we have shown (66—68) that Moral Rules exist necessarily; that they are necessary to the action of man as man; and that they result necessarily from the possession of Reason. From this it seems to follow, that moral Rules must be necessary truths, flowing from the moral nature of man; and that therefore, like other necessary truths, they must be universal and unchangeable. And accordingly, Moralists have constantly spoken of Morality as a body of fixed, immutable, universal Truths.

How are these two opposite doctrines to be reconciled?

96 They are thus reconciled. The *Conceptions* of the fundamental Rights of Men are universal, and flow necessarily from the Moral Nature of Man : the *Definitions* of these Rights are diverse, and are determined by the Laws of each State. The Conceptions of Personal Safety, Security, Property, Contract, Family, exist everywhere ; and man cannot be conceived to exist as a moral being, in a social condition, without them. The Rules by which Personal Safety, Property, Contract, Families, are maintained and protected, are different in different Communities, and will differ according to the needs and purposes of each Community. The Rules of Morality are universal and immutable, so far as they are expressed in terms of these Conceptions in their general form : it is always our Duty to respect the Personal Safety, the Property, the Contracts, the Family Ties, of others. But if we go into those details of Law by which these conceptions are in different Communities differently defined, the Rules of Morality may differ. In one country the wayfarer may morally pluck the fruits of the earth as he passes, and in another he may not ; because when so plucked, in one place they are, and in another they are not, the Property of him on whose field they grew. The Precept, *Do not steal*, is universal ; the Law, *To pluck is to steal*, is partial.

97 All Truths include an Idea and a Fact. The Idea is derived from the mind within, the Fact from the world without. In the instance of Rights, of which we are now speaking, the Idea, or Conception of the Right, is supplied by our consciousness of our Moral Nature and its Conditions ; the Fact, or Definition of the Right, is supplied by the Law of the Society in which we live, and the train of events which have made that Law what it is. The Moral Nature of Man is moulded into shape by the History of each Nation ; and thus, though we have, in different places, different Laws, we have everywhere the same Morality.

98 The existence of Rights gives rise to a *Sentiment of Rights*, and a *Sentiment of Wrongs*, which may be arranged with the Moral Sentiments among our Springs of Action. Rights, as we have seen, procure and secure to us the gratification of certain Desires and Affections. These gratifications become more important in our eyes, by being permanent and stable possessions ; which we hold, not only without fear of interruption, but with the consent and sympathy of all mankind. And with this affection for our own Right, grows up an affection for Rights in general. We see with complacency and sympathy the manifestations of this

regard for Rights in others. We recognize it as a sentiment which binds us to all men, and all men to us.

99 Also, Rights being established, Wrongs, the violations of these Rights, excite a stronger feeling than the mere privation or interruption of our gratifications. Rights, being assigned to each person by Rules to which the common Reason of mankind assents, we resent the violation of these Rights, not only as an assault upon an individual, but as an aggression upon all mankind. When we receive a Wrong, we know that we have with us the resentment of all our fellow-men, at the infraction of a Rule which all acknowledge. We entertain our resentful emotions with complacency: they become strengthened and rooted, by this conviction of general sympathy. The anger which we feel, is no longer the impulse of our own individual feelings: it is an affection of the common heart of mankind. We not only entertain our wrath, we cling to it as something good, and admire it as something laudable. We deem our indignation to be virtuous.

100 This Sentiment of Wrongs, along with the Sentiment of Rights, operate powerfully in supporting Rights, when they are once established, and in maintaining that peace and order of Society, which are the proper atmosphere of man's moral nature. For these sentiments give force and energy to the exertions with which men resist any violation of established Rules; and they fill with fear and shame those who know themselves to be violators of such Rules. The man who has Rights on his side, is bold and vigorous; he who is a conscious wrong-doer is, by that very circumstance, deprived of courage and energy. Men will not willingly expose themselves to the indignation, as well as resistance and punishment, with which the perpetrators of Wrongs are received; and thus rights are, for the most part, observed, and treated with respect.

101 These, which may be called *Jural Sentiments* (90), are the germs of Moral Sentiments, of a larger and deeper import. The Sentiment of Indignation against Wrongs, when expanded and unfolded by habitual thought, leads us to the condemnation of all dispositions which tend to produce Wrongs. All such dispositions are disapproved of, as immoral. In like manner, the Sentiment of Rights, when extended and unfolded by the thoughts of what is due to others, as well as to ourselves, produces a Sentiment of Obligation, and hence a Sentiment of Duty, or, as it is often termed, a *Sense of Duty*. And this Sense of Duty, and Condemnation of immoral Dispositions, are important parts of our Moral Sentiments.

102 Man, recognizing Moral Rules as the necessary conditions of his being (67), and recognizing Punishment as a necessary means of giving reality to such Rules (83), recognizes himself as liable to Punishment for transgression of Moral Rules. Even before he learns what the consequences to himself of transgression will be, he knows that he is exposed to those consequences, whatever they may be. He must *answer* for his actions, when the demand is made by real authority; he is *responsible*. If his actions are condemned, the results of the condemnation fall upon him. On the other hand, if his actions are approved, the results of the approval belong to him. He *deserves* these results, whatever they may be. And thus he has a *Sense of Responsibility* and a Sentiment of the *Merit* and *Demerit* of Actions.

103 When man has distinguished actions in general, according to their Moral Character, as good or bad; and has assigned to them Merit or Demerit; he must, in order to apply these distinctions, judge of particular actions, and determine to which moral class they belong. His judgments, both in the adoption of Moral Rules, and in the application of them to particular actions, must be formed by the use of his Reason. By the use of his Reason, dealing with all the elements of the human constitution within him, and the world without him, he is led to *Convictions*, both as to Rules and as to Facts; both as to what has been done, and by whom, and what is its Merit or Demerit.

104 The Moral Sentiments are further unfolded and expanded by action, habit and thought. And this process is the *Moral Cultivation* or *Moral Education* of Man. This Cultivation and Education depend upon various conditions, and are promoted or extended by various causes. Among these, we may notice the influence of one man upon another, in affecting his Moral Sentiments, or the application of them to actions. We have already spoken of the influence exercised by the parents upon the child, in educating his moral nature (47). But in many other ways, as well as in this, men exercise an influence in modifying each other's Moral Sentiments and Convictions. Men may, by speaking, by writing, by all the modes of the intercourse of life, direct the course of other men's thoughts; and thus affect their judgment of what is right and what is wrong, and their feelings with regard to actions and persons. And the exercise of such influence, by one man upon another, is an important kind of Action; and one for which the Agent is responsible, as well as for any actions which directly affect his primary Rights.

105 Virtues are, as we have said (91), the Habits of the Soul, or the Dispositions of the Soul (92) by which men perform Duties: and it is their being thus Habits and Dispositions of the Soul which gives them their peculiar moral character: the Soul being, as we have said (65), that central unity of man's being in which all the elements of human action, affection, desire, thought, will, purpose, operate upon each other and are operated upon by external causes; for instance, by such Moral Cultivation and Moral Education as have just been mentioned.

Moral Cultivation and Moral Education, whether produced by internal activity or by external influence, tend to produce in the Soul a conformity, actual and habitual, to the Supreme Rule of Human Action: they tend to make men do and feel on each occasion, what is right, and direct them to an internal Rightness. But what it is on each occasion right to do and to feel:—what is the description of habitual and internal Rightness, are points which require to be further explained: and this is the object of the following Books.

NOTE. We have already seen (79) that the expression of the Supreme Rule of Human Action must involve, among other terms, *Rights*. We have also seen (80) that there are five primary kinds of Rights:—the Rights of the Person, of Property, of Contract, of Marriage, and of Government. Further, we have seen (96) that though these Rights, as general Conceptions, are necessary and universal conditions of Human Action; the Definitions of each Right in each particular Community is given by the Law of that Community; which Law is determined by historical events as well as by moral con-

siderations. In the first edition of this work, examples of such Definitions of Rights were given, by collecting from the Roman and from the English Law, the Rules which have been established by Legislators, by Custom, and by Jurists, concerning each of the five kinds of Rights, —those of the Person, of Property, of Contract, of Marriage, and of Government. This summary of positive Law is however not necessary for the moral discussions to which we have now to proceed: and may be reserved till, having established our moral doctrines, we are ready to examine what Laws *ought* to be.

BOOK II.



MORALITY.

OF VIRTUES AND DUTIES.

BOOK II.

MORALITY.

OF VIRTUES AND DUTIES.

CHAPTER I.

OF MORAL PRECEPTS.

106 BY the constitution of our human nature, we are necessarily led to assume and refer to a Supreme Rule of human action; and to conceive human actions, our own and those of other men, to be absolutely right, when they are conformable to this Rule. In order that such a Rule may have a definite form in human Society, men must have Rights; and must also have their Obligations, corresponding, in each man, to the Rights of others. The real existence of Rights and Obligations is a condition requisite for the definite application of the Supreme Rule of Human Action: for, by the existence of Rights and Obligations, the objects of human desire and affection assume such a general and abstract form, that they may be made the subjects of Rules of Action. These points have been discussed and established in the First Book.

The Rights and Obligations which really exist among men are regulated by Laws, or Customs equivalent to Laws. Such Laws, the definitions of Rights and Obligations in each community, are determined in each community by its history (97); and may be, and are different in different communities. But in every community such Laws or Customs must subsist, and must define men's Rights and Obligations. Especially they must define the

five primary kinds of Rights of which we have spoken (80) ; Personal Security, Property, Contract, Marriage, and Government. These Rights, defined and realized by Law and Custom, are primary and necessary elements and conditions of human action. It is in his doings with regard to these things, that a large part of a man's external actions consists. And Morality, which treats of actions (76), must have a reference to these, the conditions and elements of action.

But Morality regards other elements as well as those to which Law refers. Laws regard external actions only. But external actions are the result of internal actions, namely, of Will and Intention, of Mental Desires and of Affections. These internal actions are essential parts of external actions, considered as human actions ; or rather, these internal actions, Desire, Affection, Intention, Will, are the only really human part of actions.

External actions, as the motions in our own limbs, and the motions and changes thereby produced in material things, and in the state of other persons, are not *our* actions, except so far as they are the consequences of *our* intention and will (61). When we have willed, what follows is a consequence of Laws of Nature, extraneous to us ; and derives its character of right or wrong, so far as we are concerned in it, from the Will, and that which preceded the Will. Thus, if I fire off a pistol and kill a man, his pain and death, the grief of his friends, the loss to his family and his country, all follow as the consequence of the act of Will by which I pull the trigger. They are all morally included in that act of the Will. All those consequences are produced by the working of the Springs of Action within me. They may all be prevented by the operation of other Faculties, withholding me from this act of Will. Hence the Will, the Springs of Action which impel it, and the Faculties which control and direct it, must be the main subjects of our consideration, in treating of actions as right and wrong.

Will, Intention, Desire, Affection, are governed, not merely by external objects and by transient impulses, but by Habits and Dispositions, which give a permanent character to the operation of the Springs of Action and of the controlling Faculties.

107 The Reason is the Faculty by which we conceive General Rules, and Special Cases as conformable to General Rules (14). It is therefore the Faculty by which we conceive Actions as right or wrong. The Moral Sentiments, Approval of what is right, Condemnation of what is wrong, are powerful Springs of

action (82), and thus impel us to carry into effect the judgments formed by the Reason. When we intentionally conform to the Supreme Rule, we speak of our actions as rightly directed by our Reason.

Actions to which we are rightly directed by our Reason are *Duties*. The Habits and Dispositions by which we perform our Duties are *Virtues*. Morality is the Doctrine of Duties and Virtues.

108 The internal actions, Desire, Affection, Intention, Will, point to external Acts; they have external acts for their Objects, and derive their character and significance, as right or wrong, from the external Acts to which they thus point. Thus the Desire of Having leads to Acts of appropriation, and derives its character, as right or wrong, from the Acts of appropriation to which it points. Hence, if this, or any other internal Act, point to external Acts of which the character, as right or wrong, is already determined; these internal Acts have, generally, their characters as right or wrong determined. If the Desire of Having point to the Act of Stealing, which Act is wrong; the Desire itself is wrong. For, as we have already said, it is the internal Springs of Action from which the Act derives its character of wrong. If it be wrong, it is so because the Desire and Intention which produce it are wrong.

The character of actions as right or wrong, considered with reference to the internal Springs of Action from which they proceed, is their *Moral* character. See (76).

Morality, as we have seen (78), presupposes a state of human society in which positive Rights exist; and moral Rules must be expressed, at least in their first and general form, in terms which have reference to positive Rights. As a primary and general Rule, the violation of positive Rights is morally wrong. And thus the Moral character of actions, as expressed in general rules, is governed by their jural character. To steal is jurally wrong; it is contrary to universal natural Law. Hence the Volition which aims at theft is morally wrong. The Intention which points to theft is also morally wrong. The Desire of that which belongs to another is morally wrong. These internal acts are wrong, even if the external act do not take place. It is wrong to put my hand in a man's pocket in order to pick it, even if I find nothing there. It is wrong to intend to do so, even if I am prevented making the attempt by the presence of a looker-on. It is wrong to desire another man's money, even if I do not proceed to take it.

109 As there are Laws, which express Rules of external action, there are also *Moral Precepts*, which express Rules of internal action; that is, of Will and Intention, of the Desires and Affections. Thus the Law is, *Do not steal*; the Moral Precept is, *Do not covet*, or *desire* what is another's.

Such Moral Precepts express our Duties. They may be put in various forms. Thus the Precept, *Do not covet*, may be expressed by saying, *It is wrong* to covet; *We ought not* to covet; *We must not covet*; *We should not covet*; *We are not to covet*; *It is our Duty not* to covet; *We are morally bound not* to covet; *We must not be guilty* of covetousness.

110 I have said (108) that Moral Rules must be expressed, *in their first and general form at least*, in terms of positive Rights. The limitation is introduced because Laws, the positive definitions of Rights for the moment, may be themselves immoral. Rights, as we have described them (78), are arrangements not only historically established, but also established in conformity with the supreme Rule; that is, they are such as are right. The actual definitions of Rights at any moment, that is, the state of the Law, may need improvement and reform: but in general, the Law gives, for the moment, the definitions of Rights upon which Morality must proceed.

The distribution of Rights into the five kinds which we have mentioned, was founded mainly upon the enumeration of the principal Desires and Affections of our nature. The Moral precepts must also have reference to these our principal Springs of Action: and therefore we shall have Moral Precepts corresponding to each of the Classes of legal Obligation. Hence we shall have Precepts of Duty corresponding to each of the Classes of Rights of which we have spoken (80).

Thus there are Rights of the Person, and a corresponding Class of Obligations. We are bound by Law to abstain from inflicting any personal harm on any one through anger, malice, or negligence. We are therefore bound morally to abstain from the affections which aim at any such harm, and the habits of mind which lead to it. It is our Duty to avoid Anger, Malice, and the Carelessness which may lead to another's hurt. The Moral Precepts are; *Be not angry with any man*: *Bear no Malice*: *Neglect no one's safety*.

There are the Rights of Property, and a corresponding Class of Obligations. We are bound by Law not to meddle with the Property of another; nor to take or appropriate what is not our own.

We are morally bound to abstain from the Intentions and Desires which point to such appropriation. It is our Duty to avoid the Wish to possess what is another's. The Moral Precept is, Do not-covet.

There is a Class of Obligations which regards Contracts and Promises. We are bound by Law to perform our Contracts; not to break our Engagements. We are morally bound not to wish to break our Engagements. And as the moral obligation is not confined by mere legal limits, we are morally bound to perform our engagements, whether or not they are legally valid as Contracts. It is our Duty to perform our Promises: not to deceive or mislead any man by our words. The Moral Precepts are, Do not break your word; Do not deceive.

There is a Class of Obligations which regards the Marriage Union. We are bound by Law not to meddle with the person, or seduce the conjugal affection, of her who belongs to another. There is a Class of Duties which regards the Desires and Affections on which this Union is founded. We are morally bound not to allow these Desires and Affections to point to unlawful objects. The Moral Precept is, Do not lust after her.

There is a Class of Obligations which regards the Governors and the Government of the State to which we belong. We are jurally bound to obey the Governors, and to conform our actions to the Law. We are morally bound to conform our Desires and Intentions to the Law. It is our Duty to submit to positive Laws, as the realization and definition of the Supreme Law. The Moral Precepts are, Do not desire what the Law forbids. Do not desire to violate general Laws.

The Moral Precepts just stated: Be not angry: Bear no malice: Do not covet: Do not lie: Do not deceive: Do not lust: Do not desire to break Law: are to be applied to the whole train of our affections, desires, thoughts, and purposes, and to the whole course of actions, internal and external, which make up our lives. By their application to the various circumstances of human character and condition, the Classes of Duties, thus pointed out, are further particularized and defined.

CHAPTER II.

OF THE *IDEA* OF MORAL GOODNESS.

111 As we have just seen, the Precepts of Morality, so far as they have a proximate bearing upon external actions, admit of a distribution corresponding to the classification of Rights, because both Moral Precepts and Rights have a reference to the primary Springs of Action, the Desires and Affections. So suggested and arranged, the Moral Precepts point out certain Conceptions which we are to avoid; Anger, Malice, Covetousness, Lying, Lust, Law-breaking.

But this reference of actions and dispositions to external things is not the most essential element of Morality. Morality implies a reference to the Supreme Rule of Human Action, as well as to the social and material circumstances of man's being. External Rights are the conditions and boundaries, Rightness in the Soul is the source, of Morality (105).

And this Rightness in the Soul includes a Rightness in all the Dispositions and Habits therewith connected; not in those only which have a proximate bearing upon external actions; but in internal actions, thoughts and emotions, as such; and in all that discloses or affects the condition of the Soul. Men have an Idea of Rightness in the Soul and the Dispositions therewith connected, as *Goodness*, or *Virtue*.

The Idea of Goodness or Virtue grows up in men's minds, and grows more and more distinct, as they consider their relation to the Supreme Rule of Human Action. By such consideration, they are led to see that all their actions ought to be regulated by Virtue and Duty; that their Intentions, Dispositions, Affections, Habits of Thought and of Feeling, ought also to be regulated and formed by Virtue and Duty, inasmuch as these also are actions; and that the complete Idea of Virtue or Goodness implies such a regulation and formation of the whole internal being of man.

112 Moreover men, as they consider the relation of the Supreme Rule of Action to the various Affections and Desires which belong to man's nature, and to the material and social conditions of his existence, are led to see that the idea of Virtue or Goodness in general involves several separate Virtues, as Benevolence, Justice, Veracity, and the like.

113 Also, any special Virtue implies a Class of Duties; and a Class of Duties may be enjoined by a Precept or Principle, having reference to the internal Springs of Action which are to be guided, or the external conditions which are to be regarded. And thus, the separate Virtues, which are implied in the full Idea of Virtue, may be represented by certain comprehensive Maxims or Principles of Duty, all of which must necessarily form portions of the Supreme Rule of Human Action.

In order that we may be led to discern the principal Virtues, and the corresponding Principles by which they are represented, let the following considerations be attended to.

114 Goodness or Virtue, considered as a Law of Action and Dispositions therewith connected, must be a Law which belongs to man as man; a Disposition in which all men can sympathize, and which binds man to man by the tie of their common humanity (70). We must exclude all that operates merely to separate men; for example, all Desires that tend to a center in each individual, without any regard to the common sympathy of mankind; all Affections which operate directly to introduce discord and conflict; all dispositions which disunite men and prevent their acting with mutual understanding and confidence.

115 Goodness or Virtue cannot consist in the mere gratification of Bodily Appetite, without any regard to Affection or the Mental Desires: for the gratification of the Bodily Desires, as eating or drinking, being a mere bodily act, can have no relation to the Supreme Rule, except so far as there is a chain which connects them through the Affections, Mental Desires, Rights of other men, and the like.

116 Nor can Goodness or Virtue consist in the mere gratification of the Affections, without regard to the Moral Sentiments and the Reason, which recognize Legal or Moral Rules. For the Affections, in so far as they have no regard to the moral Sentiments and the Reason, are attributes which we have in common with brute animals, and cannot have any relation to the Supreme Law of Human Nature. It is only when Love and Anger recognize the difference of right and wrong, that they can form any part of Virtue.

117 Goodness or Virtue implies not only an actual conformity to a Rule consistent with the Supreme Rule, but also a Love of Virtue, as good, and a Love of such Rules, existing in the mind; so far at least as, in each mind, such abstract affections have been developed. Goodness implies the develop-

ment of such affections,—the Love of Good as Good, and the desire to advance towards it as the ultimate and only real object of action.

From these general modes of conceiving Goodness or Virtue, joined with what has already been said, we may fix upon the principal separate Virtues included in the general Idea of Virtue or Goodness, and may state the corresponding Moral Principles.

118 Since Virtue or Goodness must be (114) a Law and a Disposition which binds man to man by the tie of a common humanity, and excludes all that operates merely to separate men, all affections which tend to introduce discord and conflict: it excludes malice and anger, as we have said (110), and directs us to Mildness and Kindness. The absence of all the Affections which place man in opposition to man, and the aggregate of all the Affections by which man clings to man, may be expressed by the term *Benevolence*, understood in the largest sense. Men feel, in the first place, the kinds of this Affection which operate within certain limited spheres. We feel and conceive the Affection of Love at first, as binding together the members of the same Family, or the same Community: but man is capable of extending his Love to all mankind; in proportion as there is unfolded in his mind, the conception of the community of the nature of all men with his own nature;—the conception of the common affection, reason, and moral sentiments in which all men participate. With the developement of this conception, he is led to a love of man as man, and a desire for the good of all men;—an affection which conforms to our Idea of a Virtue (114); for it is an affection in which all mankind are ready to sympathize, and which binds together man as man.

This Affection, then, of Love to man as man, is one of the Virtues the Idea of which is included in the complete Idea of Virtue, or Goodness.

And the part of the Supreme Rule which belongs to this Virtue (113) may be expressed by saying that *man is to be loved as man*.

119 Again, in the Idea of complete Goodness or Virtue, we must exclude, as we have said (114), all Desires that merely tend to their center in the individual, without regard to the common sympathy of mankind: and we must have a habit of mind which suppresses and contradicts all such Desires. The Desire of Property is, in its original form, of this selfish kind. Each man desires Property for himself alone. But the nature of Morality, as

we have seen (110), rejects this selfish covetousness, and points out the contrary dispositions, for instance, Liberality and Fairness, as the proper guides of Action. Liberality partakes of Benevolence, and thus is partly included in the last Article; but Fairness involves the notion of another Virtue, which may be described as the Desire that each person should have his own. This Desire, in a complete and comprehensive form, is the Virtue of *Justice*: and this Virtue, Justice, is a second part of the complete Idea of Virtue and Goodness.

And the part of the Supreme Rule which belongs to this Virtue (113) may be expressed by saying that *each man is to have his own*.

120 Again; among the necessary conditions of a Rule of Human Action, is the existence of a Common Understanding among men, such that they can depend upon each other's premeditated and predetermined actions. Lying and Deceit tend to separate men; and to make all actions implying mutual dependence, that is, all social action and social life, impossible. Such acts and habits are accordingly excluded by Moral Rules, as we have seen (110), and Veracity and Honesty are pointed out as the proper guides of Human Action. And if we conceive these qualities in their most complete form, as extending from the acts to the words, and from the words to the intentions, and from the intentions to the dispositions, we are led to a conception of a Virtue of Character which we may term *Integrity*, as implying an entire correspondence of external and internal acts; or we may term it *Truthfulness*, as implying an agreement of the words with the thoughts. We may also speak of this Virtue as *Truth*; and such a Virtue we necessarily consider as a part of the complete Idea of Virtue.

The part of the Supreme Rule which expresses the claim of this Virtue, is this: *We must speak the truth*: which may be farther unfolded, by reference to the origin of the principle, in this manner: *We must conform our language to the universal understanding among men which the use of language implies*.

121 Again; the Appetites and Desires, so far as they are not controlled by the Affections and Mental Desires, and the Affections, so far as they are not directed by the Moral Sentiments and the Reason, cannot belong to Virtue. We have already noticed Moral Precepts directed against one of the bodily desires, when not thus controlled: but in looking at this class of the Springs of Action in reference to the Idea of complete Virtue and Goodness,

we are led to a more comprehensive aspect of the Virtue which has reference to them. Since the bodily Desires are, in the order of Morality, subordinate to the Affections (115), and the Affections subordinate to the Moral Sentiments and the Reason (116), we may, speaking comparatively, call the bodily Desires the *Lower Parts*, the Moral Sentiments and the Reason, the *Higher Parts* of our Nature. And the Idea of Virtue requires that, in general, the Lower Parts of our Nature should be subject to the Higher. The control of the Appetites by the Moral Sentiments is recommended to us under the form of the Virtues of Chastity and Temperance : but the Virtue which carries the control of the Higher over the Lower Parts of our Nature deeper into the heart and soul, is more properly termed *Purity*. And hence, we place Purity as one element of the complete Idea of Virtue or Goodness.

And the part of the Supreme Rule which expresses the claim of this Virtue is this: *the Lower Parts of our Nature are to be governed by the Higher.*

122 Again ; the Supreme Law of Human Action, in order to operate effectively upon men's minds, must be distinctly and definitely conceived, at least in some of its parts and applications. But all distinct and definite conceptions of Laws of Human Action must involve a reference to the relations which positive Laws establish. Hence Moral Rules, in order to be distinct and definite, must depend upon Laws ; and must suppose Laws to be fixed and permanent. It is our Duty to promote, by our acts, this fixity and permanence : and the Duty, of course, extends to our internal actions, to Will, Intention, Desire and Affection, as well as to external act. We must conform our Dispositions to the Laws ; obey the Laws cordially, or administer them carefully, according to the position we may happen to hold in the community. This disposition may be denoted by the term *Order*, understood in a large and comprehensive sense. But further : not only positive human Laws, but subordinate moral Rules, are necessary conditions of morality. We cannot conform our actions, intentions, desires, to the Supreme Rule, without having in our thoughts subordinate Rules, which are partial expressions of the Supreme Rule ; and to such subordinate Rules, it is our Duty to conform our Intentions and Desires. The disposition to do this may also be included in the term *Order*, taken in its largest sense. We thus denote, by this term, a disposition to conform, both to positive human Laws as the necessary conditions of this, and to special Moral Rules, as the expression of the Supreme Rule.

The Virtue of *Order* in this comprehensive sense, is part of the general Idea of Virtue or Goodness.

And the corresponding part of the Supreme Rule is: *We must accept positive Laws as the necessary conditions of Morality.*

123 Thus we have five Virtues, Benevolence, Justice, Truth, Purity, and Order, which may be considered as the elements or aspects of the complete Idea of Virtue or Goodness, or as the Cardinal Points of the Supreme Rule of Human Action.

If we look for the origin of this fivefold division of Virtue, we shall find that, we may say, in a general manner, without pretending to any great precision, that it depends on five elements of our nature: Love, Mental Desires, Speech, Bodily Appetites, and Reason. *Benevolence* gives the utmost expansion to our *Love*; *Justice* prescribes the measure of our *Mental Desires*; *Truth* gives the law to *Speech* in its connection with purpose; *Purity* controls the part of our nature connected with the *Bodily Appetites*; and *Order*, engages the *Reason* in the consideration of Rules and Laws by which Virtue and its opposite are defined.

124 There is also a relation of approximate parallelism between the five classes of Rights which we have established (80). *Benevolence* is the opposite of those dispositions which tend to Violence and wrongs against the *Personal Safety* of our neighbours; *Justice* enjoins the most exact regard to the Rights of *Property*; *Truth* extends to all uses of language, the rules which the Law lays down for *Contracts*; *Purity* carries to the highest point the Moral View of *Marriage*; and the Virtue of *Order*, as we contemplate it, consists mainly in a regard for the Rights of *Government*.

125 But the exactitude of this fivefold division is not an essential point, if it be allowed, as I think it cannot be denied, that Benevolence, Justice, Truth, Purity, and Order, are, in the abstract, and when the contemplation of them is not perplexed and obscured by the circumstances of special cases, admired, esteemed, and loved by all men who distinguish between right and wrong; and allowed by all to be main elements in that notion of *Goodness* which all mankind admire, esteem, and love.

126 Benevolence, Justice, Truth, Purity, Order, have been considered as Dispositions in man. But these Dispositions may be conceived as Desires or Affections, tending to certain abstract mental Objects or Ideas. Thus, Benevolence is a Desire or Affection which has for its Object the Good of all Mankind. This object may be expressed by the term *Humanity*. *Humanity*,

which is thus the ideal object of Benevolence, is also a term used to describe the disposition itself, as it exists in man, who is the subject of this affection. We have thus an *objective* and a *subjective* Humanity. In like manner, *Justice* is a Desire which has for its Object the Rule, To each his own. This Rule is itself described as *Justice*, ("I ask for Justice"); and thus we have *subjective Justice*, the Disposition, and *objective Justice*, the Rule. In like manner, *Truth*, the Disposition as it exists in man, its *Subject*, assumes and tends to an *Objective Truth*, the agreement between the reality of things and our expressed conceptions of them. *Purity*, the Disposition, has for its *Object* an *Ideal Purity*, free from all blemish and taint of mere desire. Willing conformity to Law, which is *subjective Order*, has, for its Object, *Law* itself, which may be described as *Objective Order*. Thus, some of the most common and familiar abstract terms, *Humanity*, *Justice*, *Truth*, *Purity*, *Order*, are used to describe both subjectively, the Disposition, and objectively, the Idea to which it tends.

127 There are, however, other terms by which the two significations of each of these words is separately expressed. Thus, as we have seen, subjective Humanity is *Benevolence*; objective Humanity is the Good of all Mankind, the Welfare of Man, and the like. Perhaps one of the most usual modes of describing the object of Benevolence, in its largest sense, is to say, that it is the increase of *Human Happiness*. Justice is used with equal familiarity for Subjective Justice, the Disposition, and Objective Justice, the Rule. Subjective Truth is called *Truthfulness*, *Veracity*; and under certain conditions, *Faithfulness*, *Fidelity*. Special portions of objective Truth are *Truths*: and are also termed *Verities*. *Purity* in its subjective sense may be distinguished, as *Purity of heart*, from *Purity* used objectively, as when we speak of the *Love of Purity*. Subjective Order is *Orderliness*, *Obedience*, or, as we have said, willing *Conformity to Law*: Objective Order is *Law*, *Rule*, which includes Special Laws and Rules, as Truth includes special Verities.

128 These five terms, in their Subjective Sense, *Benevolence*, *Justice*, *Truth*, *Purity*, *Order*, are dispositions conformable to the Supreme Law of Human Action: they are Virtues (107). And inasmuch as they are the leading points to which we have been led, by our analysis of human springs of action, and human obligations, we may term them *Cardinal Virtues*; although they are different from the list of Cardinal Virtues as usually given, *Temperance*, *Fortitude*, *Justice*, and *Wisdom*. This latter list is too unphilosophical a division to be employed with any advantage in

Morality. But the Virtues which have names in common language, are all conceived as Virtues, in consequence of partaking of one or more of our five Cardinal Virtues, Benevolence, Justice, Truth, Purity, and Order; and we may arrange the Virtues in general according to their affinity with these five.

129 We are not to conceive these Virtues as distinct and separable, but rather as connected and combined in a fundamental and intimate manner. Thus, we have already mentioned moral qualities which partake of more than one, as *Liberality* partakes of Benevolence and Justice: *Honesty*, of Justice and Truth. And all these dispositions, Benevolence, Justice, Truth, Purity, Order, may be conceived to be included in a *Love of Goodness*. The disposition enjoined by the Supreme Law of Human Action is the Love of Moral Good as Good, and the desire to advance towards it as the ultimate and only real object of action (117). To this object, all special affections, all external objects, and the desires of such objects, all intercourse of men, all institutions of society, are considered as subordinate and instrumental. And thus, this Love of Good includes, excites, nourishes, and directs to their proper ends, those more special Affections and Dispositions of which we have spoken.

In order to describe the character and conduct conformable to the Supreme Rule, we may speak of it as the character and conduct of a *good man*. That is right which a good man would do.

Those are right affections which a good man would feel.

130 The opposite of Virtue, or the want of it, is *Vice*: and the language of all nations supplies us with a long list of Virtues, arising from the combination of the Cardinal Virtues with the various springs and conditions of human action, and of the antagonist Vices. These names of Virtues and Vices are Abstract Terms, and have Adjectives connected with them, by which the varieties of human character and disposition are familiarly designated. The limits of Virtue and Vice, however, are far from being manifest and obvious. It is often very difficult to say where Virtue ends, and where Vice begins. To define such limits, when it is possible, must be our business, when we come to treat of Questions of Duty. But it is necessary for us to employ the names of Virtues and Vices in a general and usual sense, before we thus attempt to define their limits. The names of Virtues and Vices are the Vocabulary of Morality; and of this Vocabulary, we shall give a brief account; arranging the Terms, as we have said, according to their affinity with the Five Cardinal Virtues.

CHAPTER III.

VIRTUES AND VICES.

1 *Virtues of the Affections.*

131 BENEVOLENCE is the Virtue of the Affection of Love. This Affection is variously modified, according to the persons to whom it is directed, and the accompanying circumstances. Thus there is Conjugal Love, the Love of Husband and Wife; Parental (Paternal and Maternal) Love; Filial Love; Fraternal Love, and other kinds of Family Affection; Friendship, the Love by which Friends are especially drawn to each other; our Love of our Fellow-Citizens; of our Fellow-Countrymen; finally, the Love which we bear to the whole Human Race and to every member of it. All these Kinds of Love are Springs of Action, and Sources of Emotion, which it is the business of Morality, not to resist and destroy, but to govern and direct. When these natural Affections are directed to their proper objects, and regulated by Reason, they are *virtuous* Affections. Those in whom they are wanting are blamed as *without natural affection*. They are all included in the general term, *Benevolent Affections*. They are spoken of figuratively as the *Heart*. A man's *heart is hard*, or *cold*, when these affections are feeble and dull in him; he is *warm-hearted*, when they are strong; and *openhearted*, when they are readily bestowed on those around him.

132 Benevolent Affections are called *kindly* affections, for they knit us to our Kind, the Human Race. Hence *kind*, the adjective, describes the disposition of a person full of such affections. A man is *estranged* from his friends, when those affections cease; he is *unkind*, when the opposite prevail; he is *unsocial*, when he shuns the occasions of kindly intercourse with companions.

When a benevolent affection turns our attention upon its object in a tranquil manner, it is *Regard*. *Love* is the affection in a more marked form. It is *Tenderness*, when it implies a sensitive and vigilant solicitude for the good of its object; *Fondness*, when it absorbs the thought, so that Reason is disregarded. When this is the case, the affection is no longer a virtue: still less is it so, when Love becomes *doting*, *overweening*, *passionate*.

Love towards a person, growing out of good received from him, is *Gratitude*. A grateful person expresses his emotions in Words, which are *Thanks*; but he is also desirous of doing Acts of gratitude; of returning Good for Good. Gratitude is a natural and virtuous Affection; but the Acts which it prompts must be limited by Rules of Duty. A man who does what is wrong in return for benefits received, makes his Benefactor the director of his actions, instead of directing them himself, as Morality requires. Hence he is said to *sell himself*; and to be *venal*.

133 The manifestations of the benevolent affections, in their influence upon the habitual external Behaviour, have various names. Such affections, regarding a particular person, and not necessarily leading to action, are *Good-will*. When they produce a current of cheerful thoughts, they are *Good-humour*. When benevolent feelings lead a man to comply readily with the wishes of others, or to seek to give them pleasure, we have *Good-nature*. When this Disposition is shown on the part of a superior, we term him *gracious* and *benign*. When a person's Good-nature makes it easy to address him, he is *affable*. If, in his behaviour, he avoid all that may give offense to others, he is *courteous*. This Disposition is conceived to have generated in the inhabitants of cities, Habits of behaviour which are termed *Urbanity* and *Civility*. The opposite of these is *Rudeness*.

134 Good-humour may often be disturbed by the Provocations which offenses and outrages occasion; but there are virtuous Dispositions which support our benevolence under such provocations. Such dispositions are *Gentleness*, *Mildness*, *Meekness*. Under the influence of these, we repress or avoid the resentment and anger, which offenses against us, and insults offered to us, tend to produce; we preserve benevolence, tranquillity, and good-humour in our minds; and manifest such a disposition in our behaviour. With these dispositions, if men act wrongly or foolishly, we are *tolerant* and *indulgent*; if they offend us, we *pardon* and *forgive* them. We are ready to do this; we are *placable*. To be *intolerant*, *unforgiving*, *implacable*, is a vicious Disposition.

135 The Benevolent Affections are also modified by a regard to the circumstances of the object. We naturally share in the emotions which we witness in man: we have a *Fellow-feeling*, a *Sympathy* with them. When this Disposition leads us to feel pain at the sight of pain, it is *Compassion*; we *commiserate* the object. This feeling, being strongly confirmed by Piety, came to be called

Pity. Such a Disposition, as it prompts us to abstain from adding to the pain felt, is *Mercy*, or *Clemency*; as it prompts us to remove the pain or want which we see, it is *Charity*. But this word has also a wider sense, in which it describes Benevolence, as it makes us abstain from judging unfavourably of other men. All these are virtuous Affections, and lead to the performance of Duties of Benevolence.

136 *Admiration* can hardly be called a benevolent affection towards its object; for we admire what does not draw our Love; as when we admire a great geometer. But if we admire a man as a good man, we also love him (91). *Esteem* is the benevolent affection which we entertain towards that of which we approve. Persons whom we esteem, but to whom we are not drawn by love, we *respect*. When, with such a Disposition, we look at them as our Superiors, we *revere* them; in a higher degree, this Affection is *Veneration*; when combined with Fear, it is *Awe*. Reverence assumes, in its object, Authority and Power, combined with Justice and Goodness.

137 The irascible Affections are, for the most part, opposed to the virtue of Benevolence; and therefore are to be repressed and controlled. Yet these Affections also have their moral office, and give rise to Virtues. They act as a Defense against harm and wrong; and hence, in their various modifications, they may be termed *Defensive Affections*. As opposed to harm, inflicted or threatened, they are Resentment; as directed against wrong, they are Indignation (56). And these Emotions may be blameless or praiseworthy; as when we feel *natural* and *proper Resentment*, or *just Indignation*. Such Sentiments are an important and necessary part of Virtue; not of Benevolence, strictly speaking, but of Justice. Without Indignation against cruelty, fraud, falsehood, foulness, disorder, the Virtues have not their full force in the mind.

But Anger, in order to be virtuous, must be directed solely against moral Wrong. *Malevolent Affections* directed towards Persons are Vices; *Antipathy*, *Dislike*, *Aversion* to any person, independently of his bad character and conduct, are vicious. It is vicious to be *displeased*, *irritated*, *incensed*, *exasperated* at any person, merely because his actions interfere with our pleasures and desires. The proneness to such Anger is *Irascibility*. Still more vicious are our Emotions, when they swell into *Rage* and *Fury*, or settle into *Malice* and *Hatred*. The term *Rancour* denotes a fixed Hate, which, by its inward working, has, as it were, diseased

the Soul in which it exists. *Spite* implies a vigilant desire to depress and mortify its object. All these malevolent Feelings are vicious.

138 Moderate Anger, arising from pain inflicted on us is *Offense*; which term is also used for the offensive Act. A person *commits an offense*, or *offends*, in the latter sense; and *takes offense*, or *is offended*, in the former. If the Act be one which violently transgress common rules, it is an *Outrage*. Anger at pain received, impelling a man to inflict pain in return, is *Revenge*. This term also implies the object or aim of the feeling, as well as the feeling itself. A man is *stimulated by Revenge*, and *seeks his Revenge*. The same may be said of the word *Vengeance*, another form of the word, but of the same origin. The man who admits into his heart this Affection, and retains it, is *revengeful*, *vengeful*, *vindictive*.

139 The Malevolent Feelings, as manifested in the external behaviour, have various names. As they affect our disposition to a person, without necessarily leading to action, they are *Ill-will*. When they disturb the usual current of cheerful thoughts, they are *Ill-Humour*. When malevolent feelings lead us to speak or act with a view of giving pain to others, they are *Ill-nature*. When they make us rejoice in another person's pain, they are *Malignity*. If the pleasure, which a malignant man takes in another man's pain, be uncheckt by compassion, when the pain is evident, he is *cruel*; and as such a disposition shows a deficiency in the common feelings which bind men together, he is *inhuman*. If this character be strongly marked, the man is *savage*; he approaches to the character and temper of wild beasts; he is *brutal*.

The Malevolent Affections are also modified by a regard to the circumstances of the object of them, as compared with our own circumstances. Malevolent Pain at the Good which happens to another, and at our own Want of this Good, is *Envy*.

140 *Contempt* can hardly be called a malevolent feeling; for we may despise persons without hating them. Contempt consists rather in an estimate of a man as below a certain Standard of Character, to which our Esteem is given. We despise a man for Cowardice, because we admire Courage. The verb *despise*, (*despicio*, to look down upon,) shows that such a view is implied. The word *Scorn* implies a condemnation of this kind, so strong that it approaches to Indignation. The expression of contempt, in a marked manner, is an *Insult*. If the discrepance of the con-

templated character with the assumed standard be extravagant, so as to excite a sudden and poignant feeling of Incongruity, our Contempt expresses itself in *Laughter*. The character is regarded as *ridiculous*.

141 There are various modifications of character and conduct which arise from the greater or less Energy of the affections, and appear as Virtues or as Vices. The feelings of Love of Right, and Anger at Wrong, in a permanent and energetic form, are virtuous *Zeal*. Courage, the habit of mind which rejects Fear, is allied to this virtue; as is *Fortitude*, the habit of not yielding to Pain. From such dispositions of mind, arise *Energy* and *Activity* in action; which are important virtues when the action is virtuous.

142 Though Hope and Fear are not simple Affections (37), they operate in increasing or diminishing our energy and activity, as the Affections do. The Disposition in which the emotion of Hope predominates is also termed *Hope*, or *Hopefulness*. *Joy* and *Joyfulness* describe rather Delight produced by some special event, than any permanent Disposition; but *Cheerfulness*, like Hopefulness, is rather an habitual Disposition; and when governed by Rules of Duty, is an auxiliary Virtue. A tranquil yet cheerful flow of the spirits keeps the thoughts and feelings in a condition suitable to virtuous action. The want of activity and energy is *Sluggishness*, *Sloth*, *Idleness*, *Laziness*, *Indolence*; which are habits alien to virtue, and connected with the Vice of Apathy, the absence of lively affections and desires. As the influence of Fear predominates, the character becomes *timid*, and tends to *Cowardice*, the opposite of Courage. Such habits are at variance with the Rules of Duty; for these Rules often direct us in a course which leads through Danger, either to the Person or Fortune of the Actor, or to the Good-will which others feel for him. In order that a man may act rightly, he must act *freely*, *independently*. Men wanting in Independence of Character, and seeking the favour of others, without regard to moral Rules, are *slavish*, *servile*, *obsequious*, *cringing*, *fawning*; they are *Flatterers* and *Sycophants*. Such dispositions make men *abject* and *base*. The want of cheerfulness and hopefulness is *Despondency*, *Dejection*, *Sullenness*, *Melancholy*, *Gloom*; which are habits of mind adverse to active virtue. The theological moralists have made *Acedia* (*ἀκηδία*), Apathy with regard to Good, one of their seven deadly sins.

143 We have placed here the Virtues and Vices which are

connected with Energy or Zeal, because these qualities depend very much upon the strength of the Affections. They depend also, however, upon the Habits of Mind by which the intention is directed. The energetic man decides soon and conclusively what course to take. This is *Decision*. Energy also manifests itself in *Fixity of Purpose*. When the purpose is once formed, the energetic man's course is *determined*; his doubts are *resolved*; and he goes on in spite of difficulty and danger. This is *Determination, Resolution*. A man who adheres to his purpose, in spite of strong motives to draw him away, is *firm*; but if the motives which he resists are reasonable, he is *obstinate*. Firmness implies a good cause; Obstinacy a bad one. Energy and Zeal may also become extreme, so as to trespass upon Benevolence. In this case they are *Overzeal, Vehemence, Harshness, Impatience*.

Zeal, operating through the Reason, is *Earnestness*, which leads to *Seriousness*. With this quality, Cheerfulness is not inconsistent, but *Levity* is. *Care* sometimes implies only so much attention as Earnestness requires; at other times, it implies more than is consistent with Cheerfulness. It is right to *take Care*, but it is not necessary to be *full of Care*. It is wrong to be *careless, reckless*. A disposition to attend to trifles only is *Frivolity*.

144 Connected with the pleasures of Cheerfulness, there are pleasures which show themselves externally in good-humoured Laughter; as the pleasures of Jestings and the like. These arise from intellectual acts, and may be spoken of hereafter; but we may here remark, that under the influence of Levity, they lead to mere *Merriment, Buffoonery, Folly*.

2 Virtues of the Mental Desires.

145 Property is the Conception about which the Cardinal virtue of Justice is especially concerned; and hence the dispositions and habits of mind which regard Property, have Justice for their leading virtue. Yet Wealth, and Property of all kinds, may be used as a means of Benevolence; and from this use, arise Virtues; as *Charity*, already mentioned, *Liberality* (a willingness to give), and the like. Wealth may be desired as a means either to such ends, or to different ones. Hence the Disposition which aims at acquisition, may be virtuous or vicious, according to the ulterior object. A man may desire Wealth as a means of Luxury and Sensuality; and in such a case, the Desire of Wealth is opposed to Temperance, rather than to Justice.

The Desire of the means of Subsistence is an universal and necessary Desire. A Wish for a Competence,—for so much property as may free a man from solicitude respecting common needs and common enjoyments,—is not opposed either to Justice or to Temperance. The prospect of *Poverty* and *Penury*; the pressure of *Privation* and *Want*; the sense of *Dependence* upon others;—greatly tend to disturb the influence of virtue in the mind. The Fear of these evils is not a vice. Also wealth may be desired as a means of benevolent action, or of right action, in many other ways. A person's power of doing good, of many kinds, depends much upon the Station and Influence which wealth bestows.

146 But though wealth may be desired for ends which make the Desire virtuous; the progress of men's habits is such that, when sought at first as a means, it is afterwards desired as an end. The Desire to acquire money is then unlimited; and is *Covetousness*, *Avarice*. The man's greediness in desiring is *Cupidity*: his eagerness in taking, is *Rapacity*. He scrapes and hoards. He spares carefully and spends unwillingly: he is *parsimonious*, *niggardly*, *penurious*. His solicitude and privations make him miserable. He is a *Miser*.

On the other hand, such habits of care, with regard to sparing and spending, as may tend to avoid Poverty and Privation, are reckoned as Virtues; such virtues are *Economy*, *Frugality*. By these, a man *thrives* or grows in his possessions: he is *thrifty*. A person who is destitute of these qualities is an *Unthrift*. A willingness to give is *Liberality*, *Generosity*, *Bountifulness*; which are reckoned Virtues. But this disposition may be excessive: the man is then *lavish*, *extravagant*.

147 Property conveys Power to the Possessor: but there are also many other Sources of Power. Whoever aims at a larger share of Power than his neighbours possess, is, so far, regardless of Justice. The Desire of Power is *Ambition*. But the Desire of Power for good ends, and the Desire of the Power which moral excellence gives, may be termed *laudable Ambition*.

The Disposition which represses our own desires, whether of money, power, victory, or any other object, and contemplates the desires and claims of other persons with equal favour, is *Fairness*. This is a kind of personal application of Justice, to questions between ourselves and others. *Impartiality* is more commonly used for the Fairness which decides justly between two other persons.

3 *Virtues connected with Truth.*

148 We have mentioned (127) some of the names of the Virtues connected with Truth; as *Truthfulness*, *Veracity*. These express a conformity of our words to the reality. The conformity of our actions to our Engagements, whether express or implied, is *Fidelity*, *Good Faith*. Thus a subject is faithful to the engagement which binds him to the Sovereign of the State. If, in such a case, Love is added to Fidelity, it becomes *Loyalty*.

A man who says what he knows to be untrue, is a *Liar*. He is guilty of *Falsehood*. A man who says what he thinks, is *sincere*. Such a man shows himself what he is. A man who conceals some important part of his feelings or thoughts, *dissembles*. When he assumes the appearance of virtues which he really does not possess, he is a *Hypocrite*. By such means men *impose* upon others, and *deceive* them.

Lies and Deceit are often used as means of *Fraud*; which is an offense against Property, and therefore contrary to Justice as well as Truth. A person who *defrauds*, *circumvents*, *cheats* any one, must be destitute both of Justice and of Truth. Property and Language may both be considered as Universal Contracts, to which the whole human race are parties; Fraud by means of Falsehood violates both these Contracts.

A man free from all fraudulent dispositions is *honest*; he is a man of *Probity*. He is not drawn aside, by the desire of gain, to act *obliquely*, *tortuously*, in a *crooked* manner. He is *straight-forward*, and *upright*. His intentions, words, and actions, form a whole in which there is no inconsistent part. This is *Integrity*. A deceitful man may have two purposes; one, apparent, simulated, declared; the other secretly held, but dissembled, till it can be acted on. To have two purposes in this way is *Duplicity*. The truthful person, on the contrary, has *Simplicity* for a part of his character: he has *Singleness of Purpose*, *Singleness of Heart*. He is *frank* and *open*, showing himself as he really is.

4 *Virtues relating to the Bodily Desires.*

149 The gratification of the Appetites or Bodily Desires, to a certain extent, and under certain conditions, is requisite for the continuance of the individual and of the species, and therefore is not vicious. These Desires being mere attributes of the Body,

cannot have, of themselves, a moral character (115). They are to be controlled by moral Rules, and made subservient to moral Affections; and thus, are the materials of Virtues. The Habits of thus controlling the bodily Desires, constitute the Virtues of *Temperance* and *Chastity*. The Demeanour produced by a chaste mind, especially in women, is *Modesty*.

By the establishment of Family and Social Relations, the gratification of the bodily wants is connected with the impulses of Affection and the Love of Society. The shelter of the common family roof, and the social meal, as well as the marriage-bed, are the objects of far other feelings than mere bodily desires. The Appetites are thus made subservient to the Affections. They are absorbed by the Affections, and are thus *purified*. All gratifications of the Appetites, sought as gratifications merely, are impure and vicious. Among such vices is the *Love of the Pleasures of the Table*. When the Desire of Food is gratified to excess, there is *Gluttony, Gulosity*. When there is an excessive solicitude about the gratification of the Taste, the man is an *Epicure*. The Love of Drink involves, not only a bodily Appetite, but a complacency in the mental condition to which certain liquors lead; namely, the condition of *Intoxication* or *Ebriety*; a condition in which the Reason loses the power of directing our actions. The Vice of falling into such a condition is *Intemperance, Drunkenness*.

The other leading bodily Desire, when not morally controlled, is *Lust*. The control of this within moral limits, is *Continence*. The vicious indulgence is *Lewdness, Lechery*. Persons whose guiding springs of action are these bodily desires, are *sensual, carnal*. A chaste and modest person does not allow his eyes or his imagination to dwell on things which may excite Lust. Such images are obscene, indecent. To suggest such images in speech is *Obscenity*. All such filthy conversation *pollutes the mind*. A man who makes pleasure the object of his actions is a *Voluptuary*. Such men generally cast off moral restraint, and are hence *dissolute, profligate*. A woman who thinks lightly of chastity is a *Wanton*.

When the arts of life are employed to gratify artificial wants and desires, those who give their attention and solicitude to obtain such gratifications are *luxurious*. Luxury is often employed to describe the aggregate of such gratifications; but the Solicitude employed on the means of gratification, rather than any special Class of such means, appears to be essential to our conception of Luxury. Things which are luxuries in one stage of society, become universal wants, and consequently necessities, in another

stage. Linen garments, glass windows, tea, were luxuries a few centuries ago in this country. They are now necessities of life.

5 *Intellectual Virtues.*

150 The Disposition by which we accept Law and Rule as the necessary guides of human action, is that which we have termed Order. This Virtue is also, as we have said (127), termed *Orderliness*, *Obedience*, and the like.

But it is a Virtue to govern carefully, as well as to obey cordially, according to the position we hold in the community. A virtuous governor must be guided by Justice; but Justice itself must be defined by Specific Rules. Laws and Rules must be apprehended by the Intellect, and must be expressed in terms of general conceptions constructed by the Reason. Hence, the Virtues connected with Order especially, include operations of the Intellect, and may be termed Intellectual Virtues.

151 The abstract Conceptions of the objects of our mental Desires, as Property, Power, Society, require operations of the Reason for their formation in the mind. By the further operation of the like faculties, we form still more abstract and general Conceptions of objects of action, as Good, Wellbeing, Happiness, Expediency, Interest, and the like. We may construct and express Rules of Action, dependent upon such Conceptions. Various moralists have stated various Rules, thus expressed. Different individuals govern their conduct by one or other of such Rules, more or less clearly apprehended. One man looks to Interest as his object, another to Happiness, another to Wellbeing, another to the Happiness of Mankind, and so on.

One or other of such objects being assumed as the end of human action, *Prudence* is the Intellectual Virtue by which we select the right means to this end. A man is prudent, who acts so as to promote his own Interest, if his Interest be assumed to be the proper Object of action: but if we conceive Happiness to be a higher object than Interest, he is prudent, if he disregard mere Interest, and attend only to his Happiness. Prudence supposes the value of the end to be assumed, and refers only to the adaptation of the means. It is the selection of right means for given ends.

152 In the notion of *Wisdom*, we include, not only, as in Prudence, a right selection of means for an assumed end, but also a right selection of the end. However prudent a man may be in seeking his Interest, he is not wise, if, in doing this, he neglect

a truer end of human action. Wisdom is the habit by which we select right means for right ends. We approve and admire Prudence relatively to its end: we approve and admire Wisdom absolutely. We commend the prudent man, as taking the best course for his purpose; but we do not necessarily agree with him in his estimate of his object. We venerate the wise man, as one knowing, better than we do, the true object of action, as well as the means of approaching it. Wisdom is a Cardinal Virtue, like Benevolence, Justice, Truth, Purity; and with reference to the first, as well as the other four, human Dispositions are good, as they partake of the Cardinal Virtue. Wisdom is the complete Idea of Intellectual Excellence; as Benevolence, Justice, Truth, and Purity, are of Moral Excellence.

153 Prudence is, etymologically speaking, the same word as *Providence*; that is *Foresight*. But we do not call a man *prudent*, except he not only see the bearing of actions on a distant end, but act upon his foresight. A man who gambles, with a clear foresight that gambling will ruin him, is not prudent. Prudence is a Virtue, not of the Speculative Reason, which contemplates Conceptions, but of the Practical Reason, which guides our Actions.

The guidance of our Actions by Reason, requires us to attend both to the present and to probable future circumstances; it requires *Attention*, and *Forethought*, or *Forecast*. It requires, too, the employment of Thought upon the Circumstances of the case. A virtuous man must be *thoughtful*, *considerate*. The want of thoughtfulness is a part of that Levity which we have already noticed as involving a Vice of the Affections (144).

In order to act prudently, we must not only have Prudent thought, but have it at the right time for action; this is *Presence of Mind*. *Cunning* is a lower kind of Prudence, that seeks its ends by means, of which the end is not intended to be seen by others, when they are used.

By our Intellectual Faculties we are able to apprehend and know Truth, that is, Objective Truth (126); and especially, Truths which bear upon our actions, and which must be taken into account in framing Rules of Action. Truth is the proper object of Reason; that is, of the universal Reason of mankind: and the Supreme Rule of human action which belongs to mankind, in virtue of their universal Faculties, must depend upon the Truths which Reason makes known to us. The Love of Knowledge impels men to aim at the Knowledge of such Truths: and the *Love*

of Truth, which thus contributes to a Knowledge of the Supreme Law, is a Virtue.

The progress which each man makes in the Knowledge of Truth, depends in a great measure upon himself; upon his Observation; his Diligence, Attention, Patience, in seeking the Truth. His progress depends also upon external circumstances; upon the Intellectual and moral Development of the Society in which he lives; and upon his own Education, in the largest sense of the term. But there are also differences of the Mental Faculties, between one person and another. One man excels another in Acuteness and Clearness of the mind, when employed in observation or in reasoning; one man has a quicker or a more tenacious Memory than another. There are various degrees of Sagacity; various kinds of Imagination. Some men have Genius. These Faculties are not properly termed Virtues, but *Gifts, Endowments, Ability*. They may be used as means to right ends, and hence they are termed *Talents*; by a metaphor taken from the Parable in the New Testament, which teaches us that a man is blameable, when he does not use the means of right action assigned to him.

6 *Reflex Virtues and Vices.*

154 We may place, among the Intellectual Virtues and Vices, those which depend upon our apprehension of other men's sentiments concerning us. For such Virtues and Vices imply reflex thought. We have already enumerated (57) among the springs of human action, the Reflex Sentiments, in which we form a conception of other men's sentiments, by the image of our own; and of ourselves, as the object of those sentiments. Such are the Desire of Esteem, the Desire of Admiration, the Love of Fame, and the like.

There is a difference to be made between the Desire of Esteem and the Desire of Admiration. Esteem is given to what is deemed right and good. Admiration and Applause are often bestowed upon qualities which have no moral character; as strength, skill, beauty, wit, and the like. The want of such qualities is a ground, among many men, of Contempt; and if the deficiency appears suddenly and glaringly, of Ridicule. Ridicule implies that the object which excites it is so palpably below the standard which we apply to it, that the comparison is extravagant and absurd. The Desire of Admiration produces a Fear and Dread of this Contempt and Ridicule. But the Desire of being admired, for

other than moral excellences, has in it nothing of Virtue. He who desires the Esteem of others, desires them to regard him as good; and will, for the most part, be disposed to sympathize with them in their admiration for what is good. The *Desire of Esteem* therefore is easily consistent with Virtue.

The *Desire of Admiration* produces a ready belief that we are admired, and a Joy and Elation of Mind accompanying such belief. This Disposition is *Vanity*. One who is treated with marks of general esteem among men, is brought to *Honour*. One who is pointed at as an object of general disesteem, is brought to *Disgrace*; and, if he feel the Disgrace, is put to *Shame*. But Honour and Shame likewise indicate, subjectively, the Sensibility of the man to those indications of general Esteem and Disesteem. We speak also of *False Honour*, and *False Shame*; meaning Dispositions to be influenced by Applause on the one side, and Blame or Ridicule on the other, even when they are not rightly bestowed. *True Honour* is a Regard for what is right and good, considered especially as the object of sympathy and esteem among men. A *man of Honour*, an *honourable man*, has an especial abhorrence of the Vices of Fraud and Falsehood. The Desire of Admiration in another form is the *Love of Glory*. In Civil Society are established marks of Public Honour, as Rank, Titles, Decorations, and the like. Dispositions, for the most part, allied to Vanity, fasten upon these objects; and thus we have the *Love of Rank*, or the like. But such marks of honour are often accompanied with Political Power; as when, in England, a man is made a Peer. In this case, the Desire of Rank may be Ambition, rather than Vanity.

155 When I have formed a conception of *myself*, I am led to regard myself as the object of my own moral sentiments. If I approve my own character, I feel *Self-esteem*. If I am the object of my own Admiration, without requiring the sympathy of others, this feeling is *Pride*; a Vice which estranges me from other men. The Satisfaction which is felt in my own Admiration, is *Self-complacency*; a feeling which blinds men to their true character.

I ought to render my Character such as to deserve esteem, and therefore, such as to deserve my own esteem, if I contemplate my own character. If I do this, I may reject wrong acts and emotions, as unsuited to the character which I thus ascribe to myself. The Disposition to do this, appears to be what is meant by a *Proper Pride*: but this way of regarding one's own cha-

racter appears to involve a share of *Self-complacency*. Men reckon among virtues, the *Magnanimity* which disregards small dangers and small injuries or offenses. The opposite term, *Pusillanimity*, denotes cowardice; a quick sensibility to offenses is *Captiousness*.

Pride is, in its tendency, at variance with the Benevolent Virtues, Meekness, Reverence, Courtesy. But the virtue which is especially opposed to Pride, is *Humility*. He who is humble in his estimate of himself, is also *modest* in comparing himself with others; but, as we have said (149), Female Modesty has a more especial meaning. When Pride is manifested so as to imply Contempt of others, it is *Haughtiness*, *Disdain*; if Unkindness be added, it is *Insolence*. The insolent man is *overbearing*, *domineering*, *arrogant*. Self-esteem, so far as it regards the Operation of the Intellect, is *Self-opinion*. When this excludes all mistrust of one's self, it is *Self-sufficiency*: and, as taking much for granted, it is *Presumption*. When Pride fastens upon special points, it is *Conceit*.

156 The Habits of mind by which we resist the impulses of desire and affection, so as to conform to rules of virtue or prudence, are *Self-control*, *Self-command*, *Self-watchfulness*; *Self-mistrust*; when the desires which we control are so lively that we cannot suppress them, though we resist them, it is *Self-denial*. When we seek our own gratification, in disregard of more virtuous objects, it is *Self-seeking*. When we let our Will take its course, in spite of manifest warnings of prudence, it is *Self-will*.

The Habit of making ourselves the principal object of our attention and solicitude, is the Vice of *Selfishness*. A man is selfish, if the Desires which tend to himself (the Desires of the Body, the Desire of Property, and the like), rather than the Affections, are his leading Springs of Action. These may be termed *Selfish Desires*. The term implies an Excess in the attention which we give to ourselves, a Defect in that which we give to others; and is always used in an unfavourable sense. Hence the term is not applied to the predominance of those Desires which do not interfere with the claims of others. We call a man *selfish*, in whom the Love of Money or of Bodily Ease prevails, because such Dispositions make him disregard the claims of others; but we do not call a man *selfish*, in whom the Love of Knowledge or of Society is strong; for my pursuit of knowledge takes nothing from other persons; and my love of society implies an acknowledgment of some kind of merit or value in other men. Pride and

Vanity are selfish dispositions; for the proud man is too much occupied with his own admiration of himself, and the vain man with admiration of himself proceeding from other men, to regard, with due attention, the claims of his neighbours.

The Selfish Man thinks only of himself: hence he has no *Consideration for others*: no due care for their feelings, condition, and claims. This Virtue is required in all; there is a higher degree of it, *Unselfishness*; the disposition of a person who pays no regard to his own gratification when that of another person comes in competition with it. A still higher degree of such virtue is *Self-devotion*; the virtue of him who willingly incurs pain, danger, or death, to procure benefits for another.

157 There are some dispositions regarded as Virtues, which are conceived to go beyond the standard of common characters. Such virtues are called *noble*; and when elevated still higher in our thoughts, they are *heroic*, or *heroical*. *Heroism* generally implies great Fortitude or Courage, combined with Self-devotion. History is full of heroic acts; as that of Regulus, who refused to counsel his countrymen to peace, and returned to Carthage to die in tortures; that of Virginius, who stabbed his daughter to preserve her from dishonour; that of the elder Brutus, who, as judge, condemned his own sons to death; that of Lucilius, who saved the younger Brutus by offering himself to the pursuers as Brutus; that of Socrates, who preferred to receive death in obedience to the Laws of his country, though escape was offered him by his friends. The acts of *Martyrs*, who died for the Truth, when they might have saved their lives by denying it, are heroic.

158 The Moral Vocabulary of which we have taken a survey, the Collection of Terms describing Virtues and Vices, is used to express the judgments of mankind in general, respecting the Dispositions and Characters of men. The approval or disapproval implied in each Term is, for the most part, so well understood, that the mere use of the term pronounces a moral sentence on the subject to which it is applied. And the moral judgment of mankind, thus expressed in a recognized form, is very efficacious in forming the moral sentiments of each person; and hence, in modifying the characters and affections of men. The Vocabulary of Virtues and Vices is a constant moral Lesson; perpetually operating to bring each man's moral sentiments into agreement with the general judgment of men. Every man is taught, by the use of moral language, to admire Gratitude and Filial Love, to condemn Revenge and Cruelty; and the like.

For the most part, this Lesson agrees with the Lesson of true Morality, and points rightly to the Supreme Law of Human Action. This may be readily understood. For the Supreme Law of Human Action must be a Law in which all men, as men, sympathize (98). Hence the common moral judgment, of which we have been speaking, which is expressed and communicated by the moral language commonly in use among men, will, in general at least, conform to the Supreme Law. What are universally held as Virtues, must be dispositions in conformity with this Law. What are universally reckoned Vices, must be wrong.

And a man, in so far as he is taught and formed by the general judgment of men, thus conveyed in the language of the Morality universally recognized, will be rightly taught. A man whose character contains what all men reckon Virtues, and is free from what are universally reckoned Vices, will be a good man. His affections and desires being thus regulated, he will tend to the possession of the Operative Moral Principles of Benevolence, Justice, Truth, Purity, Order; which we have stated as the Elements of the Supreme Law.

159 To the doctrine, that the common judgment of mankind respecting Virtues and Vices agrees, generally, with true Morality; it may be objected, that there are dispositions which we reckon vicious; and which yet, in many ages and countries, have been esteemed laudable, as Revenge. To this we reply, that men do not conceive themselves pronouncing the moral judgment of mankind when, under the influence of strong emotion, they speak of the satisfaction arising from Revenge, or appeal to the sympathy of other men alike moved. No Moralist, speaking calmly, and in the Name of Mankind, would say that boundless Revenge is good and virtuous. So far as he could praise or defend the Disposition, it would be by identifying it with the Punishment of Wrong, that is, with Justice. Men speak of Revenge as "a kind of wild Justice;" and approve it only so far as it partakes of the nature of Justice. And in like manner, all other dispositions are reckoned Virtues, even in the common judgment of mankind, only so far as they agree with, and partake of, the Cardinal Virtues, Benevolence, Justice, Truth, Purity, and Order.

CHAPTER IV.

MORAL PRINCIPLES,

160 BY the help of our Reason, we frame Rules of Moral Action which are more or less partial expressions of the Supreme Rule (151). These Rules may be variously connected, so as to give, by comparison and reasoning, rise to other Rules, according to the varieties of the occasions and relations to which the Supreme Rule is to be applied. But such connexion and such reasoning must rest ultimately upon certain fundamental general Maxims or Rules which we may term *Principles*: just as in Geometry, the reasoning rests ultimately upon the Axioms and Definitions. In order, therefore, to establish and apply Moral Rules; we must state the Moral Principles which are the foundation of such Rules.

These Moral Principles, being the expression, or parts of the expression, of the Supreme Rule of Human Action, must coincide in effect with the Idea of Virtue or Goodness; and therefore with the Elements of this Idea, which, as we have seen (125), are the Five Cardinal Virtues, Benevolence, Justice, Truth, Purity, and Order. Our Moral Principles must express these Cardinal Points of the Supreme Rule.

• 161 The term *Principles* is variously used. Springs of Action, as Affections, Desires, Dispositions, are often termed *Principles of Action*; especially when they operate in a steady and consistent manner. We put such steady *Principles* in opposition to transient and casual *Feelings*, which may be inconsistent with themselves. Our Feelings may prompt us to be kind to one person, and harsh to another; but Benevolence, operating as a Principle, would make us kind to all. We have hitherto avoided speaking of "*Principles of Action* in this sense;" and have called the Affections and Desires *Springs of Action* (24). Custom allows us to term Benevolence, and the other Cardinal Virtues, *Moral Principles*, when they operate in any man steadily and consistently, even though they be not expressed in words. But we must distinguish the term *Principles*, used in this sense, from the fundamental Maxims or Rules, the basis of other Rules, which we have also more especially called *Moral Principles*. We may call the former *Operative*

Principles, the latter *Express Principles*. The former are *Principles of Action*, the latter are *Principles of Reason*.

In order that a man's Character should conform to the Supreme Rule, it is requisite that Benevolence, Justice, Truth, Purity and Order, should be in him Operative Principles. In order that he should express his Rules of Action so that they may be contemplated by the Reason, and communicated from one person to another, it is requisite that he should arrive at Express Principles.

162. Express Moral Principles must, as we have already said, be the expression of those Ideas which are the elements of the Supreme Rule. We have already been led to attempt to obtain such expressions, in speaking of these Moral Ideas.

We have seen (118) that the Idea of Benevolence is, that of an Affection, which makes man, as man, an object of love to us: and that we may state it as a Moral Principle, that *Man is to be loved as Man*. We may term this the *Principle of Humanity*.

We have seen (119) that the Idea of Justice is, that of a Desire that, of external things, each person should have his own, without any preference of ourselves to others, or of one person to another. We may state this also as a Moral Principle, that *Each Man is to have his own*; and this we may term the *Principle of Justice*.

We have seen (120) that the Idea of Truth (as a Cardinal Virtue) is, the Idea of a Conformity to a Universal Understanding among men, which is involved in the use of language, and according to which understanding, each may depend upon the representations of the others. Hence we may state it as a moral Principle, that *We must conform to the Universal Understanding among men which the use of Language implies*: and this we may call the *Principle of Truth*.

Again, we have seen (121) that the Idea of Purity implies the contemplation of mere Appetite and Desire, as the Lower Parts of our nature, which are to be governed by, and made subservient to, the Moral Sentiments and Reason, the Higher Parts. We may state this as a moral Principle, that *The Lower parts of our Nature are to be governed by, and subservient to, the Higher*. This is the *Principle of Purity*.

Again, we have seen (122) that the Idea of Order implies a conformity, both to Positive Human Laws, as the necessary conditions of morality, and to special Moral Rules, as the expression of the

Supreme Rule. We may therefore state it as a Moral Principle, that *We must obey positive Laws as the necessary Conditions of Morality*; and this is the *Principle of Order*.

163 These five Express Moral Principles may be further unfolded; and the Conceptions by which we designate them, Humanity, Justice, Truth, Purity, and Order, may be further defined hereafter. But we do not fully express the import of the Cardinal Virtues of Benevolence, Justice, and the like, without adding some further Principles to those which we have mentioned. Benevolence must be strong, as well as general: vivid in its degree, as well as universal in its application. And the same is true of the other Affections rightly directed. The Supreme Law must not only direct the Affections and Intentions to their proper objects, but must require steadiness and energy in them thus directed. The recognition of this condition of the Supreme Rule is shown in the place which Zeal, Energy, Earnestness, hold among the Virtues (143). In order to express this, we may therefore state, as a Moral Principle, that *The Affections and Intentions must not only be rightly directed, but energetic*; and this we may call the *Principle of Earnestness*.

164. Again, it is not enough to give the character of virtue to our desires, that they are directed only to those objects which Justice assigns to us. Our desires are not virtuous (though they are not necessarily vicious,) if they terminate in the objects themselves. The Supreme Law of Human Action requires us (117) to consider Moral Good as the object to which all other objects are subordinate, and from which they derive their only moral value. We naturally desire external things, as wealth, power, honour, pleasures of the sense and of the imagination, the society of those we love, and the like, and we originally desire these things for their own sake. But a more advanced Morality directs us to desire these things also as means to moral ends: for all these things, as means of moral action, moral restraint, and moral culture, may be made means to moral ends. And we may state this as a Moral Principle, that *Things are to be sought universally, not only in subservience to moral rules, but as means to moral ends*; and this we may term the *Principle of Moral Purpose*.

165 To the *Express Principles* which we have thus stated, correspond *Operative Principles* of Benevolence, Justice, Truth, Purity, Order, Earnestness, and Moral Purpose: these exist in each man's character, in so far as the *Express Principles* above stated become his habitual guides and springs of action,—in so far

as these express the usual tendencies of his affections and purposes. In this sense, as Operative Principles, a man is also said to have a *Spirit* of Benevolence, of Justice, and the like.

It may be proper hereafter to state other moral Principles, in addition to these seven: but these seven will enable us to lay down many Rules of Duty, which is the purpose for which we put them forwards. We must now speak of Duty; and in the first place, of the distinction between Duty and Virtue.

CHAPTER V.

DUTIES.

166 WE have already stated (91), that Virtue and Duty differ, as the Habit and the Act; as the internal Disposition, and the outward Manifestation. Acts do not necessarily prove the existence of the Dispositions to which they generally correspond. A man may frequently give relief to a person in distress, without being really compassionate; he may habitually perform what he has promised, without real integrity. Such is the case, for instance, when a man gives alms to avoid importunity; or pays his debts to escape disgrace. Acts do not even prove Habits; for an act may be solitary; like that of her

Who paid a tradesman once to make him stare.

But notwithstanding this, Acts of Duty are both the most natural operation of virtuous Dispositions, and the most effectual mode of forming virtuous Habits. Hence, Acts of Duty are requisite, both as the manifestations of Virtue, and as the means of becoming virtuous. The Virtues belong to a deeper part of our nature than the Duties, being the sources out of which our acts of Duty spring. But Duties are more capable of definite description and determination than Virtue not exhibited in act; and hence Duties are the more especial subject of the Moralists's discussions. The Virtues are what we are; the Duties are what we do. It is more important what we are, than what we do; but it is more easy to speak of what we do, than of what we are; and moreover, what

we are, gives rise to what we do; and what we do, shows what we are.

167 Duties, in their general form, coincide with Virtues. Justice is a Virtue; Justice is also a Duty. But they are generally conceived with this difference; that Virtue is more of an unconscious Disposition; Duty implies more of conscious thought. Our Virtues exist and operate without our thinking about them; we perform an act of Duty, *thinking* that we ought to do it. To think an act a Duty, is to think we ought to do it; it is to think it right; to think it conformable to the Supreme Rule of Human Action.

To think an act right, is to think that there is a Reason for it, by which it is shown to be conformable to the Supreme Rule. Such Reasons are given, when we show that Acts are conformable to the Moral Principles which have just been laid down (162); for these Principles express parts of the Supreme Rule. Hence, Rules of Duty are to be established by a reference to those Principles, as their Reasons.

168 Virtue is a Habit of the Desires, Affections, and Will; Duty involves an operation of the Reason, by which the Desires, Affections, and Will, are directed and governed. By the frequent performance of such acts of direction and government, they become habitual, easy, familiar, and finally cease to be objects of consciousness; and thus Duty becomes Virtue.

169 We may make a further distinction between Duty and Virtue; indicating that we carry the notion of Virtue further than that of Duty. We speak of *Heroic Virtues*, as we have seen (157), but never of *Heroic Duties*. Heroic Virtues are Virtues beyond the range of Duty. Duty implies Rules of Duty, but Heroic Virtue soars above Rules.

170 The act of conscious thought by which we recognize our Duties, turns our attention upon ourselves as the objects of the Moral Sentiments of Approbation and Condemnation (155). The habit of regarding ourselves as worthy of Condemnation when we do wrong, and as consequently liable to Punishment, the consequence of deserved Condemnation, in a world in which the Supreme Law is really administered, is the *Sense of Responsibility*. This Habit of Thought is not explicitly recognized in our notion of Virtue, but it forms part of our conception of Duty; and is often termed the *Sense of Duty*.

171 A further feature in our Conception of Duty is, that it includes the notion of Actions determined by external Relations

and Circumstances, as well as by internal Dispositions. Duties depend upon the social position of men, and other like conditions. There are Duties of Parents and Children, of Husbands and Wives, of Friends, of Neighbours, of Magistrates, of Members of various Bodies and Professions. Men's Virtues manifest themselves in various Acts of Duty, according to these conditions. The descriptions of Duties must include a reference to those varieties of circumstance and condition. There belong to each man the *Duties of his Station*. Our Duties, so far as they regard our special Relations to particular persons, may be termed *Relative Duties*.

172 Men have legal Obligations, as well as Duties, belonging to their Station. Some of these Obligations, though defined by different Rules and Limits in different ages and countries, are acknowledged and established in some form in all communities. Thus Children are everywhere under an Obligation to obey their Parents; Parents to support and educate their Children; Husband and Wife are under mutual Obligations to community of life and fortune; Master and Servant have Obligations of support and service; and the like. And positive Obligations of this kind, in some form, are necessary conditions of man's domestic and social life: and the actions proceeding from such Obligations and from the correlative Rights, make up a large portion of the series of actions of which human activity consists. These actions, and the relations from which they proceed, like all parts of human life and being, belong to the sphere of Morality, and are subject to Moral Rule. The several relations of domestic and social life, the Obligations and Rights of station, must have a moral character, as well as a mere legal existence. Hence these actions and relations must proceed from those internal springs of action by which alone they can have a moral significance. They must be the result of Affections and habitual Dispositions; of Affections and Dispositions belonging to the special relations, domestic and social. And thus the Relative Duties recognize a moral significance in the established Obligations of each Station; and Relative Duties are necessary parts of the Moral Laws, because established Obligations relative to domestic and social connexions are necessary conditions of man's existence.

This Maxim, that there is a Moral Significance in our Social Relations, will often serve to point out our Duties. All acts relative to other men, in order to be moral, must proceed from an internal Spring of Affection; our Obligations, being what we ought to do, if the law be a reasonable law, are also Duties. But

in order that they may be Duties, there must exist an Affection which is the natural Source of such acts; and this Affection is itself a Duty.

173 The Affections from which Duties thus proceed, will be, for the most part, those Affections which naturally grow up in the bosoms of men, so far as they are influenced by the common moral judgments of mankind; they will be Virtuous Affections, the Affections which belong to a good man (158).

Our Duties are determined by the General Notions of the Virtues on the one hand, and on the other, by the Social Relations, special Circumstances, Conditions, Rights and Obligations of men.

So far as Duties depend on the Notions of the Virtues, they will admit of a Classification corresponding to that of the Virtues, already given. We shall have Duties of the Affections; Duties respecting Property and other Objects of Desire; Duties connected with Truth; Duties connected with the Bodily Desires; Duties connected with Order. Each of these Classes contains Duties which may be distinguished according to the Social Relations with which they are concerned.

CHAPTER VI.

DUTIES OF THE AFFECTIONS.

174. THE Supreme Law of Human Action adopts and authorizes the Benevolent Affections, as a part of human nature which binds men together, and depends upon their common humanity. This we have expressed, by laying down the Principle of Benevolence as one of our fundamental Moral Principles (162). But further; the Supreme Law requires that the Affections thus authorized be vivid, strong and permanent. This we have expressed, by stating the Principle of Earnestness as one of our fundamental Moral Principles (163). Now the more general Benevolent Affections which bind men together cannot be vivid and strong, except the special Benevolent Affections, determined by family relations, and other external circumstances, be also vivid and strong. For the Affection of Universal Benevolence is only the expansion of the Love belonging to narrower circles of relation.

The Affection of the most General Benevolence is expressed by saying that we love all men as our *Brothers*. The heart learns to love, by its contact with its nearest objects of love, and by the passions arising out of its intercourse with neighbouring men. If it do not begin its lesson of Duty in that school, it will never be able to apply it in a more comprehensive sphere. The Natural Affections are the proper moral School of the Heart. The lessons of the benevolent affections are further inculcated by the general moral judgment of mankind; for the universal voice of man commends Gratitude, Family Affection, Compassion, and the like, as Virtues. Hence a good man, in his progress towards the sympathy with man as man, which is implied in the Supreme Rule, will be led to possess the Affections thus universally regarded as Virtues (158). Moreover, such Affections are requisite to give to the obligations of Family, and the like, their moral significance. They are therefore Duties (172).

Hence the special kinds of benevolent Affection, Gratitude, Compassion, Reverence for Superiors, Filial Affection, Parental Affection, Conjugal Affection, Fraternal Affection, are all Duties. They are Affections in which all men sympathize. They are Natural Affections. Those who have them not, are universally condemned as without natural affection. Such men have not found admission into the Moral School of the Heart. They have not made the first steps towards that Universal Benevolence, which is a Fundamental Moral Principle. Such men must be destitute of that warmth of right affections which the Principle of Earnestness requires. Such men cannot give to the Obligations of their Station that Moral significance which Morality requires.

We will consider this further, with regard to the above kinds of Affection in particular.

175 *Gratitude to Benefactors* is a Duty of the Affections. To render advantage for advantage, is often a matter of mutual contract; to render good-will for good-will, is the Duty which gives a Moral Significance to the Obligations of such contracts (172). Gratitude, that is, Good-will in return for benefits conferred with good-will, is a natural feeling, and is universally acknowledged as a Virtue. He, therefore, who does not feel this, has made little advance in the natural progress of the benevolent affections; he is little influenced by the sympathy of men in favour of Virtue. The ungrateful man disregards one of the most manifest lessons of morality; that in which the common understanding of mankind apprehends mutual good-will, as the proper signification of good

offices, given and received. He violates this understanding; and is necessarily looked upon with repugnance and alarm, as one on whom the common ties of Humanity have no hold. He transgresses a Rule which all men can and must sympathize in approving; and which draws men together by the common recognition of the significance of external relations. Thus he is a violator of a Duty.

- Hence, Gratitude is a Duty of the Affections. A man who is devoid of gratitude cannot be a good man. And the Affection of gratitude, which is thus a Duty, will tend to express itself in acts. But no special acts are directed by this Rule of Duty. Gratitude is one Rule for the Affections, but the Rules of Action must be governed by the consideration of all the Rules of the Affections, and all the Moral Principles. The actions which gratitude prompts may be prohibited by other Rules of Duty, derived from the Principle of Benevolence in other bearings, or from the principles of Justice, Truth, Purity, and Order, and their combinations.

176 *Reverence for Superiors* is a Duty. Reverence is a Benevolent Affection, which assumes in its object Superiority of Condition to ourselves, combined with Justice and Goodness. Obedience to Law and Authority are Obligations; and these Obligations, like all others, have a Moral Significance (172), when the Law is just and the Authority rightful. They require in the Inferior Party, a Spirit of Obedience (165); an Obedience of the Heart. When the person, thus invested with Authority, is also invested with Goodness, the heart joins, and ought to join, with its Obedience, the Love which belongs to Virtue (91). And thus, this union of the Spirit of Obedience and Love, Reverence for Superiors, is a Duty.

This Sentiment is fostered by a sympathy with the natural feelings, and with the common moral judgments of mankind, expressed by means of terms implying Virtue and Vice. That Reverence for Superiors is a natural feeling, we see in the willing submission with which, in all ages and countries, Superiors have been treated by their inferiors; and in the cordial submission rendered to Laws. Man has, among his natural feelings, a Reverence for Something better, wiser, more stable, more permanent than himself. He readily believes in the existence of something of this nature; and has, in his mind, a ready Sentiment of deferential Regard for it. And this feeling is fostered by the general sympathy of men. The common moral judgment of mankind appears in the commendation bestowed upon such dispositions. Disloyalty to the Sovereign, Disobedience to Authority, Sedition,

Treason, Rebellion, are, in themselves, looked upon with feelings of Dislike, and Indignation. If a person does not participate in these feelings, he is not likely to possess Benevolent Affections at all. If he have no sympathy with these emotions, his Affections cannot be conformable to that Supreme Law, in which all men, as men, sympathize. If Goodness and Justice, joined with Superiority of condition, are not regarded by a man with Reverence, he has not that feeling towards Goodness and Justice by which virtuous men are bound together. A participation in this feeling belongs to a good man. And this feeling is requisite to invest with a moral significance the obligation of Obedience to the governing authorities of the State. For such Obedience must be a Duty, as well as an Obligation, in order that it may have a moral character. But if Obedience be a Duty, Reverence, the Obedience of the heart, which is the internal spring of external obedience, must also be a Duty. And this Reverence, being a part of the natural feelings of a good man, and a necessary condition of the Duties of Obedience, is itself a Duty.

If it be said, that in the actual constitution of the world, it may happen that Superiority of social condition is not joined with goodness and justice, and that thus this affection has no proper place; we reply, that however this may be the case in particular instances, human government is requisite as a general condition of morality, and especially as a condition of justice and order. The Governors of Society are therefore, so far as this condition requires, the representatives of Justice and Order: and reverence to them, under this aspect, is still a general Duty. A Reverence for Superiors and Governors, as the representatives and cardinal points of justice and order, is requisite, to give a moral significance to the structure of human society. Reverence in inferiors, and Benevolence in superiors, are ties of affection which alone can bind together a community in which there are superiors and inferiors, so as to give them moral relations. And in every community, those who are, by its constitution and nature, the depositaries and sources of law and government, must be looked upon as superiors, and are, in that capacity, proper objects of reverence.

177 *Filial Affection*, the Affection of the Child towards the Parent, is a Duty of the Affections. The Supreme Law of our nature requires us to possess the Operative Principle of Benevolence; but it is unlikely that we shall possess this Principle, if we do not possess those benevolent affections which are the most natural and universal; which are commended to us and urged upon

us by the sympathy and common judgment of mankind; and for which there are strong and manifest reasons. Filial Affection is pressed upon us in all these ways. It is a natural and universal affection among men, failing to show itself only under very peculiar circumstances. It is everywhere regarded as a Virtue. A child wanting in love toward his parent, is looked upon with abhorrence, as an unnatural child. And this affection is supported by the strong and evident reasons, of its being agreeable to the Duties of Gratitude and Reverence. For, in the common course of events, children receive from their parents far more kindness, and far greater benefits, than from any other persons. And the sentiment of deferential regard and conscious dependence, which is natural to man, and for which he naturally assumes in his thoughts, as an object, a person wiser and better than himself; is, by the natural condition of man, directed, in the first place, towards the Parents. The child, who learns from them his lessons of what is good and wise; who sees and feels himself to be dependent upon them, and weak and ignorant in comparison of them; sees in them, the necessary and proper objects of Reverence. The Sentiment gives a Moral Significance to the Family Relation. Such an affection in the Child towards the Parent, combined with Parental Affection on the other part, are ties of affection which must exist, in order that the Members of the Family may have moral relations to each other, such as correspond to the obligation of obedience in the child, and support and care in the parent. If this Affection be not a Duty, there is no Duty on the part of the child; for Duty extends to the Springs of Action, and therefore to the Affections. Hence Filial Affection is a necessary portion of the Benevolent Affections which a good man must possess; and being conformable to the Duties of Gratitude and Reverence for Superiors, and essential to the existence of Filial Duty, it is itself a Duty.

This Affection tends to govern the Actions. Under the influence of Filial Affection, Obedience to Parents tends to become an Obedience of Love. Such an obedience is not merely a submission of our wishes and desires to those of others; but an identification of our wishes and desires with those of the persons whom we love and obey. We wish what they wish. Our intentions anticipate their commands. The pleasure of giving them pleasure, is a more powerful Spring of Action, than any pleasures obtained in opposition to their wishes.

178 The Duty of *Parental Affection* is shown on the like grounds. This Affection is a necessary portion of our benevolent

affections. It is natural and universal; and commended by the common judgment of mankind, who loudly condemn an unnatural Parent. If a person do not feel an affection thus urged upon him, the Operative Principle of Benevolence must be entirely wanting in him, or greatly defective. Such an affection is requisite to give a moral significance to the Family relation. The Obligation of Support and Care on the part of the Parents, is necessary for the preservation and wellbeing of the Child. These good offices are generally secured by the impulse of a strong and almost universal affection, supported by the general sympathy of mankind. This Affection contains the moral significance of the Obligations of the parent; and constitutes the tie by which the parent and child have a moral relation to each other. If this Affection be not a Duty, there is no Duty on the part of the Parent; for Duty regards the Affections. Thus the Parental Affection is a part of the Benevolent Affections which a good man must necessarily possess; and inasmuch as it is the natural Security for the most essential Obligations of man, and requisite to the existence of Parental Duty, it is a Duty.

179 *Conjugal Affection* is, in a like manner, a Duty. This affection produces the marriage union, or grows out of it, where it is not repressed by adverse feelings. It is supported by the sympathy and approbation of mankind; for all admire and praise a husband and wife, so far as they are bound together by a strong and steady mutual affection. It is this affection which alone gives moral significance to the legal union. Without the supposition of this tie of affection, there can be no moral relation between the two; no Duties, no Moral Claims; for duties and moral claims belong to the affections. Moreover, the married condition involves a Promise of such affection; and therefore the want of the affection, in that condition, implies a breach of promise, as well as a coldness of heart; and violates the Principle of Truth, as well as the Principle of Benevolence. Thus, the Conjugal Affection is a part of the benevolent affections which a married person must possess, in order to be good; and being required by the Principle of Truth, and essential to the existence of Conjugal Duty, it is itself a Duty.

180 *Fraternal Affection* is a Duty. Such an affection is natural; it readily grows up under the usual circumstances of Family intercourse. Not to have this affection, implies a want of that warmth and tenderness of heart, out of which Family Affections are unfolded by the conditions of the Family. If a man

is wanting in this disposition, we conceive that his Benevolence, in its more comprehensive bearings, will be feeble and cold. If he do not love his brother, he is little likely to love a stranger. This affection gives a moral significance to the mutual good offices which a Family requires and gives rise to. These good offices between brethren cannot be Duties, except the affection which prompts them be a Duty. And thus Fraternal Affection is a part of the Benevolent Affections which a good man must possess; and being essential to the existence of Fraternal Duties, is itself a Duty.

181 *The Love of our Fellow-citizens* is a Duty. This is a Fraternal Affection of a wider kind. A Community, a Tribe, a Nation, may be considered as a wider Family. The benevolent affections fasten themselves upon that part of mankind with whom we principally converse, and with whom we share many common influences. A common descent, a common history, a common language, common manners, common laws, draw fellow-citizens together, as, in a narrower way, the habits and common conditions of a family draw together the members of the family. And the mutual services and knowledge of each other, thus produced, tend to generate a mutual affection. This Affection gives a moral significance to all mutual Services; for the mutual Services of Fellow-citizens cannot be Duties, except their mutual Good-will be a Duty. And thus a Love towards his Fellow-citizens is part of the Benevolent Affections which a good man will necessarily possess; and being necessary to the existence of social and civil Duties, it is itself a Duty.

182 In the same manner, it is seen that we have Duties of Benevolent Affection towards all persons who are connected with us by any less comprehensive social relations; as to our Servants, our Masters, our Dependents, our Employers, and the like.

183 A Duty of the same kind exists towards the whole human race. There is a Duty of *Universal Benevolence* which we ought to bear to men as men. We have already (118) stated, that in considering the conditions of the Supreme Law of Human Action, we are led to the Idea of absolute and Universal Benevolence, as a part of that which the Law must include. And we have stated the express Principle which represents this Idea (162), that we must love man as man. This Principle now comes before us as an expression of a Duty. In taking this view of it, we imply that the Principle is requisite to give a moral significance to our social relations; for this has been noted as a character of

Duties (172). This character will now be seen to belong to the Affection of Universal Benevolence towards man as man. We have Duties to all men: Duties of Justice and Truth are to be performed towards all men. But these Duties cannot be performed as Duties, except they proceed from an internal Spring of Action. They must be the results of Affection. And thus an Affection towards all men, being essential to the existence of all other duties towards them, is itself a Duty.

184 As our love of the members of the same family, or of the same community, is unfolded by our being led to see and feel what their nature has in common with ours; so our love of mankind in general is unfolded, by our being led to see and feel that they have a human nature, which is identical with our own. We are by degrees led to look upon them as Members of the same Race; as Children, along with ourselves, of the *great human Family*. And thus, we love them with an extension of the love which we bestow upon our brothers. We look upon all Mankind as our Brothers.

185 But this Duty of the Love of Mankind goes further. We come to feel a love for all mankind, of which we have spoken, by having brought before our thoughts the common human nature which they share with us. But there is a kind of love which we far more readily feel for those who offer themselves to our notice, as under the infliction of pain or grief. There is (135) a natural impulse of *Compassion*, which draws, to such persons, our benevolent regard; and which prompts us to do them good offices by which their distress may be relieved. This compassion for the Afflicted, merely as afflicted, is a feeling which the whole human race sympathize in, and which is by all commended and loved. It thus naturally exists, among the benevolent affections, which are unfolded in a man's bosom, as he becomes more and more fully possessed of those Operative Moral Principles which belong to the Supreme Rule of Human Action, and in which man, as man, universally sympathizes. And the Acts which proceed from this affection of Compassion, are part of that course of action, which the Supreme Rule, drawing together all men, in virtue of that which belongs to all, directs and enjoins. Hence, Acts of Compassion are what men ought to do. They are Duties. But these acts cannot be Duties, except the Affection from which they proceed is a Duty. And thus Compassion, which, as we have seen, is a part of the Benevolent Affections possessed by a good man, being essential to the Duties of Charity, is itself a Duty.

186 And thus, we have established as Duties, the Affections of Gratitude, Reverence for Superiors, Filial, Parental, Conjugal, and Fraternal Affection, the Love of our Fellow-citizens, and the Love of Man as man, and Compassion.

But in some cases other Duties may interfere with these. Gratitude, Family Affection, Patriotism, may, if blindly followed, prompt acts which are unjust or otherwise immoral. The course which Duty in such cases directs must be determined by further consideration; particularly by considering what is the exact meaning of *Justice* in such cases. This question of Duties apparently interfering will be resumed hereafter.

187 Other questions respecting the Duties of the Affections offer themselves when we take into account the irascible or resentful as well as the benevolent affections. The irascible affections act as a defense against harm or wrong, as we have already said (137): and so acting have their moral value. But in themselves, they are opposed to Benevolence, and are never to be indulged on their own account. All forms of Anger so operating are to be repressed and subdued. Thus Passion (in this special sense), Peevishness, Captiousness, Obstinacy in rejecting explanation of offenses which we have taken, are all vicious tempers; and acts internal or external, which belong to such tempers, are violations of Duty; or rather, they imply a neglect of that Duty of the Moral Culture of the Affections of which we shall speak in the next chapter.

188 But Resentment when it appears as Indignation against wrong and vice has, as we have said, a moral value. Such affections, rightly directed and controlled, tend to repress injustice, fraud, cruelty, foulness, disorder among men, and thus, tend to bind together the members of human society which would be separated and put in a state of mutual repugnance and conflict by such vices and wrongs. So directed and controlled, Resentment against wrong in general, that is, Virtuous Indignation, has the character of a Duty. But the degree in which this Sentiment may be pronounced to be required by Duty, must depend both upon the energy of the Affections which belong to each particular character, and upon the stage of culture which the affections have attained.

189 But when the wrong which excites our resentment and indignation is something done to ourselves, or to those nearly connected with us by affection, we are very liable to take an exaggerated view of the amount of the wrong, through the partiality of self-love and the distortion of mental vision which anger produces.

Now all indignation or resentment on account of wrong done to ourselves, goes beyond the limits of Duty, when it is more than an impartial and calm person, judging on moral grounds, would feel. We may naturally feel more resentment for our own wrongs than for those of others; but this may be right, only because we may see our own wrongs more clearly, not because we may think our own rights more valuable than those of others.

190 There is no Duty of keeping alive the sentiment of indignation or resentment against a person for a particular wrong done us. On the contrary, as our resentment against wrong done to ourselves is commonly more lively than on mere general grounds it would be for like acts, it is our Duty to tame down this feeling, as soon as possible, to that measure which an impartial person would feel. That is: we ought to *forgive injuries* so far as they concern ourselves.

191 Moreover the resentment which we feel for wrong done to any one ought not to extinguish the affection of general Benevolence, which, as we have said, it is our duty to feel towards all men, before we come to consider whether or not they have done us wrong. The indignation which we feel against persons for the evil they have done, may diminish our love for them; but still we have to recollect that they are men, and to love them as men, with such affection as our indignation for the evil done by them allows us to feel; which indignation, as we have said, ought not to be the stronger because the evil is done to ourselves. And so far as this, even reason teaches us to *love our enemies**.

192 And further, it is to be considered that our benevolence towards men must regard their moral as well as their material advantage. We must grieve for their vices, as well as for their external sufferings. And therefore their injustice, ingratitude, cruelty, and the like, are proper objects of compassion, as well as of anger. And this feeling also should prevent our indignation against vice from extinguishing our love of men who are vicious.

193 Since our resentment against wrong done to us must be thus limited, moderated, and modified, in order that it may be virtuous, it is plain that all mere Revenge (138), which regards the pain inflicted as an end, and not as a means to moral good, is vicious. Acts of vengeance, Retaliation of evil for evil, even vindictive intentions, are violations of Duty.

194 The Duty of Forgiveness of Injuries (190) has been often denied; and the Right, and even the Duty of Retaliation has

* See Butler, Sermon IX.

been held, in many ages and countries. To see and to feel the Duty of Forgiveness of Injuries, implies, no doubt, a considerable degree of moral culture. But the personal Right of Retaliation for wrongs done to us can only be conceived as belonging to a rude, stormy, and barbarous state of social progress. With regard to wrongs from which we are not protected by the law, but which we think ought not to pass unpunished, the infliction of punishment by deeds of violence from private hands, is inconsistent with any order in society; for there can be no order if violence be not suppressed. Nor could such retaliation, if tolerated by law or custom in particular cases, answer its purpose: for the wrongdoer may be victorious in the personal conflict; besides which, the person seeking such redress makes himself or his friends the judges in his own case. And any attempts to give fairness to the personal conflict by excluding fraud, secrecy, and inequality, would make its result still more accidental and irrelevant with regard to the justice of the case. Where such personal conflict, resulting from wrong alleged, is practised, (as in the case of Duelling,) the persons concerned, so far as they desire to hurt each other, are impelled by a resentment altogether immoral in its course and limits. It may be that they have no such desire, and are rather merely obeying and perpetuating a barbarous and immoral custom; but in doing this they are violating another duty;—that of preserving and promoting their own moral culture and that of the society in which they live.

CHAPTER VII.

OF THE MORAL CULTURE OF THE AFFECTIONS AS A DUTY.

195 It has been shown that Gratitude to Benefactors, Reverence to Superiors, Compassion to the Afflicted, are Duties; as also are Filial, Parental, Conjugal, and Fraternal Affection, the Love of our Fellow-citizens, and the Universal Benevolence which embraces all men as men. These Affections we ought to possess. Such Affections therefore we ought to acquire. We ought to foster, cherish, cultivate them. We ought to establish these Affections in our Minds; to direct our Affections by these Forms

of Duty. We ought to form our character in such a way that these Benevolent Affections shall belong to it.

To this doctrine, it may be objected, that we have not the power of doing what we are thus enjoined to do. It may be said, that we have not the power of generating or directing our Affections, and of forming our own character. It may be urged, that we cannot love a particular person, or love under particular circumstances, and with a particular kind of love, merely because we will to do so. Love, it may be said, cannot be thus compelled by command. Character cannot be thus formed by Rule.

But we reply, that the objection, thus stated, involves much too large an assertion. It is very far from being true, that we have no power over our own affections or our own character. The universal voice of mankind recognizes the existence of such a power, by the condemnation which it awards to the want of the affections above mentioned. If a child do not love his parent, a father or a mother their child, a brother his brother; all men join in condemning the person thus destitute of natural affection. He offends against the common nature of man. And in like manner, all men look with repugnance and disapprobation upon the ungrateful or pitiless man. All men blame him who is irreverent towards a just and good Master. These, and the like moral judgments of mankind, imply that a man's affections are, in some way, his own act. The affections are thus declared to be part of that internal action for which he is responsible. He is a proper subject of praise or blame for what he feels; and so far, his *feeling* is his *doing*.

196 And we can perceive that we have, in various ways, power over our feelings. Even immediately, by the power which we possess of directing our train of thoughts, we can foster or repress an affection. We can call before our minds, and dwell upon, those features of character and situation, which tend to impress on our minds one Sentiment or another. We can, for instance, think on all that our parents have done and suffered for us, and can thus move our hearts to a love of them. And above all, the recollection that affections are natural and right, will fix and promote them. We shall constantly approximate to those benevolent affections, which we constantly regard as recommended by the universal sympathy of mankind, and as conformable to the supreme law of our being. While, on the other hand, coldness and hardness of heart,—still more, malevolence or perversely directed affection,—perpetually dwelt upon in our thoughts, as feel-

ings which estrange us from our kind, and make us a natural object of their abhorrence, and violate the very essence of our nature,—will be, by this means, repressed and extinguished.

197 The course of thought by which the virtuous affections are promoted, may sometimes be traced, in the progress of special Conceptions, and in the significance of the terms by which they are denoted. Thus the clear apprehension of a common internal nature in all men, which suggests the use of the term *Humanity* to designate this common nature, leads, further, to the benevolent affection towards man as man; which affection is also termed *Humanity*. Thus, the apprehension of objective Humanity tends to promote subjective Humanity (126). We shall hereafter consider the progress by which some Conceptions of this kind have arrived at clearness and comprehensiveness of signification. We shall thus be led to see some of the steps by which the affections are cultivated.

198 Moreover, the Benevolent Affections impel us to endeavour to do good to the objects of them. We wish to promote the wellbeing of those whom we love. This their wellbeing thus becomes the object of our desires and intentions. But the conception of the Wellbeing of other persons, which we thus place before us as our object, may be variously modified and transformed by the operations of our thoughts. We may conceive it as merely their Pleasure, or as their Interest, or as their Happiness. And as some of these are truer and more moral views of Wellbeing than others, we may, by the exercise of our Faculties, advance from those views which are false and wrong, to those which are true and right. This possession of true conceptions of the ends to which our benevolent affections must direct us, is a part of our character: and this, depending upon our own course of thought, is in a great measure in our own power.

199. The exercise of thought and reflection may produce a moral culture with regard to the irascible as well as the benevolent affections. There are many trains of thought, for instance, which we may, for this purpose, call to mind, when we are disposed to anger against persons whom we suppose to have injured or slighted us. We may consider that we are prone to exaggerate, in our thoughts, offenses against ourselves*:—that anger is a false

* Butler, Sermon. IX. *Upon Forgiveness of Injuries*. "Without hearing particulars I take upon myself to assure all persons who think they have received indignities or injurious treatment, that they

may depend upon it, as in a manner certain, that the offense is not so great as they themselves imagine." And see the rest of the Sermon.

medium through which we see characters and actions as worse than they really are:—that to get rid of such exaggeration, distortion, and falsehood, is required of us, not so much by meekness and humility, as by common sense and love of truth:—that men are not naturally malevolent without some object to gain, so that the original offense to us did not arise from pure illwill to us:—to which we may add those reflections which strengthen our benevolent affections towards men, and thus subdue or moderate our anger:—the habitual recollection of our common nature:—the reflection that injustice, ingratitude, cruelty, are subjects of compassion as well as of anger; and the like.

200 And besides this direct operation of thought upon the affections, there are many circumstances and conditions which have an influence in the formation of our character; and which, being in our power, put the formation of our character in some degree also in our power. As we have already said, Acts of Duty generate Virtues: and our Acts depend upon our will. We can, by directing our Acts, form our Habits; and Habits of external action extend their influence to the internal feelings. Each link of this chain may be in some degree loose; and yet the whole will exert a constant pressure upon the character, drawing it towards the line of Duty. The Acts of Duty may be imperfectly done; the good Habits may be imperfectly formed; the internal Feelings may imperfectly correspond to the Habits; but yet, by the steady performance of Acts of Duty, the cultivation of a virtuous character is perpetually promoted.

201 It may be objected, that when we have done all that is possible in the formation of our character, still there will remain in it much of good and evil, the result of our original native qualities which we cannot alter, and of external circumstances over which we have no control; and thus, that our character and disposition is not in our own power. To this we reply, that, as we have before said, our character and disposition is in our own power, so far as to be a subject of praise or blame. For if praise and blame are not applied to character and disposition, to what can they be applied? We are endeavouring to define those dispositions which are the proper objects of approbation. An opponent, whose objections imply that *nothing* is a proper object of approbation or disapprobation, has no common ground with us; and with him, therefore, it is useless to reason. But further; when it is said that there will remain in our character much that is good and evil, the result of its native elements, even when we

have done all that is possible to repress the evil, and promote the good; we reply, that we never can be said to have done *all that is possible*, in the improvement of our character. So long as life continues, thoughts of Duty, and acts of Duty, by which our internal being may be improved, are possible: and so long, therefore, we are responsible for not labouring to remove the evil which remains, and to forward the good.

202 We thus see, that as there are certain Affections which are Duties, so is it in our power to foster and cherish those affections; to form and improve our character, so that those dispositions shall make a part of it; and to continue this course of self-improvement to the end of our lives. This course may be termed our Self-cultivation, or Moral Culture; and the effect which it produces upon our character is our Moral Progress. This Progress is carried on, as we have seen, by giving earnestness and vividness to our Moral Affections, generality and clearness to the conceptions by which such affections are regulated, steadiness to our habits of Moral Action. It also requires us to give consistency to our Rules of Duty; and generally, to give consistency, comprehensiveness, and completeness, to the whole of our intellectual and moral being.

203 Our Moral Culture and Moral Progress can never be terminated in our lifetime: for we can never reach a condition in which there is no possibility of giving more earnestness and vividness to our moral affections, more generality and clearness to our conceptions of moral objects, more steadiness to our moral habits. The formation of a human character is never ended. There will always be some part of it which does not fully conform to Virtue. It will always be possible to go further in these respects. The Supreme Law of our Being, by which we are directed to Duty and Virtue, is not satisfied, except the whole of our Being conform to it. Hence this Law demands a perpetual Moral Progress; and such a perpetual Moral Progress is necessary, in consequence of other changes also. New persons, new objects, are constantly presented to us: new thoughts, new views of ends and means, constantly arise in the mind. And as these arise, the feelings which they occasion ought constantly to be conformed to the Supreme Law. The Affections must constantly expand and modify themselves, according to these developments of the mind, so as to remain in harmony with the Moral Ideas. The current of thought is constantly flowing, and constantly receiving accessions from fresh rills, put in motion by the course of the outer world. It thus

becomes constantly wider and deeper through life, except when it is narrowed and constrained by external obstacles. The whole of this current of thought should be tinged by the virtuous affections; and there must, therefore, be a constantly flowing source of moral goodness to preserve the moral colour of the stream. As there is, in the head, a fountain of perpetual internal change; there must be, in the heart, a fountain which shall give to every change a character of good.

204 Thus there is a Duty of Moral Self-culture, which can never be suspended nor terminated. With reference to that part of Morality of which we are now speaking, this is the Duty of the Culture of the Affections. It is our duty constantly to cultivate the Affections which have been described as Duties; Gratitude; Compassion; Reverence; Family Love; the Love of our Fellow-countrymen; the Love of our Fellow-men; the Suppression of Violent or Obstinate Anger, of Peevishness, of Captiousness; the Forgiveness of Injuries; Good-will, even to those who injure and slight us. This Culture of the benevolent affections is a Duty which never stops nor ends.

205 Further; the Duty of thus cultivating these Affections includes the Duty of possessing such affections; and may often, in our consideration, take the place of the Duties which we have mentioned. The Duty of cultivating Gratitude and Compassion includes the Duty of feeling Gratitude and Compassion. That we are to cultivate such Affections, is a reason for feeling them, which is added to the other reasons, but which includes them all. We are to feel Gratitude and Compassion, because it is right: we are to cultivate them, because it is right to feel them; but we cultivate them by feeling them. The Duty of Self-culture enjoins upon us the same feelings which the Duty of Gratitude and the Duty of Compassion enjoined before.

206 The constant and interminable moral culture of the Affections, which is thus a Duty, and includes the other Duties of the Affections, may suffer interruption and reverse. The progress at which such culture aims, is thwarted by every act which is morally wrong. The moral progress of our affections is *interrupted* by every malicious act, by every feeling of malice, by the want of love on occasions when the circumstances and relations of our position call for it. Our moral progress is *reversed* when such malice, or such coldness of heart, becomes habitual. The *transgression* of moral precepts, whether they regard external acts, or internal springs of action, is a suspension, and may be a termina-

tion, of our moral progress. And this effect of transgression, as being a contradiction of our moral culture, adds greatly to the importance of its moral aspect.

207 We may further add, that in this aspect of *transgressions* of Duty, that they interrupt or undo our moral progress, we have the aspect of them which most determines their moral weight; so that those transgressions are considered most grave, which most interrupt our moral progress. As the interruption or inversion of this progress becomes more decided, the transgression becomes *more grievous*. This subject will be pursued afterwards.

We may likewise remark, as a point which will be hereafter pursued, that Moral Progress, the Supreme Law of our nature, must necessarily be the way to *Happiness*, the Supreme Object of our nature.

208 It may perhaps appear to some that there is nothing gained in Morality by the view just presented; since the Duty of Moral Culture is identical with other Duties already spoken of. But this is not so. By presenting to our minds the Conception of Moral Culture, our Duties often assume a different aspect from that which they have when considered separately; and we are able to establish Rules of Action, of a wider and completer kind than those to which the contemplation of more partial Duties would lead. For instance, the Duty of Compassion assumes a new and larger aspect, when we consider every compassionate act and compassionate feeling to be, not only a relative Duty towards the distressed object, but a means of softening and improving our own heart; and this aspect of the Duty may be a better guide for our actions and feelings than any narrower view would be. And thus our Duties, when regarded as parts of our Moral Progress, may be looked upon as higher objects of moral desire, and higher aims, than more special objects and more partial aims could be.

209 Although Moral Culture can never reach its termination, it may be conceived as a Progress towards an Ideal Object by which its tendency is marked. Our Moral Progress may be conceived as a constant tendency towards an Ideal Point of complete Moral Perfection;—the same Ideal Center of Morality of which we have already spoken (125). The Elements of this ideal Moral Perfection are, as we have already said, the Cardinal Virtues, Benevolence, Justice, Truth, Purity, and Order. To these we are constantly to tend. We are to establish them in our minds as Principles: that is (161) as Operative Principles—the Operative Principles of our Being. To do this, we may look upon as the

Highest Object of our actions ; as the *Greatest Good* of which our moral nature is capable.

For the present we are considering only the Moral Culture of the *Affections*; which requires us to make Benevolence an Operative Principle of our Being, so that it may manifest itself in all its modifications, according to our condition and relations to other men. But what has been said of the Duty of Moral Culture, and of its bearing upon more Special Duties, and upon violations of Duty, applies equally to the other classes of Duties, as well as to those of the *Affections*. We now proceed to those other classes.

CHAPTER VIII.

DUTIES RESPECTING PROPERTY AND OTHER OBJECTS OF DESIRES.

210 THE Rules of Duty with regard to external things, as objects of possession, are consequences of the Principle of Justice, that Each man is to have his own; and of the Principle of Moral Ends, that Things are to be sought only as means to moral ends.

The Rule that each man is to have his own, is a Rule which regulates all external acts relative to Property. It thus prescribes external Duties. But these external Duties imply also an internal Duty, directing the Desires and Affections. We must desire that each man should have his own, and must desire things for ourselves, only so far as they are assigned to us by this rule. And this Duty enjoins a perfect Fairness and Evenness in our views of external possession; an Equality in our estimate of our own claims with those of other persons; and an absence of any vehemence of Desire which might disturb this equality. The Duty of a Spirit of Justice excludes all Cupidity or eagerness in our desires of wealth; all Covetousness, or wish to possess what is another's; all Partiality, or disposition to deviate from equal Rule in judging between ourselves and others. The Rule of action is, Let each man have his own; but the Rule of desire is, Let no man seek his own, except so far as the former Rule directs him to do so. Justice gives to each man his own: but each ought to cling to his own with an affection entirely subordinate to the love of Justice. The good man has no love of possessions which can at all come into rivalry with his love of equal and steady

laws. This rule does not require us to abstain from the usual transactions respecting property:—buying and selling, getting and spending; for it is by being employed in such transactions, that property is an instrument of human action,—the means by which the characters and dispositions of men manifest themselves. A rich man may employ many men in his service by means of his wealth; nor does morality forbid this; but then, they must be employed for moral purposes.

211 Justice, as we have said, directs us to desire external things only in so far as an equal and steady Rule assigns them to us as our own. But further: even when they are our own, our desires must not turn to external things, as ultimate and independent objects. It belongs to our idea of a good man that he does not seek such objects for their own sake, but as Means to moral Ends. He does not desire gold and lands, as things in themselves desirable; but as things which will enable him to do good. We are not forbidden by morality to use our possessions in upholding and carrying on the usual relations of society; as those of Employer and Workman, Master and Servant; for the duties of men suppose the existence and fixity of these relations; but we must consider these relations, also, as means of our duty; and must maintain and direct them, only in such a manner as that they are such means of duty. We must in all things regulate our desire of wealth and its results by the Spirit of Moral Purpose.

Thus we are directed by Morality to regard Property only as a means of doing good. In the eyes of the Moralist no possessions are absolute and unconditional property; the possessor holds them only *in trust* for moral and benevolent purposes. He is a *Trustee* for the general benefit of mankind; and the condition of the Trust is, not merely that he shall give something, in cases where benevolence directs; but that he should employ the whole so as to promote moral ends. Not only in giving, but in buying goods, paying wages, saving or spending, he is bound to act morally. When the proprietor asks, *Have I not a Right to do what I will with my own?* the Moralist replies, *No; you have not a moral Right to do what is wrong with your own.*

The same may be said of the other Desires. A good man may seek Rank, or eminent station in the state, and may desire the Power which Rank and Station give. But then, he will seek these his Objects only in entire fairness of act and spirit; and he will desire them only as means of doing good.

212 Thus, the Duties of the Desires are determined by the

Principle of Justice, and the Principle of Moral Purpose. But these Principles, in order to have their proper place in the character, must become complete Operative Principles. The Spirit of Justice, and the Spirit of Moral Purpose must pervade the whole of the good man's being, must regulate all his thoughts and wishes. This is a condition of ideal moral perfection, towards which we may tend, but to which we can never fully attain. Yet, that we have it in our power to make some advance in this direction, is plain. We have it in our power to become in some degree just and morally minded; for if this were not so, we should deserve no condemnation for being unjust and sordid minded. Since, then, we can make progress towards the possession of these Principles of Justice and Moral Purpose, in which a large portion of our Duty is contained, our Duty requires us to make such Progress. There is, in these respects, as in the case of the Affections, a Duty of Moral Progress and of Moral Culture.

213 The conception of our Moral Culture being placed before us, as an object of our desires and endeavours, our Duties with regard to Wealth, and other external things, assume a new aspect, by which light may often be thrown upon the course of our Duty. We are to use Wealth only as a means of our Moral Culture and Moral Progress. Hence, though, as we have said, if we are rich, we may use Wealth in most of its ordinary applications, as in maintaining many servants, or in employing many workmen; we must take care that there is not, in our affections to such dependents, or in the occupation thus given to our thoughts, or in the results which we intend or expect, anything which prevents our moral progress. And since benevolence to our dependents is a part of moral excellence, we must give to our relation to them such a character as promotes their welfare.

214 As the rich man is bound in Duty to seek and to use wealth for moral ends only, and to make it a means of his moral culture; so the poor man, who has to labour in order to provide himself with the necessaries and comforts of life, is also bound to abstain from all labours that are immoral; and to combine, with a care for his bodily wants, a care also for his moral progress. A man may not, because he is poor, engage himself in the service of vice; or sell, for his own gain, what is committed to him as a trust. And however large a portion of his time and thought a man's necessary labours may demand; he must always recollect that he has a soul, which is to be instructed and morally cultivated, as well as a body to be supported. The poorest, as well as the

richest man, is a moral agent; and does not conform to the law of his being, except he make all other ends subservient to moral ends. He who seeks a mere livelihood, must still seek to make acting rightly, and doing good, the ends of his living. He who has the largest superfluity cannot live for a higher purpose, and may not live for a lower.

215 The power which wealth bestows upon its possessor, and any other power or influence over his fellow-men, which any one may possess, must be used for their welfare, in obedience to the Principle of Benevolence, as we have already said. The welfare of men may be contemplated under various aspects; as Interest, Happiness, and the like. But our contemplation of the good of other men cannot be complete, except we include it in that which we consider as the highest good for ourselves; namely, Moral Progress. Our Benevolence, therefore, will not be consistent with our moral views, except we seek to promote the Moral Culture of those over whom our power extends.

The Moral Culture and progress of Man considered as an object which we may endeavour to promote, includes many comprehensive and complex conceptions; the Liberty, the Education, the Civilization of man, may all be considered as elements of their moral culture, which we may make our objects in our efforts for their welfare; and above all, Religion may be looked upon as including the most important part of such culture. In order to follow, into further detail, the Duty of the Moral Culture of men, we must unfold into particulars and consequences these Conceptions of Liberty, Education, Civilization, Religion. This it will hereafter be our business, in some measure, to do. In the mean time, we proceed to another class of Duties.

CHAPTER IX.

DUTIES CONNECTED WITH TRUTH.

216 THE Duties connected with Truth, are those which result from the Principle of Truth already stated (162); that we must conform to the universal understanding among men which the use of language implies. This Principle is expressed more

briefly by saying, that we must not Lie; for a *Lie* is a violation of the universal understanding of which we speak. This Rule of Duty is in agreement with the universal moral sympathy of mankind, which condemns the Liar as hateful and despicable. That a Lie is a violation of the general understanding of mankind, is the reason why the Rule, *Lie not*, is universally accepted by mankind as an absolute Rule, even when a lie infringes no positive Rights. The other absolute Rules, *Kill not*, *Steal not*, and the like, are requisite for the establishment of Rights of the Person, of Property, and so on. A Lie violates no Right except the right of knowing the truth; which is not a jural Right, though it may be a moral claim. But the Rule is acknowledged by men as absolute; because a Contract to speak the Truth is implied in the use of Language; and a Right to know the Truth is conveyed, by every speaker, to the person to whom he addresses his assertions.

Accordingly, when the common understanding among men is not violated, a declaration is not a lie, although in the common meaning of the term it would be false; as when a man says at the end of a letter, "I am your obedient Servant," though the letter itself may contain a refusal to obey or to serve the correspondent.

217 Not only Lying, but every mode of conveying a false belief, is prohibited by the Principle of Truth. This especially applies when we convey a belief of our own intention in a matter affecting him whom we address; that is, when we make a Promise. We are bound by the Duty of Truth to promise only what we intend to perform. All Deceit, Fraud, Duplicity, Imposition, is excluded by the Duty of Truth.

But if I have promised what I intended to perform, and afterwards change my intention, does it cease to be my Duty to perform my promise? It is plain that it does not. To break my Promise is to break the understanding between the *Promisee* and me. The understanding established between us was, not a doubtful understanding; namely, that, if I did not change my mind, I would do thus and thus; but an absolute one, that I would do thus. If a Promise were capable of arbitrary revocation by the Promiser, it would establish no common understanding, and could be of no use in enabling the Promisee to regulate his actions. At the time I make the Promise, I have the power of determining my future actions, by retaining my present intention. The engagement which I make is, that I will retain it; and this the Promisee must be able to reckon upon, in order that the Promise may mean any thing. It is therefore a universal Duty to perform Promises.

218 The duty of performing Promises is an extension of the Obligation of performing Contracts. A Contract is a Promise, sanctioned by the formalities which the Law prescribes, as necessary to make it valid. It is a Duty to perform Contracts, as well as a legal Obligation; but the Duty is not limited by the formalities which limit the legal Obligation. The legal Obligation depends upon the external form, as well as the intention; but the Duty depends upon the intention and mutual understanding alone; and therefore the Duty of performing Promises must exist, wherever the mutual understanding of the Promiser and Promisee existed.

It follows from this, also, that Promises are to be performed in the Sense in which they were made and received, by the mutual understanding of the two parties, at the time.

219 It is a Duty to avoid all Falsehood, Deceit, Fraud, Duplicity, Imposition. Hence it is a Duty to have the internal spring of action which impels us to avoid such acts. It is a Duty to hate Lying, Deceit, Fraud, Duplicity: to have no wish to deceive or impose upon any one: to profess and assume no intentions different from those which we really entertain. Singleness of Heart, Simplicity of Character, Openness, Frankness, are the virtues which ought to give rise to our words and actions. We ought to have in us the Operative Principle, or Spirit, of Truth.

220 And as in the case of the other Principles, because we ought to have this Principle in operation within us, we ought to cultivate and encourage it in our hearts. Our Moral Culture in this respect also is a Duty.

The Spirit of Truth is to be cultivated by Acts of Truthfulness. That we have it in our power to be truthful, is evident. The difficulty and need of exertion, indeed, are on the other side. To say that which we know not to be true; to assume the appearance of that which we are not; requires effort, invention, and contrivance. Truth is the first thing that comes to our lips; and we must do some violence to ourselves, to substitute anything else for it. In this respect, then, in order to cultivate a Spirit of Truth in ourselves, we have only to obey our natural impulses, and to say what we think and feel. But yet there are many desires, purposes, and motives, which are constantly impelling men to falsehood and deceit. Men use language as a means to ends;—not always, nor principally, as the simple declaration of what they think and feel; but with a view to the effect which it will produce upon the person addressed. And as a falsification or distortion of the real state

of the case often seems likely to answer their purpose better than a true representation, the natural impulses of Truth are checked and overpowered by other Springs of Action. Now the Moral Culture of the Principle of Truth in us, requires that all such working of our desires should be suppressed. To lie, to deceive, for any purpose whatever, is utterly inconsistent with any care for our moral progress.

It is impossible that the Operative Principle of Truth should acquire that place in our character which morality requires, if we allow it to be thrust aside by the desire of pleasure, or gain, or power, or the like. The only way in which we can advance towards the moral standard, at which it is our Duty constantly to aim, is by a steady and solemn determination, under no circumstances, to be guilty of falsehood. A man earnestly aiming at his own moral progress, will be true in his assertion, true to his promises, true to his implied engagements, true in what he says, true in what he does. No prospect of any object of desire, or of any advantage, can sway him to any deceit or fraud; for objects of desire have no necessary tendency to further his purpose; whereas deceit and fraud are in direct contradiction to it.

221. We have spoken of a steady and *solemn* determination not to be guilty of falsehood, as means of moral culture. This expression supposes, that which our consciousness as moral beings assures us of, that we have the power of making such determinations of our future course of action. We can determine and resolve upon a future act or course of actions. We must do this, in order that we may promise, and fulfil our promise. But we may combine a greater than ordinary degree of earnestness and self-watchfulness with this determination; a more than ordinary degree of distinctness and gravity with the promise, or declaration in which we express the determination. We may *solemnly* resolve, and *solemnly* promise. If we do this, we connect the fulfilment of our resolution and promise more thoroughly with the progress of our moral culture. We entwine the two, so that the one cannot be broken, without great damage to the other. We embark a larger portion than usual of the moral treasure of our lives in one bottom, and risk a more ruinous wreck. If we break a solemn resolution, a solemn promise, what hope can we have of any steadiness or vigour in our future moral course? How can we retain the moral hopes and aspirations which are to carry us forwards? The growth of the Principle of Truth is arrested; the Principle itself seems to be eradicated. The interruption and reverse in our

moral progress is marked and glaring, and hence (206) the offense is grievous. The violation of a solemn promise is a moral offense of the highest kind.

There may be some cases in which there may be at first a doubt what course this Rule of the Duty of Truth directs us to take; but these cases we shall consider, when we have taken a view of the remaining Classes of Duties.

CHAPTER X.

DUTIES CONNECTED WITH PURITY.

222 THE Duties connected with Purity, are those which result from the Principle of Purity; the Principle that the Lower Parts of our Nature are to be governed by and subservient to the Higher Parts. Thus the Appetites and Desires, which find their gratification in meat and drink, with the accompaniments of a decent table, are to be indulged as subservient to the support of life, strength, and cheerfulness, and the cultivation of the social affections; the indulgence is to be limited by these purposes, and these purposes by moral rules. In like manner, other desires, mingled of bodily and mental elements, are to be indulged only in subservience to the affections and hopes which belong to them; and the affections and hopes are to be regulated by conditions which morality and law prescribe. In the gradation of the parts of human nature, we place bodily appetite, and all merely selfish desires, below affection; but mere blind affection we place below the moral affection which approves of goodness. The affections of the heart in some measure refine the desires of the body; but the affections of the heart may be greatly impure, if they are not regulated by the law of the heart which morality teaches. Affection alone does not make actions moral, or remove that stain of impurity which they derive from bodily appetite. The nature of man is purified, by having a moral character given to it. This moral character purifies the affections; and the affections, thus purified, communicate their purity to the desires which are subservient to them. And thus, Morality does not require us to extinguish the desires, or to reject the pleasures arising from their gratification. Still, she directs us not to dwell on this gratification in our thoughts, as an

object; but to accept from it that influence, which it can exercise in giving energy to our affections, without being itself a direct object of contemplation. The bodily desires are made the instruments and evidences of the affections; and are thus absorbed into the affections, and made conformable to the Principle of Purity.

223 The distinction of the Lower and Higher Parts of our Nature, by means of which we express the Principle of Purity, has been rejected by some moralists, and has been termed "Declamation." Such moralists contend that pleasure is universally and necessarily the object of human action; and that human pleasures do not differ in kind, but only in intensity and duration: so that, according to these teachers, there is no difference of superior and inferior, between the pleasures of appetite, the pleasures of affection, and the pleasure of doing good. Hence, say they, the only difference in the character of actions, is their being better or worse means of obtaining pleasure. But the universal reason of man assents to the opposite doctrine, delivered by Butler: who maintains that our principles of action do not differ in degree merely, but in kind also; some being, by the constitution of human nature, superior to others, and their natural governors. Thus, as he teaches, the Rule of our nature is, that Prudence shall control Appetite, and that the Moral Sentiments shall control the Affections. If we take the opposite view, we obliterate the difference between man and brute beasts. We make no distinction between the blame which we bestow upon Error, and upon Crime; for on this supposition, Crime is only miscalculation; and merely means an erroneous way of seeking pleasure. If we follow this view, we make a bad heart the same thing as a bad head. According to this doctrine, we can have no *Supreme Rule of Action*; for if Pleasure be the *highest* object of action, it is also the *lowest*. With such opinions, we deprive the words *right* and *wrong* of their common meaning; for to men in general, they do not mean right and wrong roads to enjoyment, which this view makes them mean.

224 The duties of Purity are those which follow from such an operation of the Principle. They allow no value to indulgence in the pleasures of the Table for the sake of bodily gratification alone; though they allow our meals to be so conducted, that they may not only satisfy the bodily wants of nature, but also minister to the cheerful and social flow of spirits and thought, which is a condition favourable to moral action. They reject, in like manner, the gratification of other bodily appetites when sought for their own sake; though they allow such gratification under the sanction

of the conjugal tie, and with the hope of that extension of family affections, and family duties, which the birth of children brings.

225 As it is our Duty to regulate our actions by these Rules, it is our Duty also to acquire and possess an inward Principle, from which such a course of action will spring. It is a Duty to acquire and possess within us an Operative Principle, or Spirit, of Purity, which may of itself, and without the recollection of express Rules, direct us from all that is impure. A good man has dispositions, and habits of mind, which not only restrain him from acts of intemperance and unchastity, but repress and banish intemperate and unchaste desires and wishes.

And though it may sometimes be difficult for a man to arrive at this state of Purity of Heart and Mind; it is always the Duty of every man to aim at it. A moral Self-culture in such Purity, is a constant and universal Duty, of which the obligation can never relax nor terminate. A moral Progress in this, as in other respects, must be the constant aim of a good man.

226 Offenses against the Duties of which we are now speaking, more distinctly than in other Classes of Duties, produce their effect, of impeding our Moral Progress, and turning our course backwards. The intemperate and unchaste person becomes, by every vicious act and every vicious purpose, plainly more and more prone to vice. These Vices affect his habits of mind in a very direct manner. The Glutton and the Epicure, eager and curious respecting the pleasures of the palate, can hardly give due weight in their thoughts to higher objects; and they often stimulate and overtask the bodily functions, till the mind is oppressed, impeded, or arrested in its intellectual and moral operations. In the man who indulges a love of intoxicating liquors, this takes place more evidently and more rapidly. He speedily reduces himself to a condition in which neither reason nor moral restraint has its due power. The indulgence of other sensual appetites stimulates the bodily desires and inflames the imagination. Lust, obeyed as mere Lust, tends to fill the mind with obscene thoughts, and to make the intellect and the fancy mere ministers of Appetite. By such courses, the heart and affections are corrupted: the imagination is polluted; the character is depraved. Any steps in such a course are the opposite of a moral progress: they are steps in a course of moral degradation, of which the end is utter depravity; filthiness, and profligacy; in short, moral ruin. Transgressions of the Rules of Duty, of the kind now referred to, especially produce their effect, as steps of a course.

Here the act of transgression leaves a more distinct trace in the habits, than in the case of mere mental desires. The appetites become more powerful by being gratified. Their craving becomes, by indulgence, more and more importunate and irresistible. The body will not let the mind turn away from the accustomed path of sensuality. Sensual acts leave a stain of material filth upon the soul; of which it takes long and earnest efforts to remove the trace, so that it shall not afterwards give a sensual tendency to the Will. And thus, every sensual act contributes to the moral degradation of which we have spoken; and is grossly at variance with the Duty of our own Moral Culture.

227 It is very important to dwell upon this Duty of Moral Self-culture, in reference to offenses of Impurity; for these offenses are not mere extensions of the notion of jural wrongs, as some moral offenses are. Jurally speaking, each person may be said to have a Right over his own body, provided he injure no other person; and two persons may appear to have a Right to agree to unite in acts of sensuality, when no Right of a husband or a father is violated. Accordingly, Fornication, and Concubinage, have not been generally prohibited by the Laws of ancient and modern countries. But yet such practices have almost always been condemned as impure and degraded. And the consideration of the Duty of Moral Self-culture, which we have insisted on, shows the propriety of this condemnation. No person can use his body for purposes of mere Lust, without utterly abandoning all aim at his Moral Progress, and all hope of it. He who thus gives himself up to the government of the Lower parts of his nature, neglects and despises the Higher. So far as he does this, he renounces his moral nature, reduces himself to the level of brute beasts, and goes on resolutely and recklessly to moral ruin. It is true, that men may continue to perform some Duties, and to aim at some Virtues, while they still do not refrain from the Vice of Impurity. But it is plain, that a man's desire of Moral Progress must be so feeble and inconsistent as not to deserve the name, if he contentedly and intentionally pursues a course which manifestly leads to the pollution and degradation of one main element of a moral character.

228 The different constitution of the heart and mind in the two sexes, as well as the difference in corporeal conditions, lead to some special considerations respecting their Duties. The Desires and Affections of both sexes lead to the Conjugal Union: but according to the natural feelings of most persons, and the practice

of most communities, the man proposes and urges the union, before it takes place; the woman yields and consents. The man is impelled by a love which he proclaims to the object of it; and he asks for a return in which he has the character of a conqueror. The woman is led to consent, not only by affection, but by the hope of a life filled with those family affections, and family enjoyments, for which, as her heart whispers to her, she was made. When these natural propensities operate under due moral restraint, they lead to the marriage union. But moral restraints may be disregarded in some cases; and in other cases may be so feeble, that the solicitation on one side overcomes the resistance on the other; and the woman is seduced to a bodily union without marriage. This is an act of sensuality; and thus, as we have already said, an offense against morality. And in consequence of the character and conditions of the two sexes, of which we have just spoken, after such an act, the woman continues to yield, but the man is no longer ready to bind himself to her by the marriage tie. She is betrayed, as well as seduced. In so far as the seducer breaks the engagements which he has expressly or implicitly made, he violates the Duty of Good Faith, as well as the Duty of Chastity. But what we have here to observe is, that by the act of unchastity, he not only renounces the Duty of Moral Culture; so far as he himself is concerned; but that he is a Violator of the Duty of Benevolence, as the author of her moral degradation; perhaps of her utter moral ruin. For, as we have already said, the Vice of Sensuality, once admitted, has an especial, and almost irresistible tendency, to extend itself over the whole character. The woman who has yielded to blind affection, afterwards, when her affections are chilled, and her character hardened by the disappointment and treachery she has experienced, and retaining the trace of sensual desire which unchastity produces, may, as we know she often does, become a Wanton; may give herself up to lasciviousness; may sink from one degree of impurity to another, till she end in a state of utter moral ruin. There are said to be men who intentionally, and without remorse, practise the Seduction of women. It cannot but seem very strange, to a person of the ordinary kind of affections, that a human being should employ his skill and exertions in urging a woman, whom he pretends to love and admire, down this moral descent. Such conduct appears to involve a want of common humanity; for the moral degradation of the woman deprives her of almost all that is admirable and estimable, even in the eyes of her seducer himself; and would be

mourned by him as the bitterest evil, and resented as the most grievous wrong, if it were inflicted upon any one for whom he has a family affection. To say nothing of the duty of Purity, a man who is not restrained by his Humanity from such a course of action, must look upon the moral destruction of women with the kind of indifference with which the sportsman looks upon the death and wounds of beasts and birds which he pursues. It is difficult to conceive a more monstrous degree of inhumanity than is implied in such a view of human beings. The cruelty is greater than if the pursuer were, in wilful levity, to inflict bodily pain and wounds: for this moral damage is, and is commonly held to be, a greater calamity than any bodily suffering. The moral ruin of a woman makes her an object of abhorrence to those who are bound to her by ties of family love; and produces in her and in them extreme bitterness of heart, and a gloom approaching to the blackness of despair.

229 The tendency of sensual indulgence, to inflame the desires, defile the imagination, and corrupt the heart, makes the Duty of Purity especially important in the season of youth. Habits of indulgence, begun in that season, can hardly fail to give their impress to the character, throughout life. The common belief that this is so, appears in the contempt and condemnation which the loss of virginity in unmarried women, has in all ages and countries incurred. In its effects upon the moral culture of the character, unchastity is as destructive in men as in women. No young man who has any regard for his moral progress, will make his body the instrument of mere lust. And as connected with the government of his bodily desires, both in the way of cause and of consequence, he will guard the purity of his mind. He will avoid admitting into his own thoughts, or suggesting to others, lascivious images. He will avoid placing himself in circumstances of temptation or opportunity. He will watch the affections which may arise in his heart towards particular persons, in order to suppress them; well aware how vehement may become the combined urgency of unlawful affection and sensual desire; and in what a career of vice they plunge those whom they overmaster.

230 The direction of the Affections and Desires, here referred to, towards their proper object, Marriage, is the best mode of avoiding the degradation of character, which is produced by their improper operation. Virtuous love, as it has often been said, is the best preservative against impure acts and thoughts. The Love

which looks forwards to the conjugal union, includes a reverence for the conjugal condition, and all its circumstances. Such a love produces in the mind a kind of moral illumination, which shows the lover how foul a thing mere lust is; and makes him see, as a self-evident truth, that affection is requisite to purify desire, and virtue necessary to purify affection.

Other Duties arising out of the conjugal union depend upon the Principle of Order, and must be considered in reference to that Principle.

CHAPTER XI.

DUTIES OF ORDER.

231 THE Principle of Order is, that we must obey positive Laws as the necessary conditions of morality (162). This Principle leads to various Duties of Obedience towards persons connected with us by various social relations; for these social relations are established and recognized by Laws; or by Customs equivalent to Laws; and are the points on which our Obligations, and therefore our relative Duties, depend: and many of these relations give one person an authority over another. Thus, by the laws and customs of nations, parents have a large amount of authority over their children. In most places, the husband has, by law and usage, some authority over the wife; the master over the servant; and everywhere, there are magistrates and governors, in whom is vested authority over the members of the community in general. There is, for all, an Obligation to submit to this Authority; and, in order that such acts of Submission may be moral, there must be corresponding Duties of Obedience. There must therefore be Duties of Obedience of Children to Parents, of Wives to Husbands, of Servants to Masters, of Private Persons to Magistrates; and these, we term Duties of Order, or more specially, Duties of Obedience.

These Duties of Obedience, in order to be moral, must arise from a corresponding internal Disposition; from a Spirit of Obedience. It is therefore our Duty to possess such a Spirit of Obedience, and a corresponding Affection towards our Superiors. We have already spoken of certain Affections,—Reverence towards our Superiors, Love of Parents, Conjugal Love, and the like,—as Duties. We have

there also remarked, that these Duties involve the Principle of Order, as well as the Principle of Benevolence; and that the Affections, thus enjoined, show themselves in acts of willing Obedience.

232 The Rules of the Duty of Obedience, belonging to each of the Relations of Society, that of the Child, that of the Wife, that of the Servant, and the like, must depend, in part, upon the Rules which Law and Custom have established in each community. For our Duties are such as give moral significance to our legal Obligations (173); and the Obligations of the various Members of the Family to each other, must depend upon the idea of the structure of the Family, entertained in each community. The limits of Filial Obedience are very different, in the customs of different countries; and these customs must have their weight in defining the Limits of Duty. In all states of Society, in the early stages of life, the Parent is the natural guide and governor of the child; and it is the Duty of the child to obey such government and guidance. But we cannot pretend to say, generally, how far or how long this Duty extends. For instance, we cannot lay down any universal Rule to determine whether the Parent may prevent the son from selecting a wife, or the daughter a husband, by their own choice; and whether, in such a case, it is the child's Duty to obey: or whether, supposing that obedience to a prohibition in such a case be a Duty, it be a Duty also to take the husband or the wife whom the Parent selects. In some countries, the marriage of the child is a matter usually managed altogether by the parents. In such cases, it is the child's duty to bring the affections, as far as possible, into harmony with the custom. But those communities and those parents appear to provide better for that special personal affection which the completeness of the marriage union requires, who allow to young men and young women freedom of choice in marriage. Where this is the case, it is the Duty of the man to select a partner to whom his heart tells him he is likely to bear a true conjugal affection; and of the woman, also, to give her hand only where she can give her heart. But even in such cases, filial duty requires, if not absolute obedience, great reverence and deference to the wishes of parents; especially while the children are young; and while, consequently, the habit of submitting to the parent's guidance must be still in force, in a family directed by Rules of Duty. In the same manner, the kind of authority which the husband, by law and custom, has over the wife, is different in different communities. In all countries, the man is

the head and representative of the family, and is the person to whom political offices are assigned. But to what extent the husband, and to what extent the wife, shall rule in domestic concerns, will be regulated by local usage, or by special understanding of the parties. And in every case, the duties of the husband and of the wife are those which give a moral significance to the Rules which usage and mutual understanding establish. While established, Duty requires the married pair to conform to the Rules; but Duty requires, too, that this should be done in a spirit of Affection and Confidence; the acts thus performed expressing the common will of the two. And in the same way, the Obligations of obedience in Servants are variously determined by law, use, or agreement; and their Duties will vary with their Obligations: but in all cases, there are Duties corresponding to their Obligations; their offices must be performed faithfully and heartily, not with a grudging and merely formal service. And with respect to political relations, a willing obedience to the laws, an affection for his country, a love of its institutions and of its constitution, a loyalty to its sovereign, are proper feelings of a good man, in a rightly constituted state; and are Duties, except where, by some special historical facts, objects, on which such feelings can be employed, are wanting.

233 A willing obedience to the Laws of the Land is, as we have said, generally, a Duty; for the Laws define those social relations which determine the course of our Duties; the Laws establish those Obligations of which our Duties are the expansion, and to which our Duties give a moral signification. But Laws themselves aim at a moral signification; they seek to be just and equitable Laws. We shall hereafter consider the moral character of Laws; but we may here remark, that so far as they have an obvious moral signification, it is our duty to accept and obey them according to this signification. In cases where the Law is equitable, it is our duty to conform to the Spirit as well as to the Letter of the Law.

234 There are, however, many cases in which the Law is arbitrary, and rests upon the Authority of the State alone; or in some other way, is devoid of any obvious moral signification. There are many forms, details, and magnitudes regulated by Law, merely because they must be fixed by some Rule, and Law is the proper Rule. In such cases we have no Duty, but to conform to the Letter of the Law. And accordingly, the Law itself so directs us; and the Courts of Justice pronounce their decisions, according

to the Letter of the Law. In such indifferent matters, we are not to seek for a Spirit beyond the Letter. The State itself, to which our Duties refer, gives us to understand that we are, to guide ourselves by the Letter. Nor, in such cases, is the Intention of the Legislator the measure of our Duty. It is not with any particular Legislator or Body of Legislators that we have to do. The State enjoins the Law; and we accept the Law as the State understands it. The State must be supposed to have accepted the Law, and to understand it, according to the meaning of the words; for the State has accepted and adopted the expressed words, not the unexpressed meaning of any man or set of men. If any set of Legislators failed in expressing what they meant, the State cannot be bound by their incapacity. And thus, in different matters, the Letter of the Law, and not some supposed Spirit besides the Letter, is the proper guide of our obedience. The business of Legislation is to prevent our Duties depending upon anything so vague and obscure, as the Spirit of a Law not expressed in the Letter.

235 We have spoken hitherto of Duties of Obedience; but the Duties of Order include also the Duties which exist on the other side; the Duties of Command. As it is a Duty to give a cordial obedience to just authority, with a regard to the purposes for which the authority subsists; so it is a Duty to exercise Authority for its proper purposes, and in a spirit of benevolence, towards those who are its subjects. As it is the Child's Duty to submit to the guidance and government of the Parent, it is the Parent's Duty to guide the Child aright, and to govern it by Rules which the good of the child itself justifies. As far as it is the Wife's Duty to obey the commands of her husband, it is the Husband's Duty to command nothing harshly, capriciously, or unreasonably; but such acts only as may fall in with an affectionate and confiding conduct of their united course of life. As it is the Servant's Duty to do his work willingly, and bear to his employer such respect as suits their relative condition; it is the Employer's Duty in directing those who labour in his service, to consider their powers and their comfort. It is his Duty, also, not to make the relation of employer and servant a source of estrangement between the two classes, by a hard and repulsive demeanour; for this cannot be the true moral aspect of the relation between men, since they are bound together by the Duty of mutual Benevolence. As to their place in the social scale of a particular community, men may be called Superiors and Inferiors; but no class of men are superior or

inferior to others in their moral claim to kindness in our intention, and gentleness in our manner. So far as the relations of society receive their true moral significance, they bind together all the members of the society by a tie of benevolence; which has, for its natural results, ready and willing good offices of all to all; frank, affable, and courteous intercourse of all with all. If this feeling of benevolence had its due effect, the repulsive forces which social distinctions bring into play—the pride of rank and station, the capricious exclusions of fashion, the supreme regard of each class to its own comfort, the excessive jealousy of interference, the impatience of intrusion—would disappear before it; and, so far as the influence of such a feeling operates upon the members of a community, those repulsive elements will diminish and melt away.

236 The Duties of Order, so far as regards the State, like other Duties, include the Duty of giving a moral significance to the social and civil relations with which they deal. Every man who has any power, or any function in the State, assigned him, must exercise it in such a manner as to give a moral meaning to his office. He must act, on the part of the State, as a public representative of its moral character. If he be a Judge, he must administer the Laws impartially, and so as to make them instruments of justice. If he be an administrative officer, he must carry into effect the intentions of the Community; giving to it, as far as the Rules of his office admit, the character of a moral agent acting rightly. If he have assigned to him a vote by which he shares in the election of a legislator or a governor, the vote is a *Trust* for public purposes; and it is grossly immoral to convert such a Trust to purposes of private gain. All such Duties are *Public Duties*; and Public, no less than Private Duties, require us to use all our external means and powers for the furtherance of Morality.

237 The Laws and Customs which determine how far each person shall have a share in the government of the State, define the *Political Rights and Obligations* of men; and the general scheme of Government, thus constituted, is the *Constitution* of the Country. In every country, the Political Rights and Obligations of men ought to be in a great measure fixed; for otherwise the Laws could not remain fixed, and could afford no fixed points to serve as the basis of Duty. It is therefore the Duty of a citizen to use his Political Rights, so as to give to the Laws the fixity which the purposes of Morality require. This is the *Political Duty of Conservation*. On the other hand, the Political Rights and Obli-

gations of the citizens of a State may change from time to time ; for by course of time and circumstance, it often becomes possible to alter the Laws in general, and Political Laws in particular, so as better to further the purposes of Morality. It is the Duty of a citizen to use his Political Rights in promoting changes of this description. This is the *Political Duty of Progress*.

CHAPTER XII.

INTELLECTUAL DUTIES.

238 BESIDES the Duties of Kindness, which the Duties of Command include, there are other Duties of Command, which require our attention. He who has authority, ought to issue Commands, not only kind, but also prudent and wise. He has faculties by which he is enabled to judge of such characters in Rules of Action : and he is bound to employ these faculties, as well as his Affections, in the performance of his Duty. Thus, there are Duties which belong to these faculties. We may term them generally, Duties of the Intellectual Faculties ; but we may conveniently distinguish among them, the *Duty of Prudence*, and the *Duty of Wisdom*.

We have already said, that we conceive Prudence as the virtue by which we select right means for given ends ; while Wisdom implies the selection of right ends, as well as of right means. Those who have authority over others, have to lay down Laws for their conduct ; and these Laws may be considered as means, to ends which the Lawgiver contemplates. There are certain objects, which those who possess authority by their social position, may be assumed as having constantly and necessarily in their desires : thus, a head of a family desires sustenance for his family, tranquillity among the members of it, freedom from debts contracted by them ; as an employer, he desires to have his work well and carefully done ; and the like : and he manifests his Prudence by the Laws which he lays down, or the Rules on which he acts, with reference to these objects. But perhaps a father makes it his main object that his sons and his daughters should rise to riches and rank : and then, though he may be prudent in the means he takes for such ends, we may doubt whether he is wise in selecting these as his highest ends.

239' But we have to select the ends of action, and the means to them, for ourselves, as well as for others; and Prudence and Wisdom are concerned in this selection, in the former, as in the latter case. We may therefore consider the Duty of Prudence, and the Duty of Wisdom, without any special reference to the offices of command over others, which men may have to execute.

The Duty of Prudence, like other Duties, implies that man has a power over the faculties which such a Duty requires him to employ. That man has some power over his own thoughts, is evident. He can retain an object of thought in his mind: contemplate it in various aspects and bearings; scrutinize it; deliberate upon it. This is Inquiry and *Consideration*; and by this proceeding, he can often discover means to an end, and consequences of an act, which escape his notice, in a more rapid and slight mode of regarding the subject. Now the means to an end have their moral character affected by the end. The consequences of an act contribute to the moral character of the act. The points which Consideration and Inquiry bring into view, may determine whether the act be good or bad. And since we must employ all our Faculties and Powers in order to conform our actions to the Supreme Law, we must exercise this power of Consideration; and thus every man, as a moral agent, is bound to a *Duty of Consideration*, including a Duty of Inquiry.

240 The Intention is directed by the various Springs of Action, including the Moral Sentiments and the Reason. Morality requires that Intention be directed rightly: that is, towards the Ideas contained in the Supreme Law; Benevolence, Justice, Truth, Purity, and Order. There is a Duty of right Intention, which is included in all other Duties. Now we have here to remark, that this Duty of Right Intention does not replace or supersede the Duty of Consideration. We must consider the means, as they are in themselves, as well as in subservience to the end at which our intention points. We must consider the consequences which will follow upon our act, as well as the act which we directly intend. For a good end does not justify the means which we employ, if a due consideration would show us that the means are wrongly selected: and that an act is in itself moral, does not justify it, if by a due consideration we might see that it would lead to evil consequences. I may have a wish to improve the character of my child: I may, possibly, hastily punish him, with such an intention. But the intention does not justify the haste. If a little thought and care, bestowed upon the subject, would have shown me that

these courses would make him worse, and not better, I am to blame. I have violated the Duty of Consideration. And in like manner, the Duty of Consideration is transgressed by any want of a Regard to Consequences. I may, possibly, heedlessly indulge the desires of a child, or give what a man asks of me. But if the consequences of doing this be mischief to the child or to the man, and mischief which a little thought would have shown to be probable, or certain, I am culpable. Here, also, I have violated the Duty of Consideration. Haste and heedlessness are grave offenses, in cases which concern the welfare of others. We shall hereafter see that the Law treats such offenses as violations of our Obligations: and our Duties, in this, as in other cases, are extensions of our Obligations. If Law require in us a care and consideration for the wellbeing of our fellow-men, Morality must require such care and consideration still more; and must require more care and more consideration than the Law can enforce. Benevolence aims at the good of those among whom we are placed: but she must take to her aid the best exertions of the Intellect, in order to determine by what means such good is to be brought about; and what will be the consequences of any acts which such a purpose may suggest to us.

241 It is in our power to deliberate; but even after deliberation, we may be mistaken. It may be asked, if we are responsible for such a mistake. Is it a violation of any Duty to select wrong means to good ends, or to err in foreseeing the consequences of actions meant for good? If we here also follow the analogy of the Law, we shall be led to conclude that, in some cases at least, such an error is blameable. A physician who administers medicaments grossly pernicious, is condemned by the Law for his error, however right may have been his intentions, and with however much thought he may have gone to his error. And the common judgment of mankind throws a like blame upon similar errors. Men are indignant against folly and ignorance, when they affect important acts; as well as against evil intention. Men feel, and express, a strong moral indignation against a father, who ruins the character of his child by bad teaching, though he may have employed much pains upon its education: against a pilot who wrecks his ship by bad steering, though he may have steered his best: against a legislator who makes bad laws, though he thought them good. And if we look into the ground of this indignation, and of the moral condemnation which it involves, we shall see that the persons, in these cases, are judged to be to

blame, because they deviated from the guidance of that Reason which is the common light of all mankind. They had a Faculty which points out the difference between what is good and what is bad, in such cases; between right means and wrong means, to the acknowledged ends. They cannot have duly employed this Faculty, or they would not have gone wrong. They acted irrationally, and in so doing, they violated a Duty; and thus we are led to recognize *the Duty of acting rationally*. It is our Duty, not only to be careful and considerate in our choice of means to ends, but also to choose rationally. We do not say that it is our Duty to choose rightly, for there may be inevitable errors: but at least, we must use our Reason in choosing, and avoid such errors as her light manifests to us.

We do not say that it is easy to determine what errors can, and what cannot be avoided: what selection of means for an acknowledged end is rational, and what is irrational. So far as such a distinction can be drawn, it will be our business hereafter to examine it. But the difficulty of doing this, does not prevent our recognizing, in general, the Duty of acting rationally, as one of our intellectual Duties.

242 The Reason directs our course in various ways; among others, by accepting Rules of action, and directing the conduct in conformity to them. Such Rules have it for their office to control and regulate the variable and discordant action of men's Affections and Desires: to render permanent and consistent the guidance, which Reason, operating without Rules, exercises, in each person, doubtfully and interruptedly. Rules are the primary expressions of Duties. The Rules, *Do not kill, Do not steal, Do not lie*, and the like, are the basis of moral action. The formation, the establishment, the acceptance of such Rules, is the mode in which man becomes a moral agent. But besides such Rules, others, of a less absolute and general kind, are among the most suitable and efficacious means of controlling the conduct in a rational and moral manner. Such are those we have just mentioned: *Children, obey your parents: Masters, treat your servants with kindness*. Such Rules, accepted as right, and retained in the recollection as the constant guides of our conduct, extend the sway of Reason to times when, without them, we might be led wrong by passion or desire. They sustain us against the pressure of special seasons of temptation; and extend, to the worse periods of our rational and moral life, the influence of the better periods. To act by such Rules, is the very meaning of acting according to Duty. Further;

not only are such Moral Rules means by which our Reason guides us, but other Rules also, not directly moral, but of a prudential character only, are among the proper means of directing our conduct rationally. Thus, we may avoid intemperance, by conforming to Rules which shall moderate our eating and drinking; we may escape debt and poverty, by conforming to Rules limiting our habitual expenses; we may suppress our tendencies to harsh and rude behaviour, by conforming ourselves to Rules of courtesy. Rules of this kind, more or less distinctly expressed in words, are the proper guides of man, as a rational being. They are the modes in which the general convictions of the Reason are brought into contact with particular cases of action. It is our Duty thus to regulate our conduct; and thus we have a *Duty of acting according to Rule*.

243 Moral Rules, in so far as they are moral, are absolute, being expressions of the Supreme Rule of human action, which nothing can overmaster or supersede. Prudential Rules, having for their object subordinate ends, may be set aside in particular cases, as these objects themselves may. They must give way, for instance, whenever they interfere with Moral Rules. Moral Rules only, are, in the highest sense, the proper guides of human life.

Hence, it is our Duty to accept or to frame Moral Rules, as the means of our guidance. This is a Duty, which has not, like the Duties of which we have been speaking, reference to any subordinate end, but to the highest; it is the Duty of Wisdom, not a Duty of Prudence.

The Duty of Wisdom is the Duty of framing or adopting such Rules of action as are consistent with the Supreme Rule of Human Action. It is the Duty of having Rules of Duty: for, as we have seen, the Rules of Duty are determined, on the one hand, by those Moral Ideas which serve to express the Supreme Rule; while, on the other hand, they are determined by the various social relations and conditions of man's life.

244 By what means can we obtain Rules of Duty which are truly moral, truly consistent with the Supreme Rule? We have already been employed in laying down such Rules; and we have seen, in some measure, by what process they may be arrived at. We find that there are external conditions necessary to the existence of man as a moral being; that there are certain Rights and Obligations, according to which, as external Facts, man's Duties are regulated. There are, also, certain Ideas of Virtues, namely, Benevolence, Justice, and the like, according to which, as internal

Ideas, the conceptions of Duty are regulated. By the combination of these two elements, we have endeavoured to define, in some measure, the scheme of Duties which belong to man. But we have, in several instances, been led to see that some further steps are requisite, before we can describe our Duties in a complete manner; and before we can produce Rules which shall admit of definite application, in the cases which commonly offer themselves to our notice. Among the steps which are thus pointed out to us, as required for the formation of more definite Rules of Duty, are Determinations and Definitions, more exact than we have yet obtained, of some of the Conceptions, in terms of which our Rules must necessarily be expressed; such conceptions, for instance, as *Justice, Humanity, Happiness*, and the like. The next step which we shall take, in the establishment of Moral Rules, will be to attempt to analyse and define, more precisely than we have yet done, several such conceptions as these, and to apply, in particular cases, the Conceptions thus defined. We may, in this way, best hope to obtain, both Moral Truths of a general kind, and the determinations of the questions which belong to special cases.

245 The precision of our Conceptions, which may thus aid us in arriving at Moral Truths, is a proper object for us to aim at, as a mode of promoting our Moral Culture. It is our Duty to aim at such an intellectual progress, as a means to our moral progress. And not only may this particular kind of improvement of the intellect be an aid in our moral culture; but the improvement of the intellect in general, in its conceptions and operations, is fitted to have this effect. And it is therefore our Duty to aim at such improvement. Corresponding to the Duty of Moral Culture of ourselves, there is a *Duty of intellectual Culture*. To cultivate our Intellect, is, in itself, a source of gratification. The love of knowledge, which we have spoken of as one of the desires of man, impels him constantly to make his knowledge more and more extensive, more and more precise, more and more connected; and an advance of this kind, is indeed a Culture of the Intellect. But besides all other Truth, to which the love of knowledge leads, and in which man seeks merely for the satisfaction of knowing, this desire leads to Moral Truth, which is the proper guide of man's life; and which, therefore, he is impelled to seek, not only by pleasure, but by Duty.

246 Moral Truth is, as we have said, the proper guide of human life; and hence, those who have to guide others, are under a more peculiar necessity of knowing Moral Truth, and of possess-

ing precise and consistent moral conceptions. Those especially need such Truth, such Precision, and such Consistency, whose office it is to make Rules for others, or to teach them the Rules which they are to follow;—those, that is, who have to legislate for mankind, or to educate them. The Duty of Wisdom is especially incumbent on Legislators and on Educators.

Since the offices of Legislation and of Education especially require the possession of Moral Truth, we shall defer the consideration of those offices in detail, till we have, under our notice, those further elements of Moral Truth, which we still have to consider.

We will only observe, before we quit this part of the subject, that Legislation implies, not merely combinations of Conceptions, and mental results of Ideas, but also the external Facts, by which Law is realized. Laws are Moral Rules, clothed in an actual historical form. The Legislator must also be a Governor; or at least his ideas must be adopted and enforced by the Governor in order to make them be Laws.

247 In like manner, Education, so far as it teaches Rules of action, implies external facts, which give reality to the precepts inculcated. The Educator teaches the learner the Laws of the Land, for instance, in order that he may guide himself by them; but in order that his teaching may have its effect, he must be able to speak of these Laws, as Laws actually in force; not as merely possible conceivable Rules. And when the Educator has to teach, not merely human Laws, but moral Rules, he must still be able to present these moral Rules, not merely as imaginable, but as possessing a real Authority. Moral Rules derive their substance from the Supreme Rule of Human Action, of which they are partial expressions. Hence, this Supreme Rule must have a real authority, and an actual force. The Educator teaches his pupil to do what is absolutely right; and because it is right; but this teaching supposes that its being right includes a sufficient reason for doing it; estimating reasons according to the real condition and destination of man.

The Supreme Rule of Human Action derives its Real Authority, and its actual force, from its being the Law of God, the Creator of Man. The Reason for doing what is absolutely right, is, that it is the Will of God, through which the condition and destination of man are what they are.

We are thus led to Religion, as a necessary part of the Moral Education of men. But in order to complete the train of thought by which Morality leads us to Religion, we must pursue somewhat

further the subject of Moral Transgression, of which we have already spoken (206).

CHAPTER XIII.
OF TRANSGRESSION.

248 IN our survey of the several classes of Duties (174—247) we have seen that, beside the direct Duties of action, and of affection towards others, there are reflex Duties which regard ourselves : the Duties, namely, of unfolding within us, or establishing in our minds, the Operative Moral Principles from which external Duties most proceed ; the Duty of aiming at our own Moral Progress ; the Duty of cultivating in our own minds the principles of Benevolence, Justice, Truth, Purity, and Order. We have it for our business and proper aim, to make our Lives a Moral Progress, in which these Principles constantly become more and more identified with our habits of action, thought, and feeling. We have to form our character, so that these principles are its predominant features. We have to seek not only to *do*, but to *be* ; not only to perform acts of Duty, but to become virtuous (195, &c.).

Further : there is an Intellectual, as well as a moral progress, at which we must aim ; an Intellectual Progress, which is a means to a Moral Progress. We are to endeavour constantly to improve our powers of apprehending Truth, in order that we may be able the more readily and firmly to lay hold on that Moral Truth, which is the proper guide of our Lives (245).

249 We have to aim at this moral and intellectual progress as the Greatest Good which we can desire for ourselves (209). But further, the complete Benevolence which is part of the character at which we thus aim, and which seeks the good of others, must seek for them that good which for ourselves we esteem the greatest. Our benevolence, therefore, will seek the moral progress of others as well as our own ; and intellectual progress for them, no less than for ourselves, as a means of moral progress. And thus, the complex Object, at which we shall constantly have to aim, is, the Moral and Intellectual Progress of ourselves and of the rest of Mankind.

We may consider this as the highest object of action and thought which we can propose to ourselves ; and in proportion as we make

this our object, and direct our thoughts and purposes to it, we elevate our minds.

250 We have already seen (196, &c.) that we have the power, in some measure at least, of carrying on this moral and intellectual progress within ourselves. That this progress must be altogether incomplete and imperfect without the aid of Religion, we shall hereafter see; but it is at least so far possible for men to promote or neglect their own moral progress, that one man shall differ very much from another in the advance he has thus made. Two men may be, at least by comparison, one virtuous and another vicious; and by a like difference, they may be at very different stages of their moral progress; if, indeed, we may not say of some, that the course of their lives is a constant moral degradation rather than a progress.

251 This moral progress, as we have said (203), can never terminate while we remain on earth. So long as we live, we shall have room to make ourselves better and wiser: to increase the warmth of our benevolence, to purify our hearts, to elevate our thoughts, to make ourselves more and more virtuous. To do this, is a moral growth and nurture; a moral life, which can never end, while our natural life goes on. Or if the moral progress end, the moral life is turned to moral disorder. In the moral faculties, if there be not a healthy growth, there must be a morbid decay and foul disease.

252 The moral life is nourished by the perpetual aliment of moral actions, moral habits, moral thoughts, moral affections. All acts of Duty, and all affections which lead to acts of Duty, tend to promote our Moral Culture. On the other hand, all *Transgressions* of Duty interrupt our Moral Culture, arrest our Moral Progress, and are steps in a retrograde moral course. Unkind affections, unlawful desires, fraudulent intentions, impure imaginations, are inconsistent with our moral advancement, while they occupy us; and are proofs that we have much still to do, in giving a moral character to our being. If these things form frequent and common parts of our lives, they are proofs that we have made little moral progress; or rather, that we have made none, and are making none. If these things are acquiesced in by us, and allowed to grow into habits, we are not going forwards, but backwards, in moral character. So far as this is our case, we tend to become more and more degraded, depraved, vicious (206).

253 Thus, if wrong affections, desires, intentions, and imaginations, occur in our lives at all, they are interruptions of our

moral progress; and evidences that, in our moral culture, we have still much to do. Yet such things may occur, so long as our moral culture is incomplete; and since, during our lives, it ever must be incomplete, they may occur so long as life remains. The Springs of Action, not fully converted into Moral Principles, may, under special circumstances, tend to deviate from the Law of Duty. Desires may be inflamed, Affections perverted, Reason misled, Consideration omitted, Rules neglected, lower aims put in the place of the highest; and man may fall below the line which morality draws. The circumstances which tend to produce such an effect are *Temptations*. By the impulses of the Springs of Action, not fully controlled by Rules of Duty, man is *tempted* to transgress such Rules.

254 It is the moral business of man to *resist* Temptation. The powers by which we guide ourselves, the Reason, and the Moral Sentiments, must be employed in controlling the Desires and Affections which impel us in an immoral direction. All the results of our Moral Culture must be called to our aid for this purpose. The express Moral Principles which we have learnt; the Operative Moral Principles which we have acquired; Consideration, Rational Action, and Rules of Duty; we must call all these into operation, that they may overcome the immoral impulses by which we are urged. This we must do as moral agents; although to these resources, Religion alone can give their full force.

If a man does not effectually resist Temptation; if he is overcome and yields, he transgresses the Rules of Duty; he offends against Morality; he commits a vicious act. The contemplation of man under this aspect, as liable to *Transgressions* and *Offenses*, introduces us to very important and serious views of his condition and destination.

255 Transgressions or Offenses are described by various terms, implying various degrees of condemnation. As defects from the standard of Morality they are *Faults*; and when we would ascribe them to weakness of Will, rather than to wrong intention, they are called *Failings*. As transgression becomes graver, more grievous, we have no term which directly expresses an enormous violation of morality (as do the Latin *scelus*, *flagitium*, *facinus*). *Vice* implies the disposition to transgress; *Guilt* and *Crime* properly express the violation of human laws; and *Sin*, an offense against God. But *Guilt* and *Crime* are terms also used of the violation of moral laws; and all Transgressions are sins. Those

who commit Sins are *wicked*, (which is said to have meant, originally, *under the influence of evil spirits*). Sins are described, according to their character, as acts of cruelty, of injustice, of falsehood, of uncleanness, and the like. As they excite our moral abhorrence, they are termed *hateful, heinous, atrocious, shocking, abominable, detestable, execrable*. Crimes are said, figuratively, in proportion as they are greater, to be *higher, deeper, heavier, darker*. As their criminal nature is more manifest, they are *flagrant*.

256 It may be asked, according to what Measure and Standard do moral transgressions become greater and graver. Is there a definite gradation from slight Failings to atrocious Crimes; and if so, what circumstances fix the place of each Offense in this Scale? To this we reply, that the universal voice of mankind declares some offenses to be greater, some to be less; some heavier, some lighter. But yet, since the moral transgression consists in the perversion of internal affections, desires, and will; and since this internal condition cannot be fully known and compared in any two cases, at least in any two classes of cases; it must be almost impossible to declare one *class* of transgressions to be necessarily better or worse than another. This at least we may say; that to pronounce one kind of offenses better and slighter than another, would tend to convey a false opinion respecting the offenses thus in some degree preferred and palliated. For no transgression can be said to be so much better than another, as not to be utterly bad. No offense can rightly be deemed slight, since the slightest utterly interrupts our moral progress.

257 But in this aspect of offenses, that they interrupt or undo our moral progress, we have a kind of Measure of their magnitude. Those offenses are most grievous, which are most pernicious in their effect upon our moral culture. Some may interrupt our moral culture for a time, and it may nevertheless be resumed. Others may show that moral culture has no place in our thoughts; that we have no wish to be better than we are. Other transgressions may imply a recklessness or despair of moral progress; a state of mind which points to moral ruin as its natural sequel. The gravity of the offense will therefore be increased by all circumstances which indicate it to be the result of an habitually immoral state of the Affections and Desires, of settled and deliberate purpose, of a want or a rejection of moral aims. The hope that an offense may be only a transient interruption of the offender's moral progress, is favoured by its being the result of great and sudden Temptation, plainly at variance with the habi-

tual course of the affections and will. Such circumstances, therefore, tend to make an offense less grave and mischievous to the offender.

258 I have already pointed out, of what nature the mischief is, which offenses do to the offender. So long as there is a suspension of the authority of Duty, there is a suspension of the proper moral functions of man. So long as immoral thought, purpose, and affection prevail, the moral progress, which is the proper course of man's life, is arrested or inverted. Acts of Wickedness are steps towards moral ruin. Or, to resume a figure which we have already employed; the moral life is nourished by the perpetual aliment of moral purposes, desires and affections. By an immoral act, poison is taken into the human being, which tends to enfeeble, dis-temper, and destroy the moral life.

We are now led to ask, whether there is any remedy for this mischief. When transgression has been committed, how is rectitude to be restored? When the moral progress has been interrupted and turned back, how is the regress to be checked, the lost ground to be recovered, the progress to be resumed? When poison has been taken into our moral being, how is it to be ejected, and the powers of life restored to their healthful action?

The mode in which the poison of immoral purposes, desires, and affections, was taken into our being was, by their being *our* purposes, *our* desires, *our* affections. In order to expel their effect, they must be rejected as our purposes, our desires, our affections. They must be repudiated, so that they shall no longer belong to us. They must be changed into their reverse; desire, into aversion; love, into hate; the purpose to do, into the purpose to undo; joy in what was done, to sorrow that it was done. This change must be carried, by an effort of thought, into the past. We must recall in our memory the past act of transgression, contradicting, as we do so, the motives by which we were misled, and condemning the purpose which we formed. This change, this sorrow, this renunciation and condemnation of our past act, is *Repentance*. The transgressor must *repent*. We do not say that this suffices to remedy the evil. It does not do so. But there can be no remedy of the evil without this. This, at least, he must do. He must make the effort of repentance, in order to cast out of his being the poison of immoral act or purpose. He, for this purpose, must see his moral regression as what it is, a dire mischief, which, if not remedied, tends to immeasurable evil.

259 But the regression must not only be lamented, it must

also be repaired. We must not only reject the past offense by repentance, but we must seek to resume the course which morality points out. We must endeavour to restore our moral progress; to regain the ground which we have lost; to avoid all repetition of the errors and offenses which we have committed. We must direct our Moral Culture to our recovery and renovation. We must *amend* ourselves. We must *reform* our lives. *Amendment* and *Reformation*, as well as Repentance, are the necessary sequel of transgression, in virtue of that Duty of Moral Culture and Moral Progress which is constantly incumbent upon all men.

260 The Moralist is thus led to teach, that after Transgression, Repentance and Amendment are necessary steps in our Moral Culture. But the Moralist cannot pronounce how far these steps can avail as a remedy for the evil; how far they can repair the broken completeness of man's moral course; how far they can restore the health of man's moral life; how far they can finally, and upon the whole, avert the consequences of sin from man's condition and destination. These are points on which the Moralist necessarily looks to Religion for her teaching. These questions regard the effects of Sin upon the Soul, and the concerns of the Soul belong to Religion. They regard the provision made by God for saving man from the effects of Sin, and this is also a matter belonging to Religion.

261 There is, however, one consequence of what has been said, which we may notice. We have said, that when a man has deviated from the course of Duty, he cannot resume his moral progress without Repentance and Amendment. We may remark further, that the Amendment is required by Morality to be *immediate*. If a man repents in the middle of an immoral act, he will not go on with the act. As soon as the authority of Morality is acknowledged, the moral course of action must begin; and not at some later period, when pending acts have been completed. Duty is the perpetual rightful Governor of every man; and the man who merely promises to obey this Governor at some future time, is really disobedient. The man who completes an immoral act, knowing it to be immoral, commits a new offense. He yielded to temptation, in the first part of the act; he sins against conviction, in the second.

This remark may be of use when we come to consider some cases of Duty. For instance, if I have made an immoral promise, and see my fault, it is my Duty not to complete the act by performing the promise.

CHAPTER XIV.

OF CONSCIENCE.

262 THE Desires and Affections receive their Culture by being converted into, or comprehended in, the Operative Moral Principles. The Faculties which control and direct the Desires and Affections, namely, the Reason and the Moral Sentiments, must also receive their Culture, in order that the being of man may tend to its proper completeness. The Culture of these Faculties implies the formation or adoption, in our minds, of Rules of Duty, and the application of such Rules to our own actions, with the accompanying Sentiment of Approval or Disapproval of ourselves.

Thus, by the culture of these controlling and directing Faculties, we form habits, according to which we turn our attention upon ourselves, and approve or disapprove what we there discern. These Faculties, thus cultivated, are the *Conscience* of each man. The word *conscious* implies a reflex attention of the mind to its own condition or operation; a contemplation of what we ourselves feel and do. We *feel* pain, but we are *conscious* of impatience. We start *unconsciously* at a surprise, but in danger we are *conscious* of fear. Our consciousness reveals to us not only our most secret acts, but our desires, affections, and intentions. These are the especial subjects of morality, and we cannot think of them, without considering them as right or wrong. We approve, or disapprove of what we have done, or tried to do. We consider our acts, external and internal, with reference to a moral standard of right and wrong. We recognize them as virtuous or vicious. The Faculty or Habit of doing this is Conscience.

263 As *Science* means *Knowledge*, *Conscience* etymologically means *Self-knowledge*; and such is the meaning of the word in Latin and French, and of the corresponding word in Greek; (*conscientia*, *conscience*, *συνείδησις*). But the English word implies a Moral Standard of action in the mind, as well as a Consciousness of our own actions. It may be convenient to us to mark this distinction of an internal Moral Standard, as one part of Conscience; and Self-knowledge, or Consciousness, as another part. The one is the Internal Law; the other, the Internal Accuser, Witness, and Judge.

This distinction was noted by early Christian Moralists. They

•termed the former part of Conscience, *Synteresis*, the internal Repository: the latter, *Syneidesis*, the internal Knowledge. We may term the former, Conscience as Law; the latter, Conscience as Witness.

264 We have already (242) spoken of the steps by which we establish in our minds that internal Law which we call Conscience. It is established by such a Culture of our Reason as enables us to frame or to accept Rules which are in agreement with the Supreme Law; and by the agreement of our Moral Sentiments with such Rules. *Conscience as Law*, is the expression of the condition at which we have aimed, in our advance towards a knowledge of the Supreme Law. It is a stage in our moral and intellectual Progress.

265 The Offices of *Conscience as Witness*, *Accuser*, and *Judge*, cannot easily be separated: for to be conscious of having done an act, to question its character, and to know that it is wrong, are steps which usually follow close upon each other. Yet these steps may often be distinct. It may require some consideration, and some careful exercise of the intellect, to discern the important features of an act, and to apply to it the appropriate Rules of Duty. The moralists who distinguish the *Synteresis* from the *Syneidesis*, represent the acts of Conscience as expressed by the three members of a Syllogism; of which the first contains the *Law*, the second, the *Witness*, the third, the *Judgment*. As an example, we may take this Syllogism:

He who dissembles, transgresses the Duty of Truth

I have dissembled;

Therefore I have transgressed the Duty of Truth.

266 We may also note a further office which is ascribed to Conscience. She inflicts *Punishment* for the offenses thus condemned. For the Self-accusation and Self-condemnation, of which we have spoken, bring with them their especial pains. Repentance is sorrow; Remorse is a pang, a torment. Transgression lies like a weight on the Conscience, and makes it feel burthened and oppressed. Again, the Conscience is spoken of as the *Record* of offenses committed; and as stained, polluted, blackened by our transgressions.

267 Conscience, the Judge, must pronounce its decision according to Conscience, the Law. If we have not transgressed the Law of Conscience, Conscience acquits us. If we have violated the Law of Conscience, Conscience condemns us.

He who is condemned by his own Conscience, is guilty. He has really done wrong. He has really offended against the Supreme

Rule. His actions are inconsistent with the Stage at which he has arrived, in his moral progress. They are therefore inconsistent with Morality. He who acts *against his Conscience* is always wrong.

268 The question naturally occurs, whether, on the other hand, he who acts *according to his conscience* is always right: whether he who is acquitted by his conscience is free from blame. Is it enough for the demands of morality, if each person compares his actions to the Standard of right and wrong which he has in his mind? Is this a complete justification?

It is evident, that to answer these questions in the affirmative, would lead to great inconsistencies in our Morality. For, under the influence of Education, Laws, Prejudice, and Passions, the Standard of right and wrong, which exists in men's minds for the time, is often very different from that which the Moralist can assent to. Men have often committed thefts, frauds, impositions, homicides, thinking their actions right; though they were such as all Moralists would condemn as wrong. Such men acted according to their Consciences. Were they thereby justified?

269 What has already been said, may suggest a Reply to such questions. It is the Duty of man constantly to prosecute his moral and intellectual Culture (202). This requires, not only that we should conform our actions to the Standard which we have in our minds for the time; but that, also, we are to make this Standard truly moral. Whatever subordinate Law we have in our minds, is to be looked upon only as a step to the Supreme Law;—the Law of complete Benevolence, Justice, Truth, Purity, and Order. Conscience, the Law, must be constantly directed with the purpose of making it conform to this Supreme Law. We must seek for such light, such knowledge, as may enable us constantly to promote this conformity. We must labour to *enlighten* and *instruct* our Conscience. This task can never be ended. So long as life and powers of thought remain to us, we may always be able to acquire a still clearer and higher view than we yet possess, of the Supreme Law of our Being. We never can have done all that is in our power, in this respect. It never can be consistent with our Duty, to despair of enlightening and instructing our Conscience, beyond what we have yet done. Our standard of virtue is not high enough, if we think it need be made no higher. Virtue has never so completely taken possession of man's being, but that she may possess it still more completely; and therefore, any conception of Virtue, which we look upon as perfect, must, on that

every account, be imperfect. Conscience is never fully formed, but always in the course of formation.

270 We may add, that in attempting to enlighten and instruct our conscience, and to carry on our moral progress, we are led to feel the want of some light and some power in addition to the light of mere reason, and the ordinary powers which we possess over our own minds; and that Religion offers to us the hope of such a power, which will, if duly sought, be exercised upon us.

271 It appears from what has just been said, that we cannot properly refer to our Conscience as an Ultimate and Supreme Authority. It has only a subordinate and intermediate Authority; standing between the Supreme Law, to which it is bound to conform, and our own Actions, which must conform to it, in order to be moral. Conscience is not a Standard, personal to each man; as each man has his standard of bodily appetite. Each man's Standard of morals, is a standard of Morals, only because it is supposed to represent the Supreme Standard, which is expressed by the Moral Ideas, Benevolence, Justice, Truth, Purity, and Wisdom. As each man has his Reason, in virtue of his participation in the Common Reason of mankind, so each man has his Conscience, in virtue of his participation in the Common Conscience of mankind, by which Benevolence, Justice, Truth, Purity, and Wisdom, are recognized as the Supreme Law of Man's Being. As the object of Reason is to determine what is true, so the object of Conscience is to determine what is right. As each man's Reason may err, and thus lead him to false opinion, so each man's Conscience may err, and lead him to a false moral standard. As false opinion does not disprove the reality of Truth, so the false moral standards of men do not disprove the reality of a Supreme Rule of Human Action.

272 Since Conscience is thus a subordinate and fallible Rule, it appears, that for a man to act according to his conscience, is not necessarily to act rightly. His conscience may be erroneous. It may be culpably in error; for he may not have taken due pains to enlighten and instruct it. If the conscience be in error, it must be so for this reason, that the man's moral and intellectual progress is still incomplete; and this incompleteness is no justification of what is done under its influence. A conformity to an Erroneous Conscience is no more blameless, than an act of imperfect Benevolence, or imperfect Justice.

273 Moreover, since Conscience has only this subordinate and derivative authority, it cannot be right for a man to refer to his own Conscience, as a supreme and ultimate ground of action.

The making our Conscience a ground of action, to this extent, is in itself wrong; since it is abandoning that Duty of further enlightening and instructing our Conscience, which can never cease to be a duty. That a man acts *according to his Conscience*, is not a reason for his actions, which can supersede the necessity of assigning other Reasons. If an action be according to his Conscience, it must be so because it is conformable to his Conceptions of Benevolence, Justice, Truth, Purity, Wisdom; and his reason for the action is more properly rendered by showing that the act does conform to these Moral Ideas, than by saying that it is "according to his Conscience." To allege that an act is according to my Conscience; meaning thereby, that I can act according to a Rule which is already fixed and settled in my mind, so that I will no longer examine whether the Rule be right; is to reject the real signification of moral Rules. It is the conduct of a person who pursues a wrong road to the place he aims at; and refuses to have it proved that the road is wrong.

Indeed, the very use of the term *Conscience*, in rendering moral reasons for actions, may tend to mislead us, by presenting Conscience to our minds as an authoritative and supreme guide. To dwell too much upon this abstraction, which, as we have said, merely denotes a step in our progress towards the Supreme Rule, may obstruct and disturb our further progress. We may confuse our minds, by fixing our consciousness too much upon our Conscience;—by reflecting upon this reflex habit. It has been sometimes said, that if I *talk* of my Humility, I lose it; something of the same kind may be said of Conscience.

274 But though a virtuous man may abstain from speaking much of his Conscience, he will not reverence its guidance the less on that account; or rather, his silence, if he be silent, will be that of reverence. For nothing can be more worthy of reverence than Conscience. It is, as we have said, the expression of the Supreme Rule, so far as each man has been able to discern that Rule. Conscience is to each man the representative of the Supreme Law, and is invested with the authority of the Supreme Law. It is the voice which pronounces for him the distinction of right and wrong, of moral good and evil; and when he has done all that he can to enlighten and instruct it, by the aid of Religion, as well as of Morality, it is for him the Voice of God.

275 To disobey the commands and prohibitions of Conscience, under any circumstances, is utterly immoral; it is the very essence of immorality. In order to be moral, a man must be thoroughly

conscientious; he must be careful to satisfy himself what the decision of his Conscience is, and must be resolved to follow the course thus prescribed, at any risk, and at any sacrifice. Nothing can be right which he does not do with a *clear conscience*. Whatever danger or sorrow lies in that direction, whatever advantage and gratification of the desires and affections in the other, he must not shrink or waver. Whatever may be gained by acting against his conscience, the consistency and welfare of his whole moral being is lost by doing so. His moral progress is utterly arrested. He commits a grievous transgression; and, as we have already said, morality can assure him of no means by which the evil may be remedied, and the broken unity of his moral being restored. To be steadily, resolutely, and carefully conscientious, is a Rule which every one, who aims at his moral progress, must regard as paramount to all others.

276 Inasmuch as each man's Conscience is the Supreme Law, so far as he has been able to discover that Law; and inasmuch as this discovery is a task to be performed only by a diligent and continued exercise of our faculties; there may be periods when each man is aware that the task has been imperfectly performed on special points, and may be uncertain what is right and what is wrong. In such cases, his Conscience is *doubtful*. The removal of such doubts, is to be sought by the further use of the means by which the Conscience is enlightened and instructed. When the doubts turn rather upon special points than upon the general course of action, they are *Scruples of Conscience*.

What a person can do without offending against his Conscience, when the question has been deliberately propounded and solved in his own mind, he does with a *safe conscience*, or with a *good conscience*.

CHAPTER XV.

CASES OF CONSCIENCE RESPECTING TRUTH.

277 It will appear from the preceding Chapter, that in all right action, the Conscience is employed, consciously or unconsciously. A man is *bound in Conscience* to do what he thinks right; but he is also bound to employ his faculties diligently, in ascertaining what is right. In cases in which he has not ascer-

tained what is right, his Conscience is doubtful; and for the purposes of right action, it is requisite that these doubts be removed. Cases which are considered by Moralists with the view of doing this, are *Cases of Conscience*.

We are not to suppose that any particular Class of questions in Morals are Cases of Conscience. Every case of Moral action is, for the person who acts, a Case of Conscience. But in the greater part of such cases, the Rule of Duty is so plain and obvious, that no doubt arises, as to the course of action; and thus, no internal inquiry brings the Conscience into notice. In cases in which there appear to be conflicting Duties, or reasons for opposite courses of action, we must endeavour to decide between them, by enlightening and instructing the conscience; and these are especially termed Cases of Conscience.

278 Since, in Cases of conflicting Duties, whichever way we decide, one Duty is, or seems to be, evaded or violated, Cases of Conscience, as proposed by Moralists, have often the aspect of Questions as to when Duties may be evaded or violated. To discuss such questions, has been supposed, by the world in general, more likely to pervert than to improve men's minds; and hence *Casuistry*, the part of Morality which is concerned with such discussions, has often been looked upon with dislike.

279 But the question, in every Case of Conscience, really is, not, How may Duty be evaded? but, *What is Duty?*—not, How may I avoid doing what I ought to do? but, *What ought I to do?* And this is a question which a virtuous man cannot help perpetually asking himself; and to which the answer may very often be far from obvious. In such cases, he will be glad to know to what decision the Moralist, treating such questions in a general form, and free from the influence of personal temptation, has been led. We shall here consider a few Questions of this kind.

There occur Cases of Conscience respecting all Classes of Duties: but in many of these Classes, the decision of the question may require a more exact determination of the Conceptions involved in it; for instance, in questions concerning Duties of Justice, of Humanity, which Conceptions will be examined hereafter. But there are some Cases which we may consider by the aid of Rules and Maxims already laid down.

Such are particularly the Cases which respect the Duties of Truth (*Subjective Truth, Veracity*). The Rules *Lie not, Perform your Promise*, are of universal validity; and the conceptions of *Lie*, and of *Promise*, are so simple and distinct, that, in general, the

Rules may be directly and easily applied. We shall consider first some such Questions relative to Promises.

280 In what sense are promises to be *interpreted*? We have already said (218), that the Mutual Understanding of the two parties, at the time of making the promise, is the sense in which it is the Promiser's Duty to fulfil it. This is the right Interpretation of the promise, because the promise expressed and established this Mutual Understanding. If the Promiser, intending deceit to the Promisee, or to other persons, has used expressions, with a view to their being misunderstood, he has already violated the Duty of Truth. If he repent of this, his only way of resuming a moral condition is, to carry back the effect of his repentance to the time of making the promise, and to act as if he had intended what he was understood to intend.

Since the Promiser may be the only speaker in the transaction, and the Promisee may imply his acceptance of the Promise, and the sense in which he understands it, only by his silence, or by words of assent; we may state, as the Rule in such cases, that the Promiser is bound in the sense in which he believes the Promisee to understand him. For this is the only Common Understanding between them.

281 It may be, that the Common Understanding of what the Promiser is to do for the Promisee, includes some suppositions which are afterwards discovered to be false: and it may be asked, if the Promise is still binding. This is the case of *Erroneous Promises*. And the answer to the question is, that the false supposition releases the Promiser, so far as it was included in the Common Understanding. Thus, a person solicits alms from you, telling you the tale of his distresses. Your purse being empty at the time, you promise to relieve him if he will call again. In the mean time, you discover that his story contained falsehood. How far are you bound by your promise? It is plain that if the Promise was understood by both of you to be unconditional, and the delay, to take place merely on account of the state of your purse, the Promise is binding. But if the Promise was understood to be conditional on the truth of the tale, and if the falsehoods are material, the Promiser is released. Yet it must be very difficult for the Promiser to know how far his Promise is hypothetically understood. And therefore, to avoid the moral trouble which such doubts produce, it is wise in such cases to express the condition on which the Promise is given.

282 There is one circumstance respecting Promises which

must be noticed. The Duty which they create, is not an absolute, but a *Relative Duty*. It is a Duty relative to the *Promisee* only. He is the only person affected by the non-performance of the Promise. He has a Moral Claim for this performance; but he may relinquish this Claim, as he may relinquish any Right or Possession. And when he has done this, the duty of performing the promise ceases. Hence it is laid down, as a Rule of Morality respecting Promises, that *they are not binding, when released by the Promisee.*

283 The principal Class of Cases of Conscience respecting Promises is, that of what are called *Unlawful Promises*; - that is, Promises to do an *immoral act*; for we are not now speaking of law, but of morality.

When the immoral character of the act was known to the parties at the time, the Question of Immoral Promises is answered by recollecting what has been said (259) respecting violations of Duty. The transgressor ought to repent and amend; and as a part of his amendment, he ought not to go on with an immoral act which is begun. To Promise, and to Perform, are parts of the same connected act. If the Performance be immoral, the Promise was so. To promise, was a transgression of Duty begun; to perform, is to complete the transgression. It is my Duty to stop in the mid course of the act, as it was my Duty not to enter upon it at first. When the question of Duty is proposed, there can be no other answer.

This applies at once to all promises to perform, or to participate in, any act of violence, injustice, fraud, or impurity. In all such cases, the Promiser, by his Promise, has rejected his moral nature; and can only resume it, by repudiating his own act. Even to do this, does not leave him blameless; for, as we have said, repentance does not obliterate past guilt; but to do this is necessary: this is the only way in which he can avoid the continuation and further degradation of his moral condition. He offended in the Promise; he offends again in the Performance. Whatever Temptation led him to sin, in the first part of the act; he sins against conviction, if he perform his promise, when the question has been brought before his conscience.

284 But in breaking my Promise, immoral though it be, I violate my Relative Duty to the Promisee; and the case may be one in which he denies, and even blamelessly denies, the immorality of the act promised. For instance, I have promised the less worthy Candidate for an office, that I will vote for him. I cannot expect to induce him to release me from my Promise, by repre-

senting to him his own unworthiness. Nevertheless, my relative Duty to him must give way to my absolute Duty of voting for the most worthy Candidate. But though I now do what I ought, I am not therefore blameless as to the past. The violation of a Relative Duty, is an offense against the Promisee. He has good reason to complain of me; and I have reason to feel repentance and shame, for having given him a claim upon me which I cannot satisfy. This is the unhappy consequence of making an immoral Promise.

In other cases, where the Promisee is aware that the act promised is immoral, he did wrong in accepting, as I in making, the promise. He ought to release me from the promise, not as an act of grace, but as an act of Duty. If he do not, my shame at not satisfying his claim upon me, is rightly lost in my shame at having given him such a claim.

285 When the Act promised was not immoral at the time of promising, but becomes so afterwards, it is not to be performed. For since we are asking what virtuous men would do, we are to suppose that they would not have made the promise; if they had known that performance would be immoral; and that they will release each other, now that it appears to be immoral. That the act should be lawful at the time of performance, was a part of the understanding which the promise conveyed. If a merchant promises his foreign correspondent to send him a ship-load of corn at a time appointed, and before the time arrive, the exportation of corn is forbidden by law; he is liberated from his engagement. Both parties must have understood that the promise was made, on the supposition that the act would be lawful; and that the engagement was annulled, when it became unlawful, and therefore immoral.

286 In the case where one party sees that the performance is immoral, and the other does not, the difficulty is greater; but the Rule by which we may direct ourselves is, that the promise must be understood as a promise made between virtuous men, and involving such a conditional engagement as may morally be made: and so understood, it must be fulfilled.

Thus, if I promise to vote for an unworthy candidate, the promise was immoral, and is not to be kept, as we have said. But if I promise to vote for a candidate who, after my promise, becomes unworthy, not having been so before, am I bound? We say, No: for I promised on the supposition of his worthiness; and he, who ought to regard me as a moral man in making my promises, must have understood that this supposition was implied. But yet my refusal

to fulfil my promise may give him ground to say, that it is not his worthiness, but my intentions, which have changed. And this must be a matter difficult of proof; at least to him; and therefore it will be difficult to show him that I have not violated my Relative Duty to him. The prospect of such difficulties, is a strong reason for not making promises respecting elections, in cases where the worthiness of the candidates, at the time of voting, ought alone to decide the election.

287 But there may be cases, in which an unconditional promise to vote for a candidate at an election may morally be given: and then it must be kept. There are cases in which the matter is left much to the discretion of the elector; and in such cases, though merit may determine his choice, he may fix his own time for making up his mind; and may promise when he has decided. Any candidate who offers himself after this, comes too late.

288 Or again, the Promise may imply an informal Contract; as when a person is elected to act on behalf of the Electors; or on the belief that he and they have a common purpose. This is the case, when the Representative of a body of men is to be elected. They look out for a person whose character fits him to act for them, and they promise to vote for him. He, on the other hand, by his conduct and his professions, pledges himself to follow a course of action which they approve. Promises thus made, are not immoral. Such a mutual understanding is requisite, between the Electors and their Representatives; and can only be established, by their promising him their votes. The electors are bound to elect the fittest person; but the Candidate with whom they have come to this understanding is thereby and thenceforth the fittest. The election is like the election of an Agent; and as we have said, is rather of the nature of a Contract, than of an election on the ground of merit only.

But then, in order that this Contract may morally be made, it must be for moral purposes. Such would be an understanding between the Electors and the Candidate, that he, acting as their Representative, shall aim to preserve the Constitution, or to reform the Abuses, of the body into which he is elected. But if the understanding be, that he shall give them money in return for their votes, the Contract is an immoral one. The power of electing a Representative is in their hands for the sake of some public good; it is a violation of Duty, to turn such a power into a means of private gain (211).

289 It is sometimes made a Question, Supposing such an in-

formal Contract immorally made, whether, when the immoral end is answered, it is a Duty to perform the rest of the Contract; for instance, if a person were elected to an office of public trust on promise of sums of money to the electors, whether, after the election, it is his duty to pay these sums. We may remark, that the question, here, is not, What he is to do as an innocent man; for by the supposition he is a guilty one; having been concerned in an immoral bargain. If the question be, What is he to do as a repentant man, convinced of his guilt, and wishing henceforth to do what is right, the answer is, that he must pay. There is no reason why he should add, to the violation of his Absolute Duty, the violation of his Relative Duty to the Promisees. If, in his repentance, he wishes not to complete an immoral transaction, he is to recollect that the immoral transaction is completed by his election. If he wish to mark his hatred of the offense, he may signify his meaning more clearly, by expressing his repentance, and paying the money, than by keeping it; for to keep it may be interpreted as adding avarice and falsehood to the violation of public Duties.

290 Promises are immoral, which contradict a former Promise; and therefore are not to be kept; but here, as in other cases, there is a violation of the Relative Duty to the promisee; and a ground for shame and repentance so far as regards him. And here we have another warning, of the need of being cautious in making promises.

291 Promises which it is impossible to perform, are evidently not to be kept: but then, it can hardly be that such Promises can be made, without some want of due consideration and forethought on the part of the Promiser, which gives the Promisee good ground for complaint. If the Promiser was aware of the impossibility at the time of making the promise, he is guilty of fraud; for by making the promise, he implied his belief of the possibility of performing it.

When the Promiser himself occasions the impossibility, it is a breach of promise.

292 Are Promises extorted by Fear or Violence binding? This is a question which has been much debated among Moralists. We must apply to it the Rule which we have already laid down; that the Promise, if morally made, must be kept. If I ought not to keep the Promise, I ought not to have made it. The question, therefore, will be, whether I could morally make such a Promise. And it may be remarked, that if I could not morally make the

Promise, I cannot morally derive advantage from any Contract which was combined with the Promise; for to do this, is a part of the same Act, as to make the Contract. I cannot morally derive advantage from one part of the Contract, and refuse to perform another part. If I find the Contract to have been immoral, I must undo, as far as I can, its effects; and go back, in my condition, to the state in which the Contract was made.

293 These Maxims may be applied to a case of this kind often discussed. A man falls into the power of a band of robbers, and, in fear of violence, promises them that if they will set him free, he will afterwards send them a certain sum of money. He is liberated on his promise: is he bound afterwards to send the money? According to the above considerations, if it was not immoral to make the Promise, it is a Duty to keep it. And this Rule is so obvious a one, and its application so direct, that we may wonder that any other should have been taken.

The reasons given for doubt, or for the opposite decision, are various. Thus Cicero says*, that with robbers, we have no tie of common faith or obligation. But we shall, of course, answer, that we keep our word, not as what is due to robbers, but as what is due to ourselves, and necessary to our character of truthful men: not as what is an act of obligation to them, but an act of reverence to truth. We may add, that we can hardly say that we have no ties of common obligation with them, when we have made them a promise, and have received life and liberty as a consideration for it. We make a Contract with them, though it may be an informal one. They fulfil their part of the Contract: if we do not fulfil ours, we shall take a very strange way of exemplifying our asserted moral superiority over them.

It has also been alleged, as a reason why the promise thus given should not be kept, that their confidence in Promises will thus greatly facilitate the perpetration of such robberies;—that in this way, such Contracts may be made the means of almost unlimited extortion†. Upon this we may remark, that it is right to regard the probable consequences of our actions; and we must agree, that it would be wrong to contribute to maintain a state of things in which lawless banditti levy ransoms upon peaceable citizens. But these considerations, if acted on, would prevent our making the Promise. And if, notwithstanding these considerations, we have made the promise, we must consider how far it is likely that to keep our word, rather than to break it, would make us the

supporters of such a habit of extortion. Is it probable that the banditti will give up their practice, simply because their captives, liberated on such promises, do not perform them? Is it not likely that, their power remaining, such disappointments would induce them to seek some more effectual mode of extortion? Do we not, by making and adhering to such contracts, prevent their adding murder to robbery? And is not the most proper and hopeful course for suppressing such robbery, to call for, and, if required, to assist, the vigorous administration of the laws against robbers, which exist in every State. Till that can be done, may it not tend to preserve from extreme cruelties, those who fall into the hands of the robbers, that they should have some confidence in the payment of the ransom agreed upon? Even on the balance of probable advantage, it would seem that such a promise is to be kept.

But on our principles, we should not look to these results so much as to our own moral culture. By keeping this promise, we cherish and exemplify our regard for truth. What moral quality do we cultivate by breaking it? If it be replied, that we thus cultivate a regard for consequences; we reply, that consequences, when both their existence, and their moral character, are so doubtful, are not the main objects for our regard. The consequences which take the shape of strict veracity in ourselves, and the consequent confidence of others in us, are proper objects of moral action. The consequences which take the shape of possible inconvenience produced to robbers by our own untruthfulness, are not proper objects for us to aim at.

294 It may be asked, whether, in order to avoid thus contributing to robbers, we ought to refuse to make the promise; and whether, thus, we ought to incur violence, or even death. This is included in the general question, what we ought to do in *cases of extreme necessity*, when the adherence to the usual Rules of Duty brings with it danger of life, limb, and the like terrible consequences. And to such questions perhaps no general answer can be given. They are commonly put in this form: Whether in such cases of necessity it be *allowable* to violate Duty: and in this form, something may be said respecting them hereafter.

295 If it be said, that the Law denies the validity of such engagements, by annulling Contracts made under duress; we reply, that even the Law requires that men should not allege light fears, as reasons for the nullity of a Contract. The Law makes *Duress* nothing less than the fear of loss of life or limb;

and thus shows that it expects that men will show some firmness, in refusing to be parties to illegal acts. It is true, that the law would annul a Contract made under the circumstances which we have described. It would also punish the robbers, if they were brought under its administration. But then we must recollect that Duty does not necessarily confirm the advantages to which the administration of the Law would entitle us; while Duty does necessarily confirm our obligations, and extend them, so as to give them a moral meaning. Duty interprets informal obligations, so as to make them evidence of internal principles. Duty requires the performance of promises, so as to make them evidence of a Spirit of Truthfulness.

296 Lies stand nearly on the same footing as promises; for a Lie is a violation of the general understanding among mankind, which the use of language implies, as we have already said (280). And, as has already been stated, that is a Lie which violates this mutual understanding, and nothing else. Hence the term *Lie* is not applicable, when no mutual understanding is violated. Such is the case in Parables, Fables, Tales avowedly fictitious, or notoriously so, according to the literary habits of the time; as Novels, Dramas, Poems. A person, the most careful of his moral culture, may employ himself in such fictions. Yet there are provinces of literature in which the most rigorous attention to truth is a Duty, as in History and Personal Narratives.

297 There are various understood *Conventions* in society, according to which, words, spoken or written under particular circumstances, have a meaning different from that which the general laws of language would give them. I have already noticed such phrases as, *I am your obedient servant*, at the foot of a letter; which, though not literally true, is not to be called a Lie. The Convention is here so established, that no one is for a moment misled by it. In the same way, if, when I wish not to be interrupted by visitors, I write upon my door, *Not at home*, and if there be a common understanding to that effect; this is no more a lie than if I were to write, *Not to be seen*.

298 But if I put the same words in the mouth of a Servant, and if the Convention be not regularly established in all classes of society, the Case is different. It is a violation of Duty in me to make the Servant tell a lie: it is an offense against his moral culture (249). He may understand the Convention to be so fully established in the class with which my intercourse lies, that the words, though not literally true, convey no false belief. In this

case, he may use them, and I may direct him to use them, blamelessly. But it is my Duty to ascertain that he does thus understand the words, as a conventional form; and in order to give them this character, he should not be allowed to deviate from the form, or to add any false circumstance; as, that his master has just gone out, or the like. It is very difficult to be certain that the Servant does so completely understand this Convention, as to receive no moral harm from being made the speaker in it. In many cases he will be led to think that if he may thus tell, what appears to him a lie, for his master, he may tell one for himself.

299 The view that we have taken, of the nature of a Lie, suggests an answer to some of the excuses sometimes offered for lies. For instance, some men tell lies in order to preserve a secret which they wish not to be known; and allege, in their justification, that the Questioner has no Right to know the truth. To such a plea we reply, that the Questioner has a Right not to be told a lie, for all men have such a Right. By answering his question at all, I give him a Right to a true answer. If I take my stand on the ground that he has no Right to an answer, I must give him no answer. I may tell him that he has no Right to an answer.

But it may be said, that to do this will in many cases be to disclose the secret which we wish to conceal. For instance, the author of an anonymous work, who wishes to remain unknown as the author, but is suspected, is asked whether he wrote the work. To refuse to reply, would be to acknowledge it. Such authors have held, that in such a case, they may deny the authorship. They urge, that the Questioner has no right to know: that the Author has a Right to remain concealed, and has no means of doing so but by such a denial. But this defense is wrong. The author has no moral Right to remain concealed at the expense of telling a Lie: that is, it is not right in him thus to protect himself. But on the other hand, he is not bound to answer. Nor need he directly refuse to do so. He may evade the question, or turn off the subject. There is nothing to prevent his saying, "How can you ask such a question?" or anything of the like kind, which may remove the expectation of an answer. If he cannot secure his object in this or some similar way, it is to be recollected that he has drawn the inconvenience upon himself, by first writing an anonymous work, and then engaging in conversation on such terms, that he cannot escape answering questions about the authorship

of the work. He has no Right, moral or other, to insist that these two employments may be pursued jointly without inconvenience. Familiar conversation is a play of reciprocal insight and reciprocal guidance of thought; and such weapons a man may very rightly use, to guard his secret. But he may not assume that it must be guarded at any rate, by means right or wrong; by declarations true or false. On the other hand, he may seek, as widely as he chooses, for some turn of conversation by which he may baffle curiosity, without violating truth. To discover such a turn, is a matter of skill, self-command, and invention. If he fail and be detected, he may receive some vexation or inconvenience; but if he succeed at the expense of truth, he receives a moral stain.

300 The like considerations apply in a case often discussed among moralists. A man is pursued by murderers who seek his life, and I conceal him. They ask me if I know where he is. Am I to say that I do not know? In this case, it is evident that I may blamelessly refuse to answer the question; but in this, as in the other case, not to answer, may be to speak plainly. I may also represent to the pursuers the wickedness of their purpose; I may call in the aid of the law. These latter courses are blameless.

But suppose that these resources fail, that the pursuers turn their fury upon me, and that they threaten to kill me, except I disclose to them the hiding-place of their victim. We have here a new case; the prospect of my own death if I do not make myself accessory to a murder, for, to give up the man to his murderers, would be to be accessory to his death. This is a Case of Necessity, and a Lie in such a Case is not to be judged of by common Rules.

301 *Lies of Necessity*, Falsehoods told for the purpose of saving one's life; or to avoid some other extreme peril, have found much sympathy among mankind. They are looked upon as at least excusable, and allowable. We must hereafter consider them among other Cases of Necessity. Lies of Necessity, told for the sake of saving a friend from some great misfortune, have met with a more decided approval, in the cases in which they are narrated. Such for instance was the falsehood told by Grotius's wife to save her husband, when she represented the box in which he was contained as a box of theological books.

302 But when such falsehoods which thus save a friend from ruin are accompanied with some great foreseen calamity to the teller, they excite a still higher admiration, and may be termed

Heroic Lies: as when Lucilius offers himself to the soldiers of Octavius to be killed, declaring himself to be Brutus. So far as such acts come under the Moralists's notice, they must be considered under a special head; for Heroic Virtue, as we have already said, is beyond the range of the Rules of Duty.

303 Though assertions, not literally true, may, by general Convention, cease to be Lies, we must be careful of trifling with the limits of such cases, and of too readily assuming, and acting upon, such Conventions. Carelessness in these matters, will diminish our habitual reverence for truth. Some Moralists have ranked with the cases in which Convention supersedes the general rule of truth, an Advocate asserting the justice, or his belief in the justice, of his Client's cause*. As a reason why he may do this, though he believe otherwise, it is said, that no promise to speak the truth was given, or supposed to be given. But we reply by asking; If there is no mutual understanding that he shall speak truly, to what purpose does he speak, or to what purpose do the judges hear?

By those who contend for such indulgence to Advocates, it is alleged, that the Profession of Advocate exists as an instrument for the administration of Justice in the Community; and that it is a necessary maxim of the Advocate's Profession, that he is to do all that can be done for his Client. It is urged, that the application of Laws is a matter of great complexity and difficulty: that the right-administration of them in doubtful cases, is best provided for, if the arguments on each side be urged with the utmost force, and if the Judge alone decide which side is in the right; that for this purpose, each Advocate must urge all the arguments he can devise; and must enforce them with all the skill he can command. It is added, to justify the Advocate, that being the Advocate, he is not the Judge;—that it is not his office to determine on which side Justice is; and that therefore his duty, in his office, is not affected by his belief on this subject.

In reply to these considerations, the Moralist may grant that it is likely to answer the ends of Justice in a community, that there should exist a Profession of Advocates; ready to urge, with full force, the arguments on each side in doubtful cases. And if the Advocate, in his mode of pleading and exercising his profession, allows it to be understood that this is all that he undertakes to do, he does not transgress his Duties of Truth and Justice, even in pleading for a bad cause; since even for a bad cause, there may be

* Paley, B. III. c. 15.

arguments, and even good arguments. But if, in pleading, he assert his belief that his cause is just, when he believes it unjust, he offends against Truth; as any other man would do who, in like manner, made a like assertion. Nor is it conducive to the ends of justice, that every man, however palpably unjust his cause be, should have such support to it.

To the argument that the Advocate is not the Judge, and therefore, that he is not responsible for his judgment on the merits of the case; the Moralist will reply, that every man is, in an unofficial sense, by being a moral agent, a Judge of right and wrong, and an Advocate of what is right; and is, so far, bound to be just in his judgments, and sincere in his exhortations. This general character of a moral agent, he cannot put off, by putting on any professional character. Every man, when he advocates a case in which morality is concerned, has an influence upon his hearers, which arises from the belief that he shares the moral sentiments of all mankind. This influence of his supposed morality, is one of his possessions; which, like all his possessions, he is bound to use for moral ends. If he mix up his character as an Advocate, with his character as a Moral Agent, using his moral influence for the Advocate's purpose, he acts immorally. He makes the Moral Rule subordinate to the Professional Rule. He sells to his Client, not only his skill and learning, but himself. He makes it the Supreme Object of his life to be, not a good man, but a successful Lawyer.

If it be alleged, that by allowing the difference of his professional and unprofessional character to be seen in his pleading, the Advocate will lose his influence with his hearers; the Moralist will reply, that he ought not to have an influence which arises from a false representation of himself; and that if he employ the influence of his unprofessional character, he is bound, in the use of it, to unprofessional Rules of Duty.

The Advocate must look upon his profession, like every other endowment and possession, as an Instrument, which he must use for the purposes of Morality. To act rightly, is his proper object: to succeed as an Advocate, is a proper object, only so far as it is consistent with the former. To cultivate his Moral Being, is his highest end; to cultivate his Professional Eminence, is a subordinate aim.

304 But further; not only is the Advocate to cultivate and practise his profession in subordination to moral ends, and to reject its Rules where they are inconsistent with this subordination; but

moreover, there belong to him moral ends which regard his Profession; namely, to make it an Institution fitted to promote Morality. He must seek, so to shape its Rules, and so to alter them if need be, that they shall be subservient to the Rules of Duty. To raise and purify the character of the Advocate's profession, so that it may answer the ends of justice, without requiring insincerity in the Advocate, is a proper aim for a good man who is a Lawyer;—a purpose on which he may well and worthily employ his efforts and his influence.

305 There are other Cases, in which the Duty of Truth may be violated by silence;—by that which we omit to say: as in selling defective wares, without notice of their faults; those faults being such as, by the universal understanding relative to such transactions, the Seller is bound to disclose. In these, as in the other cases, the Duty is, in a great measure, defined by the general understanding existing among Buyers and Sellers. In giving this Rule, we follow the guidance of the Law; which, in its decisions, recognizes such a general understanding with regard to sales. But here also Morality takes the Meaning, not the Letter of the Law, for her guide. We may apply this to a case stated by Cicero, and often since discussed by Moralists. In a time of great scarcity at Rhodes, a corn-merchant of Alexandria arrived there with a cargo of grain. The Merchant knew, what the Rhodians did not know, that a number of other vessels laden with corn were on their way to Rhodes: was he bound in conscience to communicate this fact to the buyers?

306 The universal Rule, that we may not deceive men, must apply in this case. The Moralist cannot doubt that it would be wrong for the merchant to tell any falsehood, in order to raise the price of his wares. (This even the Law forbids.) It would be plainly immoral for him to say, that he did not know that any other vessels were coming. But may he, the Seller, be silent, and allow the Buyers, ignorant of the truth which he knows, to raise the price by their mutual competition? This is a question belonging to trade in general; and must, as we have said, be answered according to the general understanding which we suppose to prevail among Buyers and Sellers. In common cases, both alike are supposed to have a regard to the prospect of an increased Supply, or an increased Scarcity. The Buyer does not depend upon the Seller, nor the Seller upon the Buyer, for this information. He who has, or thinks he has, superior information on this subject, takes advantage of it, and is understood to

do so : and prices are settled by the general play of such opinions, proceeding from all sides. But if a Seller possess information which he is not understood to have, and takes advantage of it, he violates the general understanding, and thus, is guilty of deceit. If the merchant in question ask such an exorbitant price for his corn, as to imply that no further supply is probable, he falls under this blame. On the other hand, he is not bound to sell his corn to-day for the price to which it may fall to-morrow, when the other vessels arrive; for, as a trader, he may take advantage of the greater skill and foresight which has brought him first to the port. We cannot say that he is generally bound to reveal to the buyer any special circumstance which may affect the market-price; as for instance, the probable speedy arrival of other vessels: for to make this a part of his duty, would be to lay down a Rule which would place skill and ignorance, diligence and indolence, on an equality; and would thus destroy the essence of trade. But if the Buyer asks questions on this subject, the Seller may not tell a lie. And if the Seller is silent as to this circumstance, he takes upon himself the responsibility, as a moral agent, of making an equitable estimate of the gain to which his unsuspected superiority of knowledge entitles him. If it be said, that it is very unlikely that a trader will be content with this, when he can get more; we shall of course reply, that the question is not what a trader is likely to do, but what a good man, (*Vir bonus*, as Cicero puts the case,) ought to do.

307 Promises of Marriage often give rise to doubts and fears; for the Promise implies much;—no less than affection and general community of interests during a whole life. A person may well hesitate before giving such a promise, and having given it, may fear whether he is not engaging for more than he can perform. But on the other hand, the Promise, sincerely given, leads to its own fulfilment; for affection grows, in virtue of the confidence which such an engagement establishes between the parties; the marriage union adds new ties to those which drew them together; and the progress of a well-conducted married life makes conjugal affection continue as a habit.

But the intention of fulfilling the engagement in this sense, and the belief of a power to do so, can alone render it right to make the Promise. A Promise of Marriage, though made, cannot morally be carried into effect, by him who does not intend thus to perform the engagement, or who despairs of doing so. If, before the Marriage takes place, he find the germ of conjugal

affection wanting in his heart, the course of Duty is, to withdraw from entering upon the immoral condition of a mere external conjugal union. But still, in doing this, he violates a most serious Relative Duty to the person thus deceived. She may have to accuse him of no less an injury, than the blighted hopes and ruined happiness of her whole life. To a man of any moral feeling, or even of any natural feeling, the remorse of having done such a wrong, by the promise of affection and lifelong companionship, must be intense. And his shame also must be profound: for he must be supposed to have well examined his heart before he made the promise; and if his affections be so dark to himself, or so fickle, that in spite of his self-examination, he has remained so long in error, and has been led to such a false step at last; how can he hope ever to be justified in making a like engagement with another person? A life of remorse and shame would be the proper sequel to such a fault.

The same remarks apply when the Promise is made on the other side.

308 We may notice here a Case of Conscience treated of by preceding Moralists*. A certain person in the lifetime of his wife had promised marriage to another woman if he should ever be free. The wife died, and the woman demanded performance of the promise. The man then alleged doubts whether the promise was binding, inasmuch as it was immorally given. The Question proposed has usually been, Whether the man is bound to marry the woman? But if we take the real Moral Question, Whether he *ought* to marry her? we must answer, that this does not depend on the Promise alone. If he wishes not to marry her, because he has ceased to bear her the affection which the conjugal union requires; according to what we have said, he ought not to marry her. If, on the other hand, he still wishes to marry her, there is nothing in the immoral condition of the promise formerly given which need prevent it. That promise was an offense against Duty in itself, inasmuch as it implied a heart alienated from the former wife. But this does not necessarily vitiate all his succeeding dispositions to the woman to whom the promise was made. We may suppose the old promise annulled, and he may, after the first wife's death, promise the same thing without blame, and perform his promise.

309 Without there being an absolute Promise of Marriage, there are often manifest suggestions of such a common purpose,

* Paley, B. III. c. 5. I state the case he professes to take it, states it differently. as Paley states it. Sanderson, from whom

between man and woman, which lead to difficulties of the same kind. In all countries, and especially in countries in which men and women are left free, in a great measure, to choose for themselves their partners in married life, marriage is the great event of life; it is the point to which the thoughts and imaginations, the hopes and designs of the young of both sexes, constantly tend. This is still more particularly the case with women; inasmuch as their social position depends mainly upon that of the husband. Hence the manner and behaviour of young men and young women, have a frequent reference, tacit or open, to the possibility of engagements of marriage among them. Conversation, of almost any kind, may disclose features of character and disposition, by which one heart may be drawn to another; and indications of such inclination may be given, in all degrees, from the slightest to the most marked. Among such a variety of elements, it may often be doubtful how far such marks of preference, on the one side and on the other, may be equivalent to an Offer of Marriage, or to an Engagement. Nor can any general Rule be laid down; for much must depend upon the conventions of society. But we may say, in general, that *Morality* requires of us a most serious and reverent estimate of the marriage state; and of the union of heart, and community of moral purpose, by which the parties ought to be drawn together. Any behaviour, therefore, which, while it appears to tend to such a purpose, is really frivolous and unmeaning, or prompted only by vanity, or love of amusement, is at variance with *Duty*. Such behaviour is a very unfit portion of a life which has our *Moral Culture* for its constant purpose; and which looks upon the prospect of marriage, and the tone of intercourse with women, as means to this end.

The above are given as Specimens only of Cases of Conscience respecting Truth; not as a complete Collection, or even as including all the more prominent classes of Cases. But the remarks made upon the above cases may serve to show the manner in which we are led, by the doctrines of *Morality*, to treat them; and the like Rules may be applied to other Cases.

CHAPTER XVI.

OF CASES OF NECESSITY.

310 THE discussion of Cases of Conscience, which we were pursuing in the last Chapter, led us, in several instances, to Cases of Necessity; and these, we stated that we must reserve for a separate consideration. Cases of Conscience are those in which conflicting Duties and conflicting Rules are weighed deliberately, the time and circumstances allowing of this. Cases of Necessity are those in which a man is impelled to violate Common Duties and Common Rules by the pressure of extreme danger or fear; as when a man kills another in defense of himself or his family; or when he steals, or tells a lie, to save his life.

311 We shall first consider the Cases in which a man thus violates Common Rules under the pressure of danger to *himself*. The Law shows us that men judge such danger, when extreme, to justify the transgression of Common Rules. Thus, in the Laws of most countries, the Command, *Thou shalt not kill*, is suspended when I am attacked by a burglar or a robber; and the Command, *Thou shalt not steal*, is suspended when I am perishing with hunger. And the common moral judgment of mankind looks with indulgence upon the transgressions of ordinary Rules in such extraordinary circumstances. The Moralist must, in like manner, allow, that there are Cases of Necessity, in which the Common Rules of Duty may be transgressed. But these Cases of Necessity must be treated with great caution.

312 In the first place, the Necessity, which is the condition of these Cases, must be very rigorously understood. It must be some such extreme peril and terrour of immediate death, or of some dreadful immediate evil, little short of death, as produces a pressure on the mind far beyond the usual course of human motives and passions. It is not every extraordinary emergency, when fear and other passions are excited somewhat beyond their usual bounds, that justifies acts which would otherwise be crimes. It is not a moderate danger, that justifies acts of violence and falsehood. The Law teaches us this, when it does not permit us to kill the diurnal housebreaker, or the flying robber; and when it requires, in order that a Contract, made under fear, shall be annulled, that the fear shall have been such as not a timid man

merely, but a firm man, might feel. To allow any looseness of signification in this condition of Cases of Necessity, would destroy all Morality. If not only the fear of death, but the fear of any great evil, would justify falsehood, there would be an end of the Duty of Truth. For any evil would appear great, when it was impending over us; and the Duty, being confined in its influence to cases in which there were no fears of inconvenience to overcome, would have no office left. And the same might be said of the other Duties. If it be said that fear excuses the violation of Moral Rules, because it carries us out of ourselves; we reply, that so far as fear carries us out of ourselves, it makes us cease to be moral agents; and that if we allow any ordinary fears to do this, we abandon our moral character. To be thus carried out of ourselves, by fear and other passions such as commonly occur, is to be immoral and wicked. The precise office of Morality is, to condemn those who yield to such a necessity as this. We cannot make transgression blameless, merely by calling the Case "a Case of Necessity."

313 In excuse of transgression of Moral Rules under Constraint, it has been said, that when man's Liberty ceases, his moral agency ceases. But to make this maxim in any degree true, the notion of a Cessation of man's Liberty must be very rigorously understood. In truth, man's Liberty, as a moral agent, never ceases, till he is moved as a piece of mere brute matter. Nothing but the man's own volition can move his muscles. No force, which other men can exert, can compel him, by physical means, to utter a word, or sign his name. It is not merely being put in close prison, and scantily fed, that can deprive man of the liberty which moral agency supposes. His liberty is not a liberty that can act only when all external obstacles and influences are removed; for in fact, that can never be. Moral Liberty shows itself, not in acting without external influences, but in acting in spite of external influences. To resist fear and danger, and still to do what we will to do, is the manifestation of our liberty. If we plead the limitation of our liberty as a reason why we are not bound by Moral Rules, we cast off such Rules altogether; for our liberty is always limited. It is not therefore by being deprived of Liberty merely, that we are placed in a Case of Necessity. Even when we are in prison, or otherwise under a constraint, we are bound by the ordinary Rules of Morality.

314 We have said, that the fear of *immediate* death constitutes a Case of Necessity. The fear of immediate death con-

stitutes one of the most distinct and plain of such cases. The reason of fixing upon such a case, is that such a fear, in most persons, produces a paroxysm and agony of terrour and trouble which subvert the usual balance of the mind, and the usual course of thought and action. What is done under such circumstances, may be considered as an exception to the common condition of the man's being. It has not the same bearing upon the man's moral culture as acts done in a more tranquil and deliberate manner. In cases where the condition is so extreme, we may allow a deviation from Moral Rules, without infringing their general authority. In addition to this reason for taking the fear of *immediate* death as a prominent example of a Case of Necessity, this condition makes the danger more inevitable. It may be supposed, in general, that if the threatened death be not immediate, other means of averting that result may be found by the person threatened, besides the violations of Moral Rules, which are the alternative. If, however, a death not immediate can be presented to the mind as an *inevitable* danger, it may perhaps constitute a Case of Necessity, on the grounds above stated.

315 But though the fear of immediate, or of certain, death, as the alternative, must be allowed to constitute a Case of Necessity, so far as such Cases are to be recognized; we are not therefore to conclude that such fear liberates us from all Duties, or justifies all Acts. We do not say, generally, that a man may, without blame, tell a Lie, or violate other Duties, in order to save his life. If we were to decide thus, what would become of our moral approval of Martyrs, who incur death by their open assertion of the truth? and of our admiration of virtuous men in other cases, who perform acts of Duty, knowing that they lead to their death? Even in Cases of Necessity, the violation of Rule may not be without blame; but the blame may be mitigated, in consideration of the Necessity: or, reference being had to the circumstances of the case and of the person, the act may be even excusable and allowable.

316 We shall not attempt to define or enumerate Cases of Necessity. A consideration of the peculiar character of such cases will show that the Moralists ought not to undertake such definition and enumeration. In the Act which is excused as a Case of Necessity, there must be a struggle and compunction in the mind of the agent respecting the Duty violated; although the extreme urgency of the motives which act in the opposite direction, may prevail. For we are supposing the agent to be a virtuous man;

and are considering what such a one may do, in a Case of Necessity. And we cannot suppose that such a man can violate the broadest Rules of Morality, without pain and trouble of mind. If we suppose a good man to be led, under the terrour of immediate death, not otherwise to be avoided, to tell a lie, or to stab the keeper of his prison; or a virtuous woman to give up her person to the lust of a man, we cannot suppose this to take place without great anguish and strong abhorrence of the acts thus committed. The intense vehemence with which man clings to life may overmaster this abhorrence; and even the best estimate which the person, at the moment, can form of the course of Duty, may direct such acts. But a person would not be virtuous who could commit them without repugnance, or look upon them with complacency. Any acquiescence in the acts, except as great though inevitable evils; any indifference with regard to the violation of the usual Rules of Morality; is at once immoral. When the act is over, there has been a dire and mortal struggle between Moral Rules and Self-preservation; and if we rejoice that we are preserved, we must still regret that, even for a moment, the general Rules of Duty were compelled to give way. We cannot look upon lying, or homicide, or being an instrument of lust, with approbation; even if, under the circumstances, we think that the acts have been, in this case, excusable. In such Cases of Necessity, we may excuse the act, but we cannot admire it. On the contrary, in such cases, our admiration is bestowed on the other side. We admire a man who suffers death, rather than tell a lie; we admire Socrates who would not escape from unjust legal bondage and death, even when he could do so without violence; we admire a woman who suffers death rather than submit to violation. It is plain that those who act thus, conform to the law of Duty: those who, in such cases of necessity, act otherwise, may do what, in such cases, is excusable or allowable; but the Moralist must not let them suppose that they take the course which is alone right, or eminently commendable.

317 This being the case, we must necessarily abstain from laying down any definition of the limits of Cases of Necessity; and any Precepts for such cases. For if we were to define, beforehand, the conditions under which lying, or homicide, or submission to lust, is the proper course; those who accepted our Rules, would, when the occasion came, take that course without the reluctance and compunction, which are essential to make an act allowable in virtue of Necessity. If we were to trace a definite boundary, be-

yond which the Common Rules of Morality no longer hold good ; men, in circumstances of temptation, would be looking out to see when they had passed this formal boundary, and were entitled to use the license which such a position would give. They would be inquiring at what moment they were beyond the jurisdiction of ordinary Morality ; in order that they might then disregard Moral Rules. Whereas this is not the disposition which the Moralist can approve or allow, even in Cases of Necessity. He requires, in order that he may give his approbation, or withhold his condemnation, a struggle in giving up what is commonly right ; as well as a wish to do no more than is, in uncommon cases, allowable. He cannot wish to aid any one in looking with composure upon the shock that his moral being must receive, by the emergencies of a Case of Necessity.

318 A further reason for not defining such cases, is this ; that the application of such Rules requires a calmness and fairness which cannot be looked for in a case of necessity. By the supposition of a case of necessity, the man is so thrown off his balance, that he cannot conform to the Rules of Duty in their exact and primary form. If we state these Rules in a relaxed form, Cases of Necessity will occur, in which, from the like want of balance of mind, he will transgress even the enlarged Rule. The Moralist cannot deliver, as a Precept, *Lie not except in great emergencies*. If he were to say so, to a man, under the influence of passion, small emergencies would appear great ; and thus such persons might learn to lie without compunction. The Moralist says, *Lie not at all*. If an extreme emergency occurs, he grants that there are Cases of Necessity in which transgressions of Moral Rules may be excusable ; and if he have to pronounce a moral sentence on the case he will take into account the circumstances of the case and of the person.

319 He will attend to the circumstances of the person, as well as of the case. For though the man who has to act in a Case of Necessity is not likely to look to the Moralist for Rules of Action ; it is very likely, or rather, inevitable, that his course of action will depend upon his own previous Moral Culture. A man who, like Socrates, has cherished in his mind, for many years, a reverence for the laws, will wait his death from their operation, rather than evade them. A man who has carried the love of truth, a woman who has carried the love of chastity, to a high point, will die, rather than incur the guilt they abhor. Other persons, not so far advanced in Moral Progress, will yield to the present fear, and

seek the allowable course, which, in such Cases of Necessity, may exist. The conduct, in such cases, is governed, not by Rules, but by the Operative Moral Principles which have been taken into the character so as to be the Springs of Action.

The conduct of a person in a Case of Necessity, as in any other case, must be considered with reference to his moral culture, in order that we may determine how far it is good or bad. Now in the case in which a person, whose moral culture has, up to that point been going on, violates the ordinary Rules of Duty in a Case of Necessity; his moral progress must, as we have said, receive a shock. There has been a mortal struggle between Moral Rules and Self-preservation; and Morality has been overcome. So far, the event is a suspension or reversal of moral culture, like any other transgression. But this has not taken place in the ordinary course of the man's being: it has been at a moment of paroxysm and agony; when by the terrour of immediate death, or of dreadful evil, his mind was thrown off its usual balance. This event in his moral culture, is, therefore, not to be reckoned as if it had happened at any other time. Perhaps the struggle and the defeat of Morality, was but for a moment; and implies no real permanent depravation of the character. Perhaps, the shock, though severe, was transient. Perhaps, the moral derangement was a sharp and critical disorder, brought on by special external circumstances; which, once past, does not affect the general moral health. In Cases of Necessity, when Rules have been violated, the Moralist may be willing to hope that such is the case; and in this hope, may abstain from condemning the actor, and may thus pronounce his act allowable. In delivering such a Sentence, the Moralist trusts that, as the Moral Culture has been interrupted by extraordinary circumstances, or turned into a strange channel; it will also afterwards be resumed with extraordinary zeal, and pursued with extraordinary advantage. The man who has had to take a merely allowable course, has great reason to examine his conscience and his heart, in order to see that they have received no stain or wrench; and to remove the defect, if they have. And if any more than native aid may be obtained in such a task, he has, more than others, reason to seek for it. If he do not need Repentance and Amendment after his act, at least he needs a renewed Recognition, in his heart, of the Moral Rule which he has violated.

320 We may remark, that we have spoken of cases in which the direct Rule of Duty leads to Death; as if Death were nothing more than one among many objects of human fear, although the

greatest. Death is, however, also the end of our moral career, so far as this life is concerned. This consideration would not affect the merely Moral Question; which is a question concerning the Course that Duty and Virtue require, *so long as life lasts*. But Religion, which presents Death to us as, not merely the end of this life, but the beginning of another, gives a new aspect to all such questions. Still, in the eye of Religion, as in the eye of Morality, Death is only one of the events of man's being; and every man's conduct with regard to this as to the other events, must be governed by the Law of Duty.

321 It appears from what has been said, that Cases of Necessity, in which the conflict is between Moral Rules and Self-preservation, are properly spoken of in the common maxim, which declares that *Necessity has no Law*; but the exception to Law amounts only to this; that transgression is allowable, provided the Necessity be extreme.

322 In the case in which moral Rules are transgressed, not for the sake of our own preservation, but in order to preserve some *other person* from great impending evil; we may have a Case of Necessity, which is also a *Conflict of Duties*: for to preserve another person from great evil, is a part of the general Duty of Benevolence; and when the person is connected with us by special relations, to do this, is involved in the Duties of the Specific Affections. Thus, when the wife of Grotius saved him by a lie; when Lucilius saved Brutus by falsely personating him; when Virginius preserved his daughter from pollution by her murder; when a man, in rescuing a neighbour from death, kills the robber who assails him; we have two Duties, placed in opposition to each other; on one side, the Duty of rescuing, from a terrible and impending evil, a husband, a friend, a daughter, a neighbour; on the other hand, the Duty of not telling a falsehood, or committing homicide.

These Cases of Conflict of Duties differ from the Cases of Conscience formerly considered, in having, as one alternative, death, or some extreme evil, immediately impending over a person whom we love; and hence, they hardly admit of a deliberate previous decision what we *ought* to do; but rather lead to some paroxysmal act, of which we afterwards inquire whether it was *allowable*, as in other Cases of Necessity.

323 In these Cases, as in the other Cases of Necessity, the Moralist must abstain from laying down definite Rules of decision; and for the like reasons as before. To state General Rules for

deciding Conflicts between opposing Duties, would have an immoral tendency. For such a procedure would necessarily seem to make light of the Duties which were thus, in a general manner, postponed to other Duties; and would tend to remove the compunction, which any Moral Rule violated, ought to occasion to the Actor. We may see these defects, in the Rules which have been proposed for such purposes. For example, it has been said by some, that the wife of Grotius and the friend of Brutus were justified in what they did, because the Duty of Truth is only a Duty to one's self; and Duties to a Husband or a Friend are of a higher order than Duties to one's self*. But the result of this Maxim would evidently be, that any Lie, however great, might be told to procure the smallest benefit to a Husband or Friend; which is a most immoral conclusion.

324 But though in such Cases of Conflict of Duties, no Moral Rules can be laid down, as of universal validity, the course taken by the Actor will depend, and ought to depend, upon his state of Moral Culture. And perhaps the best mode in which the Moralist can estimate any particular case, is to consider how the two sides of the alternative would have affected the Moral Culture and Moral Progress of the person. Thus, in the case of Grotius's wife, Conjugal Love was in Conflict with the Love of Truth. Both of these are Moral Principles, to be cultivated in our hearts, by their influence upon our actions. If the wife had neglected an opportunity which offered itself, of saving the husband from death, the shock to Conjugal Affection would have been intense; and the irremediable evil, when it had fallen upon her, must have brought with it a self-accusation and despair, against which the recollection of scrupulous veracity could hardly have supported her. If, on the contrary, in such extreme necessity she uttered a Falsehood; even if it had been to friends, it might have remained in her mind as an exception, without weakening the habitual reverence for Truth: but the deceit being, in fact, used towards enemies, with whom the same common understanding does not obtain, which subsists among friends, it would naturally still less be felt to be an act in which the Duty of Truth was lightly dealt with; so that there were reasons to hope, that if any wound were inflicted on the Love of Truth by the act, it might heal readily and completely.

325 But this mode of viewing the subject is not to be recommended to the person who has to act: for, besides the calm self-contemplation which it implies, and which is not conceivable under

* Eschenmayer, *Moralphilosophie*. Stuttgart, 1818. § 187. *Nothlüge*.

the circumstances of a Case of Necessity, it is difficult for any one, under any circumstances, to judge for himself beforehand, in what degree any course of action will affect his moral culture*. Yet such considerations as have just been stated may lead the Moralist to look without condemnation on extreme cases, in which the duties of the affections have been preferred to the duties of truth and justice. But then, this must be understood only of Cases of Necessity, rigorously understood, that is, of death or other peril of the highest kind, incumbent upon the object of affection: for otherwise, such a Rule would destroy the duties of truth and justice altogether.

326 As we have said, in such Cases of Necessity, men will hardly, in general, look to the Rules of Moralists for the direction of their conduct. But though they may not do this, they will be determined, in their conduct on such emergencies, by their previous moral culture and moral progress. A man who, acting under a momentary sense of duty, kills his daughter to preserve her purity, must have cultivated to a high degree his love of purity; and has probably not cultivated, in the same degree, his horror of homicide. Yet we can hardly blame him, in the same way as we should do, if mere Appetite or Desire had overmastered a moral Principle; for both those Principles are to be cherished in the Moral Culture of Man. If, in Cases of Necessity, the conflict of opposing Duties be decided by the energetic action of a Principle, which, though disproportioned to other Principles, is still moral, we may pronounce the act excusable; without pretending to decide that some other course might not have been selected, by a character of more even and comprehensive Moral Culture. Moreover the predominant Principle in each character will show itself, not only by prevailing in the struggle, when the conflict is begun; but also by stimulating the invention, and suggesting a course of conduct, which, to a more indifferent mind, would not have occurred. It was the strength of conjugal affection, which suggested to Grotius's wife the device to save her husband; it was the strength of friendship, which suggested to Lucilius the thought of presenting himself as Brutus; it was the horror of shame and slavery, which inspired in the mind of Virginius, the thought of killing his daughter. A strong Moral Principle, like any other Spring of

* It may be observed however that in Cases of Conscience, when there is time for calm consideration, this mode of deciding what we ought to do, by inquiring what course will most promote our moral

culture will rarely fail to lead us right: for instance, it would prevent us from telling a falsehood in order to avoid disturbance to our vanity, pride, ease, or reserve:

Action, shows its strength by the activity, vigour, and inventiveness which it calls out in the mind.

327 In such cases as have been described, when the course chosen implies self-devotion, or the sacrifice of strong special affections, along with great courage or fortitude, the act is often called an *Heroic Act*. Accordingly, men have been described as "Heroic," the acts of Lucilius, and of Virginius; also (157) of the elder Brutus, Regulus, Socrates. Such "Heroic Acts" approach very near to those Cases of Necessity which involve Conflicting Duties. And they will be judged by the Moralist, in nearly the same manner as such Cases. Such Heroic Acts arise from the energetic predominance of some Operative Principle, which, overpowering selfish desires and affections, doubt and fear, stimulates the mind to some act out of the common course of human action. If the Principle which thus manifests itself, be a Moral Principle, although disproportioned to other Moral Principles in the character; the Moralist may, not only pronounce the acts excusable, but may even admire them, as *Heroic Acts*; that is, as Acts out of the reach of Rule. But at the same time, it must be recollected, that the Origin of such Heroic Acts, in general, is a disproportion in the Moral Character. To aim at Heroic Virtues only, would be an extremely bad culture of ourselves. It would lead to an entire rejection of Duties; for as we have said (169), we speak of Heroic Virtues, but not of Heroic Duties.

328 Among the Cases of Necessity, there is one Class which may be specially noticed; namely, those in which, under the pressure of Necessity, the Duty of Obedience to Government is put aside—Cases of Resistance to Governors, and of Revolutions. Such cases have occurred, in the history of almost all nations; but they are usually defended, and can only be morally defended, as Cases of Necessity. Under all common circumstances, the Duty of Obedience to the Government historically established in the Community, is incumbent upon every Citizen. There may occur circumstances, in which the preservation of the Constitution of the Country, or the Welfare of the People, may make Resistance and Revolution necessary. But the Moralist must say, in such, as in other Cases of Necessity, that the Necessity must be extreme, before a violation of the Rules of Duty is allowable. All common means must be tried, all the resources of the Constitution exhausted, all other courses explored, before Resistance becomes moral. And we cannot define beforehand, at least, except in a very general way, what are those marks of necessity which thus

justify Resistance to Government. The Moralist abstains from doing this, in these, for the same reasons as in other Cases of Necessity. It would not answer the purposes of Morality, to draw lines, and mark points, to which discontented citizens might look forwards, in order to see when they had acquired the privileges of a condition free from the Rule of Obedience. We are not to class Resistance and Revolution among ordinary conditions of Society. On the contrary, they are to be looked forward to as dire calamities, whenever they come; with which the mind is never to be familiarized, any more than with any other great transgressions of Rules, which, in Cases of Necessity, may occur.

When the Case of Necessity occurs, or is supposed to occur, the Necessity will be expressed in the language of historical facts and current opinions*. Both the Necessity and the expression of it, will depend upon the Moral and Political Culture which the Community has attained. If, according to the historical Constitution, and actual condition of the Community, the Necessity be really extreme; and if, all Constitutional courses having been exhausted, the operation of Moral Principle in the Community has produced Resistance, and led to Revolution, the Revolution may be necessary, and even glorious. But even in this case, it is conducive to Morality that the deviation from the common Rules of the Constitution should be, and should appear to be, as small as is consistent with the object to be secured. There may be occasions, on which the Moralist may have to dwell with satisfaction upon such Revolutions; and on the heroic acts by which they were brought about; but in general, it will be his province to speak of the ordinary Rules of Duty, and of their application, rather than of the difficult and disquieting questions of Exceptions to Ordinary Rules.

CHAPTER XVII.

OF THINGS ALLOWABLE.

329 WE have been led, by our reasonings, to state that, in Cases of Necessity, certain courses of action may be declared *Allowable* or *Permitted*, even though we may not be able to

* As in the English Revolution of 1688, the necessity was ascribed to a violation of the Social Compact; and in the French Revolution of 1789, to the requirements of the Rights of Man.

pronounce them absolutely right ; as to tell a lie to save one's own life, or the life of a friend. There is a prevalent inclination among men to extend this notion of things which are permitted or allowable, though not rigorously right, to many other cases. It is often asked, with a latent persuasion that the Moralist cannot fail to return an affirmative answer, "Whether it be not allowable to utter a falsehood, in order to preserve an important secret :—" "Whether, under very provoking circumstances, anger on our own account be not allowable :—" "Whether, in deciding a question of merit, we may not allowably lean a little to a member of our own family :—" "Whether, a slight occasional excess of moderation, in eating and drinking, be not allowable." These, and many questions of the like kind, are often propounded : and it may be proper to consider what reply the Moralist must make to them.

The notion of what is *allowable*, is admitted in Cases of Necessity, as expressing our acquiescence in certain actions as exceptions to General Moral Rules ; so that, though the general Maxims of Morality will not authorize us to pronounce them right, our regard for the condition of human nature will not permit us to pronounce them wrong. But to extend this notion of *allowable* to Cases of common occurrence, when there is no necessity, and only such a temptation as is often arising, is to annihilate all Rule. The meaning of every Moral Rule is, that it is to be obeyed, in spite of temptation to transgress. If, professing to accept the Rule as our Rule, we still deviate from it, whenever any considerable temptation occurs, the Rule is not our Rule. It is no part of the habitual conduct of our thoughts ; no part of our moral culture.

330 Further : the merely propounding such questions as the above,—Whether deviations from the Rules of Truth, and Benevolence, and Justice, and Temperance, be allowable,—of itself shows that the Moral Culture is very imperfect. It shows that the Love of Truth, of Benevolence, of Justice, of Temperance, is not established in the mind ;—that the Moral Rules which express these Virtues are received as an extraneous constraint, which we would gladly escape from ; not accepted as desirable means to a wisht-for end. To inquire whether, under specified circumstances, violation of Moral Rules be not *allowable*, is to show that our thoughts are seeking, not the way to conform to the Rule, but the way to evade it. To make a *Class of Allowable Things*, would be to sanction and confirm this disposition. We should place an insurmountable impediment in the way of the Moral Culture of

men, if we taught them to classify actions as Good, Bad, and Allowable. For they might be led to fill their lives with Allowable actions, to the neglect of those which are Good: and it is evident that to do this, would be to remove all moral progress and all moral aim.

331 But it may be said, there must be a class of actions which are merely Allowable: those which are not either good or bad; where a person may take one course or the other without blame: as for instance, to choose Law or Medicine for his profession: to spend more or less upon his dress and table, within the limits which his fortune prescribes: to eat more or less: to study more or less; or to study one branch of literature or another. In these, and an infinite number of others, the like matters, it may be urged that it is allowable to adopt either side. Good men constantly do both the one and the other of the things, thus put as alternatives. There is no necessary character of good or bad on either side; and either side is allowable.

Upon this we remark, that if, in such alternatives, there be not on either side, any necessary character of good or bad, a man is permitted by morality to choose one side or the other according to other considerations. If this be so, the things may be described as Things *Indifferent*, rather than as Things *Allowable*. And undoubtedly, there are, at every period of our lives, many things about us, which are, so far as we can discern, morally indifferent. We cannot see that Moral Rules are applicable to them. We cannot see that either alternative will affect our Moral Culture.

332 But we may further remark, that in many cases, in which no moral result appears at first sight, a moral result exists: and may even, by us, be discerned as probable. The choice of a profession, for instance, can hardly be a matter of indifference, in a moral point of view. We have already seen that there are wide moral questions, inseparably connected with the profession of an Advocate. Questions of the like kind might be stated, belonging to the profession of a Physician. How far either of the professions is, for each person, a moral one, must depend upon those solutions of such questions which are accepted by him. Moreover, each of these professions must, in many ways, produce a very great effect upon the moral culture of the person who exercises it. A man's profession determines the sphere and kind of his actions; and it is in the doing of these actions, that the man's moral character is to be formed. The choice of a profession, therefore, must be very far from indifferent, in its moral results, for each man.

333 But, though the choice of a profession be important in its moral bearings, it by no means follows from this, that it must be governed by any uniform Rule for all. What is good for one man, may be bad for another, according to the difference of native character and previous circumstances. The effect of a profession, as influencing the man's moral culture, will depend upon the moral culture which has taken place already. In a man's moral and intellectual progress, all the steps are connected: and his moral and intellectual Education, which has preceded his entrance upon his profession, may have made his Profession the best Sequel to his Education. We have said that, in the extraordinary exertions of moral principles, the energy of the principle stimulates the mind to select and follow out appropriate trains of thought. The same is the case, also, in the ordinary operation of the principles by which the general course of a man's life is determined. The Operative Principles which are the strongest in his character, decide him to take one course or another; and if these Operative Principles are right Moral Principles, they will tend to continue his Moral Culture, in the scheme of life to which they have impelled him. And thus, though we do not, in such cases, pretend to lay down Rules of choice which shall be applicable to all men alike; yet we see that the choice is, for each man, very far from a matter of indifference; that, on the contrary, the congruity of his social position with his character, and with his moral and intellectual condition, may influence, very favourably, or very unfavourably, his moral culture throughout his life. To decide our choice in such alternatives, is one of the great offices of Prudence and Wisdom; of Prudence, if we consider the decision with reference to any object short of the highest Moral Progress: of Wisdom, if we decide so as most to further that highest object.

334 But there are other ways in which actions, at first sight seemingly indifferent, have really a character of good or bad. They may form or foster *Habits*, which are often plainly not indifferent, though the single acts may appear so. Slight changes, daily repeated, may produce an evident modification. To exaggerate a little the events of the stories which we tell in conversation; to overpoint the antithesis of our remarks; to eat or drink to the full gratification of appetite; to give way to slight impulses of impatience or anger; may, on each single occasion, appear so small a matter as to be allowable; and yet, in this way may be generated Habits of violating truth, justice, temperance and kindness,

at least in some degree. And such Habits, existing in any degree, are necessarily very adverse to our moral culture. Habits are generated by successive acts; and, in their turn, produce a continuation of the acts; and every act in which we trifle with the suggestions of truth, justice, temperance, kindness, or any other virtue, may, and more or less must, extend its consequences to the subsequent tenour of our lives. And in the same manner, acts in which we act with a strict and special regard to truth, to justice, to temperance, to kindness, in spite of minute temptations to the contrary, in matters however apparently small and unimportant, may, by the habits which they tend to form, or to uphold, be of service to us in our moral culture.

335 Acts which are thus performed, rather from a regard to their influence in the formation of habits, than from their own value, are practised as a *Discipline*. Many of the seemingly trivial acts, which make up the tissue of our common lives, require to be regarded in this view, in order that they may be duly regulated by moral considerations. The indulgence of selfish desires in small matters; ill-humour; sharp expressions; obstinacy in trifles; must be avoided; because the contrary habits,—self-denial in small matters for the sake of others; cheerful and kind words used to them; the habit of yielding to the wishes of others in trifles;—are not only manifestations of a benevolent disposition, where it does exist; but are a discipline of benevolence, by which its growth is fostered. We must avoid colouring a story in order to produce an effect; arguing for the sake of victory only; depreciating the characters and actions of men in order to show our wit and genius; because such habits are inconsistent with the disposition of an earnest and sincere love of truth and justice; and because such habits tend to make those who practise them, indifferent to truth and justice, in comparison of the gratification of vanity and pride. The opposite practices;—a strict fidelity in narration; a moderation in maintaining our opinion, even when we are confident we are right; an abstinence from speaking evil of any;—are a Discipline of truth and fairness. In like manner, the gratifications of the Table, even if they be not carried so far as to interfere immediately with moral action, by overloading the body, or clouding the mind, may interfere with our moral culture, by fostering a habit of self-indulgence, rather than of self-denial. Rules of living, which make the satisfaction of the bodily appetites a discipline of moderation, are the proper mode of making that part of our nature subservient to our moral culture. And, as we have already said,

our bodily appetites have in themselves no moral character. It is only by being thus made to contribute to our moral Discipline, that they can cease to be obstacles in the way of our moral progress.

336 In a character morally disciplined, the bodily Desires do not operate upon the actions in a direct and unmingled manner, but through the Habits. The direct operation of the desires is controlled; they are wrapt up and put out of sight, in the round of events by which the needs of the body are supplied. The more rigorous moralists have spoken of the bodily desires, as being killed, or *mortified*; and have taught that this Mortification of the Desires of the body is necessary for the full completion of our moral culture.

The Discipline, which consists in limiting or rejecting the indulgence of the Desires of the body, has been carried very far by some, with the view of mortifying such desires. With these persons, Discipline, *Askesis*, has been made a direct object; and they have adopted many practices to attain their object, which have hence been termed *Ascetic* Practices.

337 But it does not appear that this ascetic course, in which the mortification of the desires of the body is made a direct and primary object, is really well suited to the moral culture of men in general. The object of Discipline is not Discipline itself, but the unconscious Habits which Discipline generates. Discipline is not complete, till we do *spontaneously* the actions in which we have been disciplined. A man has not completed the discipline by which he learns to swim, till he can swim with no more effort or thought than he requires to walk. An accomplished swimmer swims spontaneously, when he finds himself in the water. A man has not completed his discipline in a foreign language, till he can understand and use it without recalling his rules of grammar;—till, as it is often expressed, he thinks in the language. And such is the object, in this, and in other courses of bodily or mental discipline. The like is the case in our moral culture. Spontaneous, not Ascetic Virtue, is that which the Moralist desires to see among men. So far as ascetic practices may be requisite to generate habits of self-denial and self-control, they may be rightly employed: but we are not to forget that ascetic practices have, in themselves, no moral value. If they are good at all, they are good only as means to something else. Discipline is good as Discipline: but Discipline is completed, only by reaching the end of the ascetic struggle with inclination. In our moral culture, we

are to aim, not at the means but at the end : not at the Ascetic Struggle, but at the *Disciplined Spontaneity*.

338 What has been said of the Discipline by which moral virtues are fostered, applies likewise to the *Discipline of the Intellect*. Many employments of the mind, apparently unimportant and indifferent, are important parts of our intellectual and moral formation. Intellectual employments, which are generally pursued for the mere pleasure of the pursuit ; favourite studies ; books of our own choice, and the like ; can hardly fail to have a great influence upon the intellectual habits, and thus may promote or impede the development of the intellectual virtues. Studies and reading, which have in them no direct immoral tendency, may yet dissipate and distract the mind. The love of mere intellectual amusement may destroy the habit of solid thought, and interfere with those Duties of Consideration, and of acting rationally, of which we have spoken ; indulgence in the literature of mere imagination, humour, wit and the like, may destroy the love of truth ; the exclusive cultivation of the material and mathematical sciences may make the mind dull and captious in dealing with moral conceptions. Any course of intellectual employment, if allowed too much to absorb the mind, may check and pervert that balanced and complete intellectual culture, which is most conducive to the progress of the whole man.

339 Thus actions of all kinds, otherwise unimportant, become important as parts of a Discipline. Scarcely anything can be said to be indifferent, when considered with reference to the effect which it may produce upon our lives, through corporeal, intellectual, and moral habits. Every act, however slight, may be good or bad, when considered as an indication of good moral discipline, or of the want of it ; as, in the eyes of those who are judges of manners, every act is an indication of good or of ill Breeding.

340 For this reason, the Moralist does not readily class any act as indifferent ; or pronounce any act Allowable, which is no more than allowable. It may be difficult, or impossible, to see the bearing of a single trifling act, on the actor's moral condition ; and it would be unwise to lay down general rules for such acts. But the act may, nevertheless, have such an influence ; and each man has it for a duty, to exercise a careful guidance and control over even trifling acts ; recollecting how trifling Acts grow into Habits ; and how important a part of a man's moral condition his Habits are. The more entirely a man's whole being is governed and directed by Moral Principles, the more does the circle of Things

Indifferent narrow and dwindle. As the moral light grows stronger, everything assumes a colour of good or bad, between which he has to choose. Everything, however trivial or mean, affords alimnt and occasions to virtue. And as all things thus become good or bad, nothing is merely allowable. If it be allowable, it is right; and is what must be done because it is right, not what may be done because it is allowable.

341 It is true, that thus to estimate every act, however trivial, as having a moral value from its influenc upon our character, implies a clearness of view, as to the operation of such influences, which we can never fully attain to. This condition of mind, in which all acts are good or are bad, and none indifferent, is one which we may approximate to, but can never arrive at. When we have exercised all our sagacity and diligence, in determining what acts are right, and what are wrong; there will still remain a residue, at every period of our lives, which will have the aspect of being indifferent. Nor need we be disturbed that this is so. If, habitually referring things to a moral standard, and exercising such care and thought as a serious conduct of the business of life requires, we keep our eyes open to the good and the bad of the actions which come before us, in order to choose the good and shun the bad; we then carry on our moral culture, according to the stage at which we have arrived. But in order to do this, we must, at each step, ask, not what is allowable, but what is right; not what we may do, but what we ought to do. If to these questions we can obtain, on any particular subject, no definite response from our consciences, we may guide our course by the best lights of prudence which we can obtain; always recollecting, however, that our not being able to see that there is one course which we ought to take, rather than another, is an imperfection of vision, which arises from the defect of our intellectual and moral faculties; and which we may hope to see removed, when our minds are further enlightened, in a more advanced stage of our moral progress.

CHAPTER XVIII.

OF IGNORANCE AND ERROUR.

342 IGNORANCE and Erroure are often referred to, among the causes which make Actions excusable. It will be proper to

consider how far Actions which are generally wrong, are, by Ignorance and Error, rendered excusable in the Agent.

We have already spoken of Intellectual Duties; and the existence of such Duties leads to some Maxims which bear upon the question now before us. We have mentioned (239—242) the Duty of Consideration; the Duty of acting according to Rule; and the Duty of acting rationally. We have further spoken of the Duty of our own Intellectual Culture; and also (269) of the Duty of constantly enlightening and instructing our Conscience. These Duties cannot be neglected or omitted, without a transgression of that Duty of Moral Culture, which is our highest and most comprehensive Duty.

343 But Ignorance and Error may arise from other Causes, besides the neglect of these Intellectual Duties; for example, they may arise from our want of information, which we have not any means of obtaining; or from our receiving false information, which we have no reason to suspect of falsehood. In such cases Ignorance and Error are *unavoidable*: or, in the language sometimes used by Moralists, they are *invincible* Ignorance and *invincible* Error. They cannot be avoided or overcome by any obvious exertions of ours. We have performed, it is supposed, the Duty of Inquiry and Consideration (239) which is incumbent upon us, and still we remain in Ignorance or in Error. On this supposition, the actions which we ignorantly and erroneously perform are blameless. We have no way of avoiding or removing Ignorance or Error, but by Inquiry and Consideration. If we have done all that is in our power to free our actions from these defects; the defects may be considered as no longer belonging to us. If I purchase a horse, and have a suspicion that he has been stolen from a previous owner, I must inquire for the evidence of such a fact, and weigh it carefully. But if the result of my inquiry and deliberation is, to remove entirely the suspicion, I may blamelessly buy him, though he should afterwards be found to be a stolen horse. And in the same manner, I am blameless, if the circumstances of the sale are such as to banish suspicion; as for example, if he is sold in open market, it may be that this circumstance is, in consequence of the habits of the country, sufficient to remove the necessity of inquiry. In this case, Error, when it occurs, may be considered as unavoidable; and the erroneous action is still blameless.

344 But it is requisite, to the moral character of the act, that we should direct ourselves by the real inward belief to which

we are led, and not merely by any external result. A mere formal inquiry, for the sake of saving appearances, or of complying with the letter of our maxims, cannot make the act moral. Such a pretended conformity to the Duty of Inquiry, is insincere and dishonest.

It will often be difficult for us to determine, whether we have been sufficiently persevering and minute in the Inquiries, which we have made, into the facts which guide our actions. When we have been deceived, and have thus been led to do what we wished to avoid, as soon as the deceit is discovered, we may perhaps wonder that we did not detect it sooner; and may regret that we did not carry our inquiry further. Thus, when I have bought a horse, and afterwards find him to have been stolen; I may regret that I did not inquire more carefully into the Seller's story. This regret includes some condemnation of the act which I have committed under the influence of the deceit, and approaches to the character of repentance. And such sentiments of self-condemnation and repentance are well founded, when we have been negligent in our inquiries. It is very difficult to know when we have done all in our power to ascertain the truth of facts; and therefore, difficult to know when we are quite free from the blame of such negligence.

Hence we are led to this Maxim; that *Unavoidable Ignorance or Error removes the blame of the actions which it causes; but that we are to be very careful of not too easily supposing our ignorance to be unavoidable.*

345 Of course, as soon as we discover that, through ignorance or error, we have done a wrong to any one, it is our Duty to remedy the wrong. If we have bought what was stolen from him, we must restore the thing to him; and the like. Any resistance in our minds to this step, is immoral. When our ignorance ends, the excuse which it supplies to us ends. We may avoid blame, in virtue of our Ignorance or Error, but we may not receive advantage from it. We regret our Error; but if we retain the benefits of it, we shall have to repent of our Fault. There is dishonesty in resisting the consequences of the detection of our error; as there is dishonesty in willingly abstaining from detecting our error.

346 When Ignorance and Error are of such a kind that they may be avoided by Inquiry and Consideration, the actions to which they give occasion are not freed from blame by the ignorance and the error. Yet Ignorance and Error, even when they are the consequence of a neglect of the Duties of Inquiry and

Consideration, may exist for a time, without producing any external action which violates Moral Rules. So long as this is the case, the fault which we have committed is the *general* Neglect of that Intellectual Culture which is requisite to our moral progress. But when Ignorance and Error, thus produced, give rise to *special* violations of Moral Rules, such transgressions are not excusable on account of the Ignorance and Error. If a man remain, through Negligence, ignorant, or mistaken, as to the amount of his income, and in consequence, contract debts greater than he can pay, he is not blameless; though Ignorance and Error are the occasion of the wrong which he does to his creditors. He is culpable for not ascertaining what he could afford to spend, before he incurred his debts. If, with the same ignorance, he had not incurred such debts, he might still be blamed for Negligence in not ascertaining the conditions under which he had to act. But when his Negligence inflicts loss on other persons, it becomes a carelessness of Justice and Honesty embodied in act; and therefore a transgression of a graver kind.

347 Still, there is a difference between *Carelessness* of Justice and Honesty, and intentional *Injustice* and *Dishonesty*. Debts contracted through negligent ignorance of our income, are not so culpable as debts contracted with fraudulent intentions. In one case, the Duty of Consideration is, for the time, omitted; but it may be resumed. In the other case, the Duty of Justice or of Honesty is intentionally violated; and the Violation must be repented of. In one case, the moral progress is suspended; in the other, it is reversed. And thus, *Ignorance and Error arising from negligence*, though they cannot excuse, *may palliate our transgressions, by excluding intentional wrong.*

348 But besides Ignorance and Error with regard to the *Facts* on which the direction of our actions must depend; there may, also, be Ignorance and Error with regard to the *Rules* by which the moral character of actions is determined. And it may be made a Question, how far such Ignorance and Error render actions excusable, which are contrary to Moral Rules. If a man be ignorant that theft is a crime, is he guilty when he steals? If a man believe slavery to be consistent with morality, is he excusable in buying and selling men? If a man think that property is an immoral institution, is he justified in disregarding the Rights of Property in other men?

To such questions, we reply, in the first place, that a person labouring under Ignorance and Error, such as are here de-

scribed;—ignorant that theft is a crime; that buying and selling men is immoral; that property is an institution necessary for moral action among men;—must be in a very imperfect state of moral culture. We have shown that, in virtue of man's moral nature, property is a necessary institution, and theft necessarily a crime; and we shall be able to show, in like manner, that buying and selling men is immoral.

These Moral Truths spring from the moral nature of man and are unfolded in an explicit form, by our moral and intellectual culture. They are virtually included in the Express Principles of Humanity, Justice, Truth, Purity, Order, Earnestness, and Moral Purpose, which we formerly stated (162). Such general moral truths, thus derived from the Fundamental Principles of Morality, may themselves be termed *Moral Principles*. And as the denial of the express principles of Morality implies a defect in the Operative Principles, namely, Benevolence, Justice, Truth, Purity, and Wisdom; so a denial of the Derivative Principles, which result from the Fundamental Principles, also implies a defect in the same Operative Principles. A person who denies the necessity of Property, the criminality of Theft, and the like, must either be a person in whom the power and habit of intellectual deduction are feeble and confused; or he must be a person who denies the express Fundamental Principles of Benevolence, Justice, Truth, Purity, and Order. Denying these express Principles, he cannot possess, except in a very imperfect and obscure form, the Operative Principles which form the Cardinal Virtues of men. Hence a person who is in Ignorance and Error on such points as have been mentioned, the necessity of Property, the criminality of Theft, and the like, may be said to be *wanting in the Common Moral Principles of Men*.

349 Putting off for a moment the Question how far this condition—the Want of the Common Moral Principles—may be said to excuse or exculpate actions arising from such a condition; we cannot hesitate to say that such a condition implies a low stage of moral culture. The man who is in this condition, has made a very small advance in that Moral Progress, at which, as Moral Agents, we must constantly aim. When Ignorance and Error take the form of a Want of the Common Moral Principles, they may easily suspend or reverse the Moral Progress of the Man, as much as many kinds of Transgression would do. And hence, they must produce upon the Man's Moral Being, the effects which the Suspension and Inversion of the Moral Progress does produce.

We shall not now attempt to determine what is the result of a suspended and inverted Moral Culture, when not retrieved by any subsequent progress. Perhaps Morality alone cannot decide this question; perhaps she must refer us to Religion, in order that we may learn what consequences such a final suspension and inversion of moral progress produces, upon man's destination and condition. But we must necessarily conceive thus of the result:—that, the condition of the man whose moral progress is finally suspended and inverted is, in some way, opposite to that of the virtuous man; and this, equally, whether the want of progress arise from transgression of moral principles, or the want of them. If Virtue lead to Happiness, as we have said it must (207), the Want of the Common Moral Principles must lead to an unhappy condition. The man who, wanting the Common Moral Principles, transgresses them, cannot be placed, by his Ignorance and Error, on a like footing with the man who knows these Principles, and conforms to them in his actions. If such Ignorance and Error be not faults, they must at least be considered as great moral misfortunes. Such Ignorance and Error belong to a Conscience dark and erroneous; and a dark and erroneous Conscience is a great moral calamity.

350 But the general judgment of mankind regards the Want of the Common Moral Principles, not only as a Misfortune and a Calamity, but as a Fault. The man who shows this Want of Moral Principles by the declarations which he makes, incurs the disapprobation and repugnance which we give to moral wrong. We abhor a man who asserts that no affection is due from a child to a parent. We do not hear with patience men asserting that they have a Right to buy and sell their brother men as if they were cattle. We condemn, as immoral, a man who refuses to acknowledge any Duty of Kindness, or Justice, or Truth, towards other men. These are Errors which we do not hold to be innocent or excusable. We think they might have been avoided, and ought to have been avoided. Each man's Reason, and the Instruction which each man receives, in the general course of Society, might, we hold, have taught him better than this. And this, our conviction, agrees with what we have said of Intellectual Duties. We require of men that they should be rational; we have seen (241) that there is a Duty of acting rationally. And as there is a Duty of acting rationally, there is a Duty of thinking rationally; for rational thinking is a condition of rational acting. And to deny, or to be ignorant of, the Common Moral Principles

of Man, is to be, to a certain extent, irrational. It is to neglect or pervert the use of the human Reason, by which all men are capable of arriving at such Principles. And thus *Ignorance or Error, in the form of the Want of the Common Moral Principles of Man, are blameable.*

351 Hence, as a general distinction, Moralists pronounce *Errours of Fact*, when not accompanied with negligence, to be *exculpations* of the actions which they occasion; but *Errours of Principle, not to be exculpations.* And in this distinction, they agree with the Jurists: who lay down these two cardinal maxims: *Ignorantia facti excusat; Ignorantia juris non excusat.* Ignorance of the Fact is an excuse; Ignorance of the Law is no excuse. A man is not criminal for not directing his actions by a Fact, which he did not know from observation or testimony; and which he could not know any other way. On the other hand, ignorance of the Law cannot be accepted by the Law as an excuse. The Law is requisite for the guidance of each citizen in his social transactions, and it is his business to make himself acquainted with it so far as it concerns him. The Law is Natural Justice, with such additional regulations, as are requisite to define its application; the Law, therefore, is requisite for each man's moral guidance. It is his duty, as well as his obligation, to guide himself by it, and, therefore, to make himself acquainted with it. And the Law, in assuming a knowledge of the actual Laws, assumes only a knowledge of that Rational Law which is the basis of Actual Laws, and of its special consequences in our own country. Such assumptions are requisite for the administration of Laws. If a man might plead ignorance of the Law, in excuse of a crime, it would be impossible to convict criminals; for men would remain wilfully ignorant of the Law, in order to avail themselves of this excuse; and even if they were not ignorant, it would be difficult, or impossible, to prove their knowledge. Hence, it is everywhere presumed that the citizen is acquainted with the Law of the State; and in like manner, it is presumed, by the Moralist, that man, as a moral being, is acquainted with the Laws to which his Moral Nature directs him: and if he transgresses these Laws, or pleads ignorance, as his excuse, the excuse is generally not to be accepted.

352 But though the Moralist pronounces Ignorance and Error, when they appear as the Want of common Principles, to be blameable; and rejects such a Want, when offered as an exculpation of immoral actions, because it implies a neglect or per-

version of Reason; it is still proper for him to recollect, that it is by no means easy to avoid all imperfection and confusion in the use of the Reason. It is our Duty to act and think rationally, as it is our privilege to be rational; but it is by no means easy to think in a manner perfectly rational. The original Endowments, internal Habits, and external Circumstances of men, make Ignorance and Error, even with regard to the Common Moral Principles of men, very difficult to avoid. Few persons are able to see all that the light of Reason is capable of showing. Men may miss their way at many a point, in the path to and from the Fundamental Principles of Morality. We have been led to such Fundamental Principles (Express Principles (see 162)) by the examination of several abstract and general Conceptions. And we deduce from these Fundamental Principles, Special Duties, also by means of abstract and general Conceptions. But in forming these abstract and general Conceptions, which are thus the objects of our thoughts, and the guides of our reasonings, we may perform these intellectual processes very imperfectly; and in attempting them, we may fall into confusion, ambiguity, inconsistency; and thus into Error. Abstraction and Generalization are intellectual processes which are very inexactly and obscurely performed by most persons: and in the confusion and obscurity of the general and abstract Conceptions thus formed, there is a source of a great deal of irrationality and incoherence, which thus infuses itself into the Moral Principles held by men; even when they have not been negligent, nor intentionally perverse, in their moral reasonings. Thus, if a person maintain theft to be no crime, his Error may arise from a very confused apprehension of that abstract conception, the *Right of Property*; or from a very imperfect notion of that balanced *jural* Condition of Society, in which Rights are necessary. If a person deny the necessity of Property, perhaps his Error arises from some confused notion of *equality*, applied to the quantities of men's possessions, instead of the Rights of the possessors. If a man assert that buying and selling men is not immoral, his Error may arise from a very defective conception of *Humanity*, the brotherhood of man to man; as we shall afterwards endeavour to show. In these and the like cases, it may be difficult for some men to avoid those imperfect and confused notions which thus lead to Errors, that are, in themselves, contrary to Reason.

353 And this imperfection and confusion of moral notions is, in some measure, augmented and extended by the use of Moral

Terms, as it prevails among men. For while many men's notions are thus defective and obscure, and on that account, as well as on others, different, under the same name, men reason as if the same Term always meant the same Conception, and thus fall into Error. Abstract and general Terms are not only marks of our Conceptions, and thus, helps to the memory in reasoning; they are also our instruments of Reasoning. Without the names of Conceptions, we cannot reason at all; and hence, if the names are applied in a confused and variable manner, we are led to false and inconsistent Principles. Principles are established and assented to, in one sense of their Terms; and then, they are applied and urged upon our assent, in another sense. And this cause may make a man inconsistent, even with himself; for we often remember and refer to Principles expressed in words, when we do not clearly retain in our minds the meaning of the Terms which they involve. This confused use of Terms, by ourselves and those around us, leads to many Moral Errors. We live in an atmosphere of Language, by which we see Moral Truths obscured and distorted. But still we must recollect, that without the use of Language, we should not be able to see Moral Truths at all; as without an atmosphere we should have no daylight.

354 Language is not only thus a source of moral obscurity and inconsistency difficult to be avoided; but also, a source of Prejudices; for it subjects our minds to the influences of those with whom we share the habitual use of language; our families, our educators, our class, our nation. These Influences are Causes of Error difficult to avoid.

355 It will be well to recollect this, in order that we may abstain from applying to men, on account of the Express Principles which they assert, and which are contrary to true Moral Principles, that condemnation, which properly belongs to immoral Operative Principles. If, indeed, men carry out immoral Principles into immoral actions, we cannot be mistaken in condemning them. In that case, there must be something worthy of condemnation. But if, while they assert Principles which, in their expression, are immoral, the acts which they bring forth, as examples of their Principles, are kind, just, true, pure and orderly; we may rather suppose that there is, not any distinct immorality in their Principles, as understood by themselves; but rather some confusion in their language, or some incoherence in their generalizations.

For, though opinion leads to practice, and false opinion seems

to be the first step to wrong action, there is, in the nature of man, a very general inconsistency, which prevents this connexion from being at all certain or universal. Men who hold false general opinions, compensate an error of belief, by another error, of reasoning; and derive, from false speculations, blameless or moral Rules of Practice. The recollection that this may be so, should temper, not the promptitude of our rejection of false opinions, but the vehemence of our condemnation of those who hold these opinions.

356 So to abstain from condemning seemingly wrong Principles, is to *tolerate* them; and this *Duty of Toleration* is incumbent upon us, as we have just seen, in virtue of the imperfection of the human Faculties, and their general insufficiency for the task of constructing, in each man's mind, a perfect connected system of Moral Truth. And thus, we are led to pronounce that *Ignorance and Error, especially with regard to very general and abstract Principles, are to be tolerated.*

357 Further: Ignorance and Error, on moral subjects, may arise, not only from the imperfection of the human Faculties, but also from external Circumstances, as Education, and the defects of the National Standard of Morality. These exert an influence upon our minds, through the use of language, as we have said (354); and in other ways. The Ignorance and Error thus arising are not absolutely unavoidable; for every man may raise, by moral self-culture, his standard of Morality above that of his Education, or of his Nation; but they are difficult to avoid, for the very power of self-culture is affected by the Habits of youth, and by the national customs. Hence, we may consider the Ignorance and Error, which arise from such causes, as *difficultly vincible*: and as in some measure, involuntary. Hence, such Ignorance and Error excuse, in some degree, the transgression of Moral Rule, which they occasion. They do not remove altogether, but they diminish the blame. A youth of a savage nation, who has been bred up to look upon theft as innocent or meritorious, does not incur the same moral stain by praising an act of theft as a boy who has been brought up amid a strict respect for property. But then, on the other hand, the moral culture of the former is very imperfect. His moral nature is very scantily unfolded; his conscience is very dark. This, as we have said, is a calamity, if it be not a fault.

358 A further reason why Ignorance and Error, when they arise from external Causes, and are hardly avoidable, may be

deemed to diminish the amount of the transgression, is, that in such cases, the moral defects of the character may often admit of remedy. The defective Moral Culture may afterwards be carried further onwards, by the help of external circumstances more favourable. A bad Education may be succeeded by a better. A low standard of Morality may be superseded by a higher, when this latter is brought before the mind. The dark conscience may be enlightened; and thus, the Ignorance and the Error may be in some measure removed. Hence, the interruption or inversion of the moral progress, produced or indicated by transgressions, which take place in such a condition of Ignorance or Error, are not so great, nor their remedy so hopeless, as when the transgressions proceed more entirely from the internal character, without this influence of external causes. And thus, according to what was said respecting the amount of transgressions (207), offenses, arising from such hardly avoidable Ignorance or Error, are diminished in their heinousness, by their being so occasioned.

359 Ignorance and Error may be considered under one other aspect, which it is important to attend to; namely, when they are *wilful*, or as it is sometimes termed by Moralists, *affected*. Such would be, for instance, these cases: A man who will not examine the Title-deeds of his estate, because he fears to find that it is not his by Right: A man who will not inquire into the amount of his income, because he fears that, when he does so, he will discover the necessity of diminishing his expenses: A man who will not attend to the proofs of the immorality of a practice which he follows, for instance, slave-dealing; A man who, really believing that negroes have human faculties, pretends to believe that they have not, in order to justify his making slaves of them: and generally, A man who either refuses to attend to the proofs of his duties, because he does not intend to perform them; or who denies some proposition, merely because it would tend to establish the proof of such duties. Such *wilful and affected Ignorance does not*, in any degree, *excuse or exculpate* the transgressions which it accompanies. Indeed, it seems rather to aggravate them: for it adds to the moral regression which the offense implies, a perversion of the intellect, adopted with a view to a consistency in immorality.

It may be thought, perhaps, that assumed or affected Ignorance or Error should be spoken of as an Offense against Truth; that is, against Truthfulness: and in many cases it may be so. But in

moral doctrines, and especially in those of an abstract and general kind, there is, as we have just said, room for considerable vagueness and incoherency, in the obscure region of transition from particular to general propositions: and hence, it may often be difficult to say whether or not a man really holds the opinion which he asserts. Some of those who assert property to be an immoral institution, have probably rather confused than immoral minds. Those who assert the negroes not to have human faculties, and yet make laws against their human faculties, being educated, may perhaps not quite disbelieve their own assertion; though it is inconsistent with their conduct. There is room for some self-deceit on such subjects; and this may, to some extent, liberate a man from the blame of Falsehood. But even if there be not Falsehood, there is often, in such cases as we have described, and in many others, Ignorance and Error which may be called wilful: and such Ignorance and Error are no excuses for transgression.

360 Thus the general result of our view of this subject is, that Ignorance and Error, when unavoidable, are excuses for offenses: when difficultly vincible, they diminish the offenses; when wilful, they do not at all diminish it. We have seen, too, that on very general and abstract moral doctrines, Ignorance and Error are to be tolerated, out of regard for the imperfection of man's faculties.

CHAPTER XIX.

PROGRESSIVE STANDARDS OF MORALITY.

361 NATIONS and communities, as well as individuals, have their Standards of right and wrong, which assume the reality of a Universal Standard of right and wrong. They have not only Laws, which determine Rights and Obligations, but also current moral Precepts and Rules, which express the conceptions of Duties and Virtues. The assumed existence of a Standard of right and wrong shows itself in the sentiments which are associated with the conceptions and names of Virtues and Vices. Vices are, in all ages and countries, named only to be condemned. Violence, Fraud, Falsehood, Indecency, are objects of aversion at all times and

places. There is no nation or language, which has not the means of expressing this ; and none, which does not express it.

It is true, the actions, to which this aversion and condemnation are applied, are different in different ages and countries. In some countries, plunder of strangers, slavery, polygamy, have been regarded as blameless ; to us, they are offenses and vices. This difference arises from the diversity of the *Definitions of Rights* in different times and places : for, as we have seen, Rights are defined by Law, and Virtues and Duties depend upon Rights. Yet the variety of Laws, in various nations, does not prevent Rights from being a necessary element of man's condition ; and in like manner, the diversity of Standards of Morality does not prevent Virtue from being a necessary object of man's approval ; nor hinder Conscience, which recognizes Virtue, from being a universal attribute of mankind.

362 There must be, in all cases, a great connexion between the National Laws and the National Standard of Morality. Both the one and the other express that which is deemed right. Laws are enacted, or upheld, because it is considered right that they should be so. Actions also are approved or disapproved according as they are looked upon as right or wrong. And the consciences of individuals accommodate themselves, in a great measure, to the law. If the national law allow polygamy, or slavery, the individual commonly practises it without self-condemnation. The exhortation of the National Moralist is, in the first place, To obey the Law. The National Moral Precepts take for granted the National Laws. The national conceptions of the various relations of Society, as Property, Marriage, the Family, the State, and the like, which are the basis of the Laws, are also the basis of the Morals, of the Nation.

363 But though, in every Nation, Law and Morality are connected, they are, for the most part, not identical. The difference of Law and Morality, is one which is generally understood. Law refers to definite external acts absolutely commanded or prohibited ; Morality refers to internal springs of action ; and as results of these, to acts of a less definite kind. The Precepts of Law are positive and absolute. The Precepts of Morality respecting actions, are *exemplary* and *relative* ;—that is, they only *exemplify* the disposition from which the actions proceed ; and they *refer* to the legal conditions of Society. The Precepts of Law, *Thou shalt not kill ; Thou shalt not steal ; Thou shalt not break thy promise ;*—must be considered, in the first place, as fixed and absolute. The

injunctions of Morality are to be understood as recognizing the authority of these commands ; but as carrying the signification of them much further.

364 Law deals with matters external and visible, such as Objects of desire, (Things,) and Actions, and thus Creates Rights. Morality has to do with matters internal and invisible ; with Desires and Intentions, as well as with Laws and Rights. Desires and Intentions cannot be defined or described in any way, without some reference to Things and Actions ; and therefore, cannot supply a basis of Morality independent of Law : and thus Morality, in the first place, is dependent upon Law. Rights afford the fixed points by which moral positions are determined. Rights also supply some of the principal forces by which the moral sentiments produce their effect. Law affords a support to the frame-work of society ; but Law does not suffice for the social life of man, without Morality. Law and Morality coincide in their general form and outlines ; but Law is stiff and hard ; Morality of a more flexible, yet more pervadingly active nature. Law is the rigid skeleton, which Morality clothes with living flesh and acting muscles. Law supplies the fixed positions, on which the Machinery of Duty can rest, so as to move the world.

365 But though Morality rests upon Law, Law is subject to the Authority of Morality : Law is the Basis of Morality, but yet Morality is the Standard of Law. Law is fixed for the moment, and Morality supposes its fixity : but Morality is a supreme and eternal Rule, which Law must recognize. Law must always attempt to conform to Morality. Thus, though the Law is, in the first instance, assumed to be fixed, and though its commands are accepted as absolute and peremptory ; it is not to be considered as entirely and finally unchangeable. The commands of Law are themselves liable to be judged of, as good or bad. They, and their application in particular cases, may be morally wrong, as well as right.

The Law itself acknowledges this. It puts forward its Rules and Definitions of Rights, as not absolutely fixed and universal. They admit of exceptions in extreme cases. In many such cases, there are special moral considerations, which counteract the general Reasons of the Rule, and suspend its operation. The Law, *Thou shalt not kill*, admits of exception in cases of self-defense, burglary, and the like : the Right of Property gives way in case of necessity : and, in its general administration, the National Law either itself aspires to be the voice of Natural Justice, as the Roman Law did ; or has, as

in England, a jurisdiction of Equity combined with it, and proceeding by Rules of natural justice. Thus Law herself recognizes Justice, as a Standard to which she must conform her commands, and which her definitions cannot alter.

And thus, again, as Rights are to be used as instruments of Morality by individuals, so also are they by communities. Rights are built upon Law, but Law is to be subservient to Morality. Morality sanctions Law, but Law must perpetually seek the sanction of Morality. Moral Rules at first agree with Laws; but if the Moral Rules are improved, the Laws ought to follow the improvement.

366 We must consider some of the steps by which Moral Rules are improved. We have already stated, that among these steps, is the more exact Definition of some of the Conceptions, in terms of which Moral Rules are expressed. We shall now therefore proceed to consider, with a view to such a more exact determination of their import as our subject may require, some of the Conceptions of this kind; such, for instance, as *The State, Justice, Humanity, Liberty*, and the like.

Such Conceptions, in the progress of nations, gradually become clearer and clearer among men. We may suppose that, at first, man's social and moral faculties are very imperfectly developed. His notions are mainly fastened upon objects of sense; his language refers, for the most part, to such objects. His moral conceptions are dim and vague; and the words by which they are indicated, are employed in a loose and wavering manner. Such is usually the case with all terms of moral import, in the earliest history of a language and of a nation. As the intellectual culture of the nation proceeds, abstract words are used with more precision; and in consequence, the conceptions, designated by such words, grow clearer in men's minds. Wide and general, as well as limited and narrow terms, are employed, in expressing those moral truths upon which moral precepts rest; and by which the characters of nations are unfolded and fashioned: nor can we say to what extent this intellectual and moral progress may proceed.

367 The intellectual progress of individuals follows nearly the same course, in these respects, as that of nations; although the steps of the progress may succeed each other with far greater rapidity. In consequence of the influence of the opinions of past generations upon the views of the present, through the working of literature, language, institutions, and traditions, each man's

mind may pass in a short time, through successive modes of thought which, in the course of history, have been slowly unfolded one out of another. The intellectual revolutions of centuries are compressed into a few years of a man's youth; a man's moral conceptions, such as they are in our time, are affected by those of the Greeks, of the Latins, and of the earlier times of our own country; not to speak here of the influence of Religion, greater than all the rest.

But though the intellectual progress of the individual is thus a compendium, and a very brief compendium, of the intellectual progress of man, the two careers are of the same kind;—a constant advance from the material to the abstract; from the particular to the general; but, in what is abstract and general, an advance from the dim and vague to the distinct and precise. And we now proceed to trace, in several instances, what the steps of this advance have been, in order to determine what they necessarily must be, and at what point we may consider ourselves as having arrived.

368 Among these steps, one of the first is the formation of a conception of a *Person*, as something having active and conscious Will and Thought, as we ourselves have: and differing, thus, from *Things*, which are unconscious and merely passive. We have already remarked that this distinction of Persons and Things is one of the foundation-stones of man's moral nature (45).

Again; another important fundamental step in Morals, is the recognition of Things as belonging to Persons; to ourselves and others; the distinction of *meum* and *tuum* (78). This relation is at first indicated only by grammatical modifications denoting possession; such as the pronouns which have been mentioned. But Things, viewed under this aspect, are soon denoted by a general abstract Term, and are called *Property*.

Property is assigned to different persons by general Rules, and each man's Property is his *Right*. And in like manner, other abstract Conceptions, vested as possessions in particular persons by general Rules, are Rights; as we have already said. This Conception of *Rights* is established among men, wherever there is settled and tranquil society.

Some of the succeeding steps in the progress of Moral Conceptions we must consider more in detail.

CHAPTER XX.

THE STATE.

369 IN order to proceed in a distinct manner with our reasonings, we must have a Conception of *The State*; a conception which is one of the foundations of Morality (94). By *the State*, we mean the Community, as the Source of the reality of Rights. The State implies a collection or aggregation of men: but it is not a mere Collection, like a herd of cattle, in which there are no Rights. The State implies Society: but not a voluntary association; for the State is a necessary Society: man cannot exist out of such a Society. The State implies Rulers and Government: but the Rulers and the Government are not the State: for the State may change its Rulers and its mode of Government, and yet remain the same State. The State implies Laws; but the State is not the Laws; it is the Origin and Enforcer of the Laws: it is the Being whose mind and voice the Laws are. It may be said that the State, thus understood, is a mere Abstraction: but as we have all along seen, Moral Truths cannot be expressed but by Abstractions, and human life is governed by Abstractions. Law itself is an Abstraction: Property, Power, Security, Life, the objects of human desire, are Abstractions: even Home, Food, Raiment, when we speak of them in the general way which moral reasonings require, are Abstractions. In like manner, the Family, the Tribe, are Abstractions; and the State is an extension of these Abstractions; including in the conception, some special attributes which belong to our subject; as for instance, that already mentioned; that the State gives reality to Rights, delivers and executes the Laws.

370 This conception prevailed from an early period. In the Jewish People, indeed, the Laws were God's Laws, supported by his sanction; and the conception of the State, as the origin of Law, was, among them, not brought into clear view. But the conception of the State as the origin of Rights and Obligations, was familiar among the Greeks. "It is manifest," says Aristotle*, "that the State (*ἡ πόλις*) is one of the things which exist by nature: and that man is by nature an animal living in States (*πολιτικὸν ζῶον*, a political animal). A man belonging to no

State, is less than man, or more. And thus we find in Homer, a savage man reviled as

ἀφρήτωρ, ἀθέμιστος, ἀνέστιος.

A Tribeless, Lawless, Homeless Wretch." (*Il.* ix. 62.)

He further adds, "The State exists before the family or the individual, as the body exists before the members; for if the body do not exist, the hand or the foot is not really a hand or a foot." Where, as we find by the context, he means, that the State exists before the Individual, in the order of reasoning. The Conditions of the Individual's being are to be derived from the Conditions of the State, and not reversely.

The variety of forms of Government which prevailed among the Greek cities, and the changes of form which often succeeded each other in the same city, prevented the philosophers of that nation from confounding the State with the Governors, as was often done in long-enduring monarchies; while the strong constraint which the Laws, in many Grecian States, exercised over individual inclinations, made it unlikely that men should then view the State as a *voluntary* association; a doctrine which was adopted by theorists at a later period. That the State, notwithstanding this constraint, was an object of great reverence, not only as the Origin of Law, but the Teacher of Justice and Virtue, the reader of the Greek authors of the Republican time, will recollect abundant proofs. I may mention, for the sake of example, the expostulation which Socrates, in his dialogue with Crito, makes the State address to himself, on the supposition that he had attempted to escape from prison*.

371 The Romans were, in like manner, familiar with the conception of the State, as the condition of a society in which Rights exist. In Cicero's work *De Republicâ* he says†, "Est igitur Res publica res populi: populus autem, non omnis hominum cœtus, quoquo modo congregatus; sed cœtus multitudinis juris consensu et utilitatis communione sociatus."

372 The Conception of the State became, in later times, less clear and steady. The creation and destruction of Kingdoms and States which took place between the epochs of Alexander and Augustus; the concentration of all the powers of the Roman Com-

* Plato, *Crito*, § 11.

† Lib. i. 25. The State, or the Commonwealth, is the Community: but a Community is not every assemblage of

men, anyhow gathered together; but an assemblage connected by agreement respecting Rights, and common participation of Advantage.

monwealth in the Emperor; the separation of the Roman Empire into new kingdoms; the further subdivision of the powers of government which prevailed under the Feudal System; the nearly absolute power of Kings in most European countries;—all tended to unsettle and confuse in men's minds the Conception of the State. On the one side, men confounded the *King* with the State, and conceived that in him was the source of Law and Authority. And in opposition to this, there grew up, in modern times, opinions in which the doctrine of the State, as the source of Rights, was rejected; and Society was represented as a mere *Concourse of Individuals*. According to this doctrine, individuals compose a State by contributing, to a common stock, the Rights which they naturally possess; sharing the aggregate of such Rights among themselves by common consent; and establishing officers, to carry their agreement into effect.

373 This latter doctrine is quite untenable. Without the existence of a State, we have no Rights; nor can the Rights of the State be at all explained, by any aggregation of the Rights of Individuals. Has the State of England its Right to the National Territory by summing up in itself the Rights of Individual Landholders? Or does not, rather, each Landholder derive his Right to his property from the State? It is plain that the latter, not the former, is the case. The Right to Land is derived from the Law of *the Land*; that is the Law of the State. Independently of the Law of the Land, no man has a Right to land in England. The National Right is not the result, but the origin of the Rights of individuals. And in like manner, of other National Right. England, as a State, may make war upon France; and in the course of war, may kill Frenchmen, and seize French possessions. But an individual Englishman has no fraction of such a Right. Even if he declares that he will withdraw himself from a share in the national compact, and will act for himself, he is not allowed to do, on a small scale, what the nation does upon a large one. The Right of the State to make War, depends on its being the State; not on its being a Collection of Individuals.

374 The State is conceived as *one*; the Individuals of which it is composed being many: the State is conceived as *permanent*, while the individuals are born and die. Individuals derive, from the State, their Possessions, Privileges, and Condition, in the community; either directly, or by the State determining the Possessions, Privileges, and Condition of the Family, and the Laws of their derivation. The State, as a single permanent agent, in its

proper functions, acts for the many constantly changing individuals, of which it consists. States have, with each other, intercourse of various kinds; making Treaties of Peace, Commerce, or Alliance with each other; and making War on each other, if the necessity arises. The State bounds the legal relations of the individual: the citizens of different states have no legal relations with each other, except through their States.

375 The State is, thus, the necessary Origin of all Rights which exist within itself. It is an Authority, superior to all other Authorities; and from which they are all derived. This Supreme and Original Authority, thus residing in the State, is its *Sovereignty*. A State which is, in all its internal relations, independent of all other States, is a Sovereign State. In the monarchies of modern Europe, the Supreme Power has been conceived as vested in the Monarch; and he has been looked upon as the Origin of all other power. In such cases, the Monarch is termed the *Sovereign*: but in Republics, such as the United States of North America, no person is Sovereign. The term *Sovereign* has also been applied to the People; but a people, deprived of that organization which makes them a State, are not sovereign. They cannot exercise or impart Authority. We can with no propriety speak of the *Sovereign People* of England; except we mean the State of England; and thus include King, Lords, and Commons, in the term *People*: if *People* denote individuals, without governors and magistrates, we can with no more propriety speak of the Sovereign People of England, than of the Sovereign People of Yorkshire. If the People of Yorkshire be not sovereign, because they are under the authority of England; the People of England are not sovereign, because, by the same rule, they are under the authority of King, Lords, and Commons. If there be any established Authority, the Rule of such Authority determines where the Sovereignty resides. If we suppose all established authority annihilated, no body of men is sovereign over any individual; and each man is sovereign, with as good a Right as any other man or any collection of men.

376 If it be said that the People is really the Sovereign Authority, and the source of Rights, because it is by the common consent of the People that the Supreme Authority is conferred upon the sovereign governors of the State: we reply, that such a transfer of sovereign power to governors, by the common consent of the members of a society, has very rarely taken place; and if in a few societies it have ever occurred, such uncommon and extraordinary events afford no grounds for the existence of Rights, in com-

munities in which nothing of the kind has ever taken place. And in the next place, we remark, that whenever the members of a society have thus conferred supreme authority upon their governors by common consent, they have, in their actions, presupposed the existence of Rights derived from States. If a body of men, for instance, by common consent frame a government for the country in which they live; or for another country, which they have purchased, and into which they are migrating: they suppose, in the first instance, that the country is theirs as being their native land; and in the second instance, as being a purchase. But yet mere individuals alone cannot have such Property: for Property in land, as we have seen, and purchase of Land, for the like reasons, are creations of the Law.

377 Thus the Conception of a Sovereign State, as the origin and guardian of Rights, is necessary, in order that we may conceive Rights as realities. We may add, that the State is necessarily conceived as a Moral Agent; since it makes war and peace, which it may do justly or unjustly; keeps Treaties, or breaks them; educates its children, or neglects them. What are the Rules of Justice in the actions of States, we must afterwards consider: but it is plain that we must consider the State as an Agent, to whose conduct such Rules are applicable.

378 Since the State is thus a Moral Agent, we may apply to it the Rules of Duty, and the doctrines of Morality, which we have already established. The State has its Duties; Duties of Truth and Justice, as all agree; for all hold it to be the Duty of a State to observe its Treaties, to abstain from the Possessions of another State; and the like. A State has also Duties of Benevolence; To relieve its poor, to liberate its slaves, are often urged upon a State, as manifest Duties of this kind.

And, as the condition of other Duties being performed, the moral Education of its citizens, and consequently of itself, is a Duty of the State. It is its Duty to establish in the minds of its children, and to unfold more and more into constant and progressive operation, the Moral Ideas of Benevolence, Justice, Truth, Purity, and Order.

379 Thus Moral Progress is the Duty of States, as well as of individuals. States, like Individuals, have a continuous existence; a series of purposes and actions; a connected course of being; a *Life*. During this Life, it is their Duty to conform their being more and more to the Moral Ideas; and this Duty extends to all their actions, and all times of their action.

CHAPTER XXI.

JUSTICE.

380 RIGHTS are, as we have formerly said, necessary conditions of man's action as man; and the State is the necessary origin and basis of Rights: the State defines them and realizes them. But though Rights are thus, in each case, what, by the State, they are defined to be; there is yet, in men's minds, a fundamental conviction, that Rights are not arbitrary. It is conceived that there is a higher Rule, to which Rights ought to conform; that they should be, not only *ordered*, but *just*; that there are not only positive Laws, enacted by special bodies of men, but a Natural Law, depending upon the nature of man.

This conception of Natural Law, appears among the Greek Philosophers. "There are," says Aristotle*, "two kinds of Law; that which is proper to each community; and that which is common to all. For there is, as all men perceive more or less clearly, a Natural Justice and Injustice, which men in common recognize, even if they have no society nor compact with each other. Thus the Antigone of Sophocles is made to say, that it was right for her, in spite of the tyrant's command, to bury her brother Polynices, as a part of a Natural Law:

"For this is no command of yesterday,
But everliving Law, its source unknown."

The Books of the Laws of Plato proceed upon the same supposition; and are an attempt to draw out, in detail, the Code of Natural Law which was thus assumed to exist.

381 This Conception of a Natural Law, derived from Reason, and universally valid for all men, was still more distinctly entertained by the Romans. This appears in Cicero's Dialogues on the Laws in several places†, and still more emphatically in a passage in the work *De Republica*‡: "Law is right Reason, congruous to Nature, pervading all minds, constant, eternal; which calls to Duty by its commands, and repels from wrong doing by its prohibitions; and to the good, does not command or forbid in vain; while the

* *Rhet.* I. 13.† *Legg.* I. 6; II. 4.‡ *De Rep.* III. 22, quoted Lactant. *Inst.* VI. 8.

wicked are unmoved by its exhortations and warnings. This Law cannot be annulled, superseded, or overruled. No Senate, no People can loose us from it; no Jurist, no Interpreter, can explain it away. It is not one Law at Rome, another at Athens; one, at present, another at some future time; but one Law, perpetual and immutable, includes all Nations and all times*.”

The Law, thus described by Cicero, includes Justice, as well as Law. In the notion of Natural Law, the distinction of Obligations and Duties is not recognized.

382 But it may be said that the Natural Law, thus described by Cicero, nowhere exists. The actual Law is different at Rome and at Athens, and in every different State. And since the Natural Law, of which we speak, cannot be the same as *all* these Codes, it cannot be the same with *any*; and is actually nothing.

The reply to this difficulty is contained in what we have already said (96, 97); That the *Conceptions* of the Fundamental Rights, which Law establishes, are necessary and universal for all men; but that the *Definitions* of these Rights are Facts, which grow out of the History of each community, and may be different in different times and places. The Fourth Book of this Work will contain a view of this Natural Law; the Laws of Rome and of England being there employed, as the exemplification, not as the necessary form, of Natural Law. We shall there see, that in many instances, the Commentators on these Laws have announced Maxims of Natural Law, as the basis of the actual Law.

383 The Roman term, *Jus*, (in its sense of a body of Laws, and of Doctrines on which Laws depend,) is especially adapted to denote this Natural Law; for it implies, at the same time, Law and Justice (90). The consistency of the Law with Justice is assumed throughout the Roman Jurisprudence. Thus in the commencement of the Institutes we read †: “*Justitia est constans et perpetua voluntas jus suum cuique tribuendi. Jurisprudentia est divinarum atque humanarum rerum scientia, justii atque injusti cognitio.*” But Justice; thus assumed as identical with *Jus*, in its results, is a conception which requires to be more exactly defined and developed than we have yet done, before we can so apply it. This we must now attempt to do.

* I have omitted the concluding clause of the paragraph, “Of this Law the Author and Giver is God;” as belonging to another part of my subject.

† *Inst.* I. I. Justice is the constant

and perpetual intention of giving to each his own Right. Jurisprudence is the knowledge of divine and human things, (as required for that intention :) the science of what is just and unjust.

384 As we have said, Law, in every form in which it exists, must involve actual Definitions, as well as the general Conception of Natural Law or Justice. These Definitions will depend upon past events. Thus, the tenure of land in each country depends upon past conquests and migrations of the races which inhabit the country; upon many inheritances, many contracts of buying and selling, and the like, which have taken place among individuals; upon Laws which have been made, relative to such property, and such transfers; and upon various other circumstances. Justice gives to each his own; but the actual Law must define what is each person's own, according to all these circumstances. And the like may be said of all other branches of Natural Law.

385 According to our idea of Rights, as assigned by Natural Law, each person must have those Rights which it is just he should have. A person, by Natural Law, cannot have Rights which it is unjust he should have. If the actual Laws of any State give him such Rights, those Rights are unjust; and that they are so, is a reason for altering the Law, or its application. If a man has acquired a seeming Right, in violation of Justice, Natural Law rejects such Rights. According to Natural Law, *Rights cannot be founded on Injustice.*

386 On the other hand, existing Rights, in each country, as we have seen, depend upon its History: and the History of every country contains many acts of injustice. It cannot be doubted that the present Rights of Property in Land, for instance, have, in every country, been brought into being by transactions, many of which have been unjust. Shall we say that Justice requires us to deprive persons of such Rights, when any Injustice can be discovered in their origin or transmission; however remote may be the blemish, and however blameless the present holders? If an estate were acquired by fraud centuries ago, and has since been possessed, without dispute, by generations of unconscious successors; or sold to a multitude of poor and honest purchasers; shall we say that it still, in Justice, belongs to the heirs of the defrauded person; and that, according to Natural Law, the present possessors ought to restore the property to those heirs? No one, probably, would assert it to be just to destroy supposed existing Rights on such grounds as these. All would allow that Justice is, in such a case, with the Possessors.

387 Indeed, to assert the contrary, would be to make that Law of Descent, by which the heirs of the defrauded person might

claim the property, paramount over all other Laws. It would be to make that Rule of inheritance absolute and indestructible, while other Rules, as for instance, *bona fide* purchase, prescription, and the like, are comparatively rejected. There can be no reason, in Natural Law, for erecting any one Rule of Derivation of Rights into this absolute Supremacy over all others.

388 Thus the maxim, that Rights cannot be founded in Injustice, is not to be applied in such a way as to make every past Injustice overturn present possession. Injustice is an arbitrary act, done in disregard of Rule and Reason. Justice abhors all that is arbitrary; for it requires all things to be done according to Reason, and therefore, according to Rule. But then, the Law of Inheritance is an arbitrary thing, as well as the Act of Fraud. The Law of Inheritance is quite different in different countries; and might, in this country, have been different from what it is, if the Law had so ordered it. Justice accepts, in general, the Law of Inheritance, as her Rule; yet not absolutely, as Supreme, but relatively, as a means to her end. Justice annuls, in general, the Effect of acts of Fraud; but still, not without limit in the contemplation of *Effects*, but only, so far as the condemnation of such effects is a means to her end. Justice cannot disregard the existing state of possessions, and turn her attention only to their origin. She cannot found her sentence on one particular past event, and take no account of the more recent events and the present conditions. On the contrary, it is the present with which she has especially to do. She has to pronounce upon existing Rights, as to whether they are valid or not; and she must look at them, as they exist. And hence, as a balance to our former maxim, we must lay down this: *Justice assigns Rights according to existing Conditions.*

389 Thus justice rejects that which is arbitrary, alike in the past and in the present. She condemns the ancient fraud, from which the present possession is derived: she limits the Rule of inheritance, on which the opposing present claim is founded. She pronounces that no Right can be founded in Injustice: but she pronounces the Right of the present holders to be founded, not on the ancient Injustice, but on the recent transactions; which are free from the stain of Injustice, and by which the ancient stain may be diluted or obliterated. A thing unjustly acquired, may, by long undisturbed possession, and *bonâ fide* tenure, become a just property: and accordingly, so the Laws of States decide.

390 The opposition of the two maxims respecting Justice, which have just been stated, is a result of the universal opposition

of Ideas and Facts which exists in every subject of Thought (97). In the *Idea*, Justice cannot admit of anything arbitrary; for what is arbitrary is unjust. In the *Fact*, every transaction must have in it something arbitrary, for it must depend upon external circumstances, which are not governed by our Ideas. In *Idea*, Justice would assign Property without regard to previous possession; but in *Fact*, by rejecting the regard to previous possession it ceases to be Property.

The same opposition may be remarked, in other parts of Natural Law. In *Idea*, for instance, Justice requires that all classes of men should have equal Rights: but in *Fact*, men form themselves into Classes, and by that very act make their Rights unequal. In *Idea*, men should make and perform their Contracts according to perfect Equality; but in *Fact*, the Terms of the Contract must be regarded by Justice, because Equality is too obscure and indefinite a foundation for a just decision. And the like may be said in other cases.*

391 The Steps by which the Conception of Justice has been unfolded and defined among men, have involved a recognition of both the maxims which have been stated. The Laws of all Countries annul Rights acquired in violent and illegal ways; and the Laws of all Countries allow undisturbed Possession, in the sincere belief of Right, to give, at least in some cases, and after some lapse of time, a complete Right. To all men, when the origin of existing Rights is shown to be some violent and unjust act, the Rights appear to be unjust. But when it is shown, on the other hand, that the traces of this arbitrary origin are only such as inevitably exist in all Rights, the Rights again seem just. When we consider how greatly the existing tenure of Land, in this country, depends upon the violent confiscations which took place in the Norman Conquest, the Rights of many of our landlords may appear to be unjust. But when we recollect that the Saxons, whom the Normans conquered, had themselves obtained possession of the land by a similar conquest; and that the transactions respecting property in England have, for nearly eight hundred years, assumed the validity of the Rights acquired by the Norman Conquest; we see that it would be unjust to fix our attention on that particular event, as especially vitiating Rights.

392 The remoteness of an act of violence in point of time; the complexity of the events which have succeeded it; the degree in which it has faded into oblivion; the habit of disregarding it established in the community;—all these, are circumstances which

make it just to disregard the bearing of the event upon existing Rights. Every circumstance, by which the effect of a past event upon men's thoughts and actions is enfeebled, makes it less of a reality in the present condition of things; and therefore, less an element for consideration in the assignment of Rights according to justice.

393 What has now been said, agrees with what was said formerly (362) in speaking of the Standards of Morality; namely, that though, in general, Morality is determined by Law, the Law must be framed in accordance with Morality. Justice is directly and positively determined by Law; for a man's just Rights are those which the Law gives him. The Law must be framed in accordance with Justice; and must therefore reject all that is arbitrary and unequal, as soon as it is seen to be so. Hence the Law, in order that it may accord with Justice, may be changed from time to time, in proportion as different external facts are made objects of attention. For instance, if one State, (suppose Helos,) act with great violence and cruelty towards another; (suppose Sparta;) it may be just in Sparta to punish Helos, by reducing its citizens to a condition of subjection, and depriving them of their property. But after several generations, when the transgression is fallen into oblivion, it would be unjust to make any Laws, on the ground of such transgression. When such a time has arrived, it may be just to make laws, in order to render the condition of the Helots less subject; or in order to restore to them their territory.

394 On this imaginary case, we may make one or two further remarks. It may be objected to the above statement, that it cannot be just to punish a whole State for the offense of some of its citizens; still less to continue the punishment to succeeding unoffending generations. And this is true, so far as such a remark can be applied, consistently with the nature of Punishment, and of a State. But when one State is injured by another, it must deal with the offending State as a whole; and it cannot extend its regard to individuals, in such a manner as would render impossible the punishment of injuries done by the State. If individuals have offended against a foreign State; and if the State to which they belong, refuses to punish them, or to give them up; it makes itself a party to their wrong. And when, on this ground, a penal infliction takes place, this infliction must operate alike on the offenders and their fellow-citizens; alike on those citizens who were in being at the time of the wrong, and on succeeding generations. For the State, according to the conception of it, is a collective and per-

petual body (374); its condition is communicated to contemporary and to successive members of it, by their being Members. In this, there is no injustice; any more than there is in the transmission of the Possessions, or of the Rank, of a Family, to its Members, and to successive generations. Nations derive their prosperous or adverse condition from their history, and from their transactions with other nations; and individuals, more or less, share in the prosperous or adverse condition of the nation.

395 States have not, nor can have, any way of punishing Injuries, or of asserting their Rights against other States, except War. They have no common Superior Tribunal to which they can appeal (375): and they can seek Justice in no other way. Also War would not answer its purpose, nor would it *be* War, if it did not produce some inconvenience to the vanquished State, and consequently to its citizens. Innocent citizens must be involved with the guilty, in the punishment; as the children of a guilty parent are necessarily involved in his punishment.

With regard to the seizure of the Property of the vanquished by the victorious State; it may further be remarked, that the citizens of the vanquished State derived Rights from their State; and that, therefore, they necessarily lose their Rights, when their State loses its power of maintaining Rights*.

It is not therefore necessarily unjust that there should take place, between States, acts of violence, which affect, through succeeding generations, the distribution of property and the relation of classes. The possibility of such events, is a necessary condition of the existence of States. The Actions of States, as of individuals, produce permanent consequences. If they did not do so, questions of justice and injustice respecting such actions would be of little importance.

396 But if such violent events have at some time taken place, must their consequences remain unchanged? If calamities have been inflicted by one nation upon another, even as a just punishment; does justice require these inflictions to be perpetuated without limit? If a nation have been enslaved and despoiled, even for their wrongs, may not the time come when they may be restored to freedom and property? We reply, in accordance with what has been said, that in proportion as the traces of the wrong are obliterated in men's minds, Justice will aim at obliterating them in their condition also. The privations and subjection of the

* Such maxims may be much mitigated in practice by International Law, as we shall see hereafter.

subjugated class, so soon as they cease to be looked upon as penal, appear as arbitrary, and therefore unjust. As soon as the inequality appears as an arbitrary one, Justice requires that it shall be removed.

But then, no present inequality can be quite arbitrary, because every actual inequality depends upon the Laws and Habits by which the present is derived from the past; and such Laws and Habits are requisite, in order that there may be, between the present and the past, that connexion which the continuity of the Life of States (379) requires. The Events of History have, at every step, led to present inequalities; to a difference of high and low, rich and poor. Justice does not require that we should abolish all such distinctions; for to do this, would be to abolish Rights, the necessary conditions of Justice. What then is the course which Justice prescribes?

397 We answer, that *Justice requires us to aim constantly to remedy the inequalities which History produces.*

We do not say that Justice requires us to *restore* any previous condition which has been unjustly changed, but to *remedy* the effects of the change. For, in fact, a previous State of things never can be restored: and when a change takes place, then, after a short time has elapsed, there have grown up, under the new State of things, new Rights, which it would be unjust to annul. What has once happened, can never cease to have happened. In the course of a nation's history, what has been done, cannot be undone. We may do something of an opposite tendency; and when what has been done was unjust, it is just to do something to remedy the injustice. If we are asked whether the consequences of events are to be perpetual; we may answer, that the consequences of events *are* perpetual; but that the consequence of a second event may counteract those of a former one. And we pronounce that such a second event ought to take place, when there exist inequalities, originating in the injustice of a former event.

398 Such remedying of Injustice is a part of the general Duty of Moral Progress, which belongs to States as well as to individuals (379). We have already said, that the Law must perpetually and slowly tend to the Idea of Justice. We now see further the import of this assertion. The Law must tend *slowly* towards Justice; because the influence of the Facts of History upon existing Rights must always be great: and it is not just to disregard this influence. The influence itself is, however, weakened by the lapse of time, and the intervention of new events. It is the

Duty of men to act justly, in these new events: it is the Duty of States, to make just Laws, in reference to the new aspect which those new events give to History. And Justice, thus, and History as regulated by Duty, constantly, but slowly, mould each other.

399 Again, the Law must tend *perpetually* towards Justice, that is, its progress in that direction can never be looked upon as terminated. For the influence of the past Facts of History upon Law, though constantly wearing out, can never be quite obliterated. Even if, in all present events, men did act justly and legislate justly, still there would remain traces of the ancient order of things. For instance, the distribution of landed property at present, must always continue to depend upon the original and ancient migrations of mankind, by which each Nation became possessed of its present territory; and upon many succeeding events; some of which have been acts of Injustice. The administration of Law, and the progress of Legislation, can never obliterate the effect of these bygone arbitrary and unjust acts; while new arbitrary and unjust acts are constantly happening. Thus Law, who must constantly travel onwards towards Justice, must always have some part of her journey still to perform. Or to use another image: the pure waters of Justice are constantly poured into the mingled stream of the Law, in order to purify it; but we cannot hope to see the time when all the impurities which the latter has collected, in its passage through the realms of History, shall have disappeared; and the clear united current shall flow on indistinguishable.

And thus both the maxims which have been stated retain their truth and validity. *Right cannot be founded on Injustice*: such is the negative maxim which serves to define the Idea of Justice. *Justice assigns Rights according to existing Conditions*: such is the positive maxim which makes Justice applicable to Facts.

We have taken the exemplification of the conditions of Justice from imaginary relations between States, because in such a case there is not, as in all transactions between individuals there is, a mixture of the considerations of Law, with the question of Justice. But still Justice, as distinguished from Law, is to be considered in questions between individuals. The term employed to designate Justice in this point of view, is *Equity*.

CHAPTER XXII.

EQUITY.

400 *EQUITY* derives its Name from *Equality*; and in the Conception, also, is understood to imply, in some way, equal advantages assigned to the parties contemplated. In this sense, attempts have been made, at various periods, to introduce the Conception of Equity, as explanatory of, or supplementary to, the Conception of Justice. It will be found that this mode of conceiving Equity, has led to some Maxims which are worthy of notice.

Aristotle* says that Inequality is one kind of Injustice; and that Injustice is to be remedied by Equality;—by Equality of Ratios, in Distributive Justice;—by Equality of Shares, in Corrective Justice. Thus Distributive Justice makes A's share be to B's share as A's right is to B's right: Corrective Justice takes from A, the wrong doer, and gives to B, who is wronged. But this view of the equality which constitutes Justice is partial and fanciful: it cannot be extended to cases in general. Still, there is a notion of Equality, as a kind of Justice. Cicero says†, “Jus constat ex his partibus, Natura, Lege, Consuetudine, Judicatio, Bono et Æquo, Pacto.” This expression *Bono et Æquo* was familiarly used in this sense by the Roman Lawyers. Thus Ulpian‡, “Jus est Ars Boni et Æqui.” And this notion of equal Justice has been carried into some detail. Thus Grotius makes Equality the Rule of Contracts§; they require equality of knowledge; equality of liberty; and, within certain limits, equality of advantage.

401 Justice and Equity, originally conceived as identical, in the course of time were separated; for Justice, in its administration, was necessarily fixed and limited by Laws and Rules; while Equity was conceived as not so limited. And as Laws and Rules, however much meant to be just, and however carefully constructed, will yet press upon individual cases in a way which seems hard; Equity was conceived as that kind of Justice which was not thus bound by Laws and Rules, and which was disposed to relieve such hardships. The Virtue which exists in such a disposition, is termed by Aristotle||, *Ἐπιείκεια*; and he defines it to be, The Correction of the Law, where it is defective by reason of its uni-

* *Eth. Nic.* v. 2.

† *Ad Hercenn.* II. 13. Jus consists of these portions; Natural Law, Positive Law, Custom, Decisions, Equity, Con-

tract.

‡ *Dig.* I. i. 1.

§ *B. et P.* II. xii. 8.

|| *Eth. Nic.* v. 10.

versality. The Law, he says, is necessarily universal in its expressions: but some things cannot rightly be expressed universally. There is a defect, not in the Law, nor in the Lawgivers; but in the nature of things. And the *ἐπιεικὲς*, or *equitable*, is opposed to the *ἀκριβοδικαίον* or *rigidly just*. The same opposition is repeatedly recognized in the Roman Law. Thus*, “Placuit in omnibus rebus præcipuam esse justitiæ æquitatisque, quam stricti juris rationem.” And in another place†, “Hæc Æquitas suggerit, etsi jure deficiamus.” And the Prætor’s judicial office was sometimes described, as if its object were to administer Equity in this sense‡: “Jus Prætorium est quod Prætores introduxerunt, adjuvandi, vel supplendi, vel corrigendi juris civilis gratiâ, propter utilitatem publicam.” Similar functions have often been ascribed to the Jurisdiction of the Court of Chancery in England. Thus Bacon, on occasion of assuming the office of Chancellor, says§, “Chancery is ordained to supply the Law, not to subvert the Law:” and Chancellor Finch says, that the nature of Equity is to amplify, enlarge, and add to the letter of the Law. This has sometimes been stated by saying, that Equity decides|| “de rebus quas Lex non exactè definit, sed arbitrio boni viri permittit.”

402 But this description of Equity is too vague to be applicable; and has not been really accepted and acted upon in the administration of Justice, either in Rome or in England. For a Justice, administered, not according to Rules, but according to the immediate aspect of each case, would be deficient in the first requisite of Justice, that of being consistent with itself. We have already said (242), that Rules are necessary in Morality, to subdue the temptations of special cases; they are especially necessary as regards Justice, to correct the delusive aspect of particular cases. To leave the decision of cases to the conscience of the Judge, however wise and good, would lead to those arbitrary decisions which Justice especially abhors. In this view, Selden’s condemnation of Equity is deserved¶; “For Law we have a measure, and we know what to trust to. Equity is according to the Conscience of him who is Chancellor; and as that is larger or narrower, so is Equity. ’Tis all one as if they should make the standard for the

* *Codex* III. l. 8. It has been thought good that regard be had to Justice and Equity, rather than to strict Rights.

† *Dig.* XXX. iii. 2. 5. This is suggested by Equity, although Law fails us.

‡ *Dig.* I. l. 7. Prætors’ Law is that which the Prætors have introduced, for the public good, for the sake of helping

out, supplementing, and correcting the Civil Law.

§ Bacon’s *Works*, IV. 488.

|| Grot. *De Æquitate*. Concerning things which the Law does not exactly define, but leaves to the discretion of a good man.

¶ *Table Talk*.

measure of the Chancellor's foot. What an uncertain measure would this be!" Since Morality is governed by fixed Rules, Equity, which is a part of Morality, must also have its fixed Rules. And as the Rules of Law are the foundations of Justice, the Rules of Equity cannot be in general inconsistent with those of Law.

403 Accordingly, the Prætor's power did not extend to the overthrow or disregard of the written Law. When the Law was applicable, the Prætor was to stand by it*; and we find such remarks as this†: "Quod quidem perquam durum est; sed ita lex scripta est." Nor does a Court of Equity in England decide differently from a Court of Law, except in cases which involve circumstances to which a Court of Law cannot advert. Equity, as we have said, has its Maxims; and one of the first of these Maxims is‡, *Æquitas sequitur Legem*; Equity follows the Law.

404 Nor does Jurisprudential Equity fill up the measure of the description of Moral Equity, that it *abates the rigour of the Law*. Blackstone has shown how far this is from being a description of the Equity of English Courts. No such power of abating the rigour of Law, he says, is contended for by the Court of Chancery§. The Law is rigorous, which declares that land which a man bequeaths to a legatee shall not, after his death, be liable to simple contract debts, even if the debt be for money employed in purchasing this very land. The Law is rigorous which commands that the father shall never immediately succeed as heir to the land of the son: yet in these cases, a Court of Equity can give no relief. Jurisprudential Equity, therefore, does not extend to cases of legal hardship in general.

405 In a certain sense, however, and to a certain extent, Equity does supply defects in the Law. Equity, as a branch of Jurisprudence, must, like all branches of Jurisprudence, act by definite Processes, and according to fixed Rules. But the Processes and the Rules of Equity in Jurisprudence, came into being, at first, as remedies to the defects of Law: and though, by being reduced to a fixed form and settled maxims, they can no longer be appealed to as remedies for all hardships and defects of Law, they have still a remedial and suppletory character.

This agrees with the account which the best authorities give of the origin of the Equitable Jurisdiction of the Court of Chancery in England. In the Common or traditional Law of England, the

* Story, *Commentaries on Equity*, p. 6.

† *Dig.* XL. ix. 12. 1. This is very hard: but this is the written law.

‡ Story, *Eq.*

§ *Comm.* III. 430.

process of an action began by certain writs or documents of prescribed form, which were issued from the King's Chancery, on application made there; and which brought the action into the Courts of Common Law. The Chancellor, therefore, (according to Lord Hardwicke,) when any petition for such a writ was referred to him, was the most proper judge, whether such a writ could be framed and issued, as might furnish an adequate relief to the party; and if he found the Common Law remedies deficient, he might proceed according to the extraordinary power committed to him by the reference*; "Ne Curia Regis deficeret in justitiâ exercendâ." Thus the exercise of an equitable jurisdiction by the Chancellor, arose from his being the Officer to whom applications were made, for writs on which to ground actions at the Common Law. Where that Law afforded no remedy, he was led to extend a discretionary remedy; and thus, the forum of Common Law and the forum of Equity were separated in England †.

406 It is not necessary to prosecute further our account of *Jurisprudential* Equity; since our business is rather with *Moral* Equity. And by tracing the course of the development of this Conception, as we have now stated it, we are able to give a connected account of this moral quality. We may accept, as a starting point, Aristotle's Definition: *Equity is a Correction of Law where it is defective by reason of its universality.* But Equity itself must proceed by fixed Laws, otherwise it would be defective in consistency. As the Rules of Equity thus become fixed, Equity ceases to be able to correct all the defects of Law; and becomes itself, as Law was at first, an imperfect expression of Justice; and thus we have, in the notion of Equity, a recognition of two Maxims to a certain extent opposite to each other; that *Fixed Rules are requisite for the expressions of Justice*; and that *No Fixed Rules can so completely express Justice, but that the conception of Justice will, in some particular cases, seem to require exceptions to the Rules.*

407 The administration of Equity has led to the currency of many Maxims, which may be considered Maxims of Moral, as well as Jurisprudential Equity; since their acceptance in the Courts of Law has been due to their presumed agreement with Justice. We may notice some of these Maxims; not as being always universally true, or free from doubt and difficulty in their application; but as bringing forwards some of the points on

* Lest the King's Court should be deficient in administering justice.

† Story, *Eq.* 44.

which Equity must principally depend; and as showing, by examples, the kind of *Equality* in which it consists. Among such maxims are the following.

408 *Æquitas sequitur Legem*; "Equity follows the Law." And this may be understood in two senses; either that Equity is based upon the Relations which the Law establishes; or that Equity follows the Analogy of the Law. We have already said, that Justice assumes the Definitions of Rights which Law gives. Hence Equity supposes *that* to be a man's Property, that to be a Marriage, that to be a Contract, which the Law makes such. Yet if there be merely some formal defect in a contract, moral Equity will still hold it valid. Again, Equity follows the Analogy of Law; thus in England, where the Law gives the whole landed property to the eldest son, that would not be an equitable decision which should divide the property amongst the children equally.

409 *In equali jure melior est conditio possidentis*; "Where Rights are equal, Possession is a ground of preference." As if two persons have been equally innocent and equally diligent, the one in trying to recover a property lost by fraud; the other in transacting a *bonâ fide* purchase of the property; he who is in possession is preferred.

But there are other maxims, which throw the task of judging of deficiencies in the property on one side especially: for instance, in matters which are apparent on due examination, the Rule is: *Caveat emptor*, Let the buyer take care of himself.

410 *Qui sentit onus, sentire debet et commodum*; *qui sentit commodum, sentire debet et onus*; "He who bears the burthen ought to receive the profit; he who reaps the profit ought to bear the burthen." Thus, if a man, dying, leaves his wife pregnant, so that it is uncertain who will be heir to his lands; if the next presumptive heir, in the mean time, sow the land, it is equitable that the harvest also shall be his. And on the other hand, they who enjoy the benefit of any improvement of land arising from public works; as, for instance, from a general drainage; ought to contribute to the expense of the works.

411 There are other maxims which refer to the general responsibility of actions, as for instance, *Necessitas non habet legem*; "Necessity has no law;" which we have referred to in speaking of cases of necessity (321). And again: *Qui facit per alium facit per se*; "What a man does through the agency of others is his act." Others refer to the mode of interpreting Laws

or Contracts, and administering Justice: as, *Expressio unius est exclusio alterius*; "The mention of one person is the exclusion of another." *Nemo debet esse iudex in propria causa*; "A man is not to be judge in his own cause." All these maxims may be looked upon as indications and fragments of a supposed Natural Law; which can never be expressed except by indications and fragments; since, as we have said, no Rules can express Equity, so as not to require exceptions.

412 Other indications of the assumed existence of a Natural Law, the necessary result of Justice and Equity, may be traced in expressions, which are often used in moral and political discussions. Thus, we hear of the *Natural Rights* of man; and as examples of these, of the *Right to Subsistence*, the *Right to Freedom*, and the like. In speaking of these Rights as *Natural*, it is not meant that they are universally recognized by the Laws of States. In truth, Rights of the citizens to Subsistence and to Freedom, are so far limited and modified by the Laws of most States, that they can hardly be said to exist as *general* Rights. By speaking of such *Rights*, and describing them as the dictates of *Natural Justice*, as is often done, it is meant that the Laws *ought* to recognize and establish them. But something more than this seems to be meant, by speaking of the *Natural Right* to Subsistence, and the like; for to say that such a Right is what the Law *ought* to establish, is merely to class the recognition of this Right with all the other prudential improvements, of which the Laws of any State are susceptible. The Laws *ought* to aim at securing the Purity and Rationality, as well as the Subsistence, of the people. By speaking of the Claim of men to Subsistence as a *Right*, it appears to be meant that it is not only conformable to the Duty of States, in the general sense in which it is their Duty to make their laws constantly better; but that it is conformable to Justice in some more special sense, in which Justice is expressed by definite and universal Principles.

413 Yet the Principles of Justice which have been propounded as the basis of the Natural Rights of Men, are such as it is difficult to establish, in a definite and universal form. It has, for instance, been said, that *All men are born equal*. But it is evident that this is not true as a fact. For not only are children, for a long time after birth, necessarily in the power of parents and others; but the external conditions of the society in which a man is born, as the laws of property and the like, determine his relation to other men, during life. If it be said that these are

extraneous and accidental circumstances, not born with the man ; we answer, that if we reject from our consideration, as extraneous and accidental, all such conditions, there remains nothing which we can call intrinsic and necessary, but the material conditions of man's existence ; and if we were to adopt this view, the principle might more properly be stated, *All men are equally born*. The relations of Family, Property, and the like, are as essential to man's moral being, as Language, without which his mind cannot be unfolded to the apprehension of Rules, and the distinction of right and wrong. If therefore our assumed equality rejects the former circumstances, it must reject the latter.

414 But though in Fact men are not born equal, they are all born with a capacity for being moral agents : and this Idea is the basis of all Morality. And we may lay it down as a universal Principle, from which we may hereafter reason, that *All men are moral beings*.

This Principle may be perhaps considered as rather a Principle of Humanity, than a Principle of Justice. For this, and any other Principle from which we derive the claims of men to Subsistence, Freedom, &c., must involve a recognition of that Common Human Nature, by which all mankind are bound together. We shall therefore treat of such Rights in treating of the Conception of Humanity.

CHAPTER XXIII.

HUMANITY.

415 It has already been stated, that a universal Benevolence towards all men, as partakers of the same Common Human Nature with ourselves, is a part of the Supreme Law of human being. But the lapse of time, the growth of institutions, and the development of man's moral nature, are requisite to bring this affection into its due prominence. The affections of men, in a rude condition, are confined within narrower limits ; and have, for their main or sole objects, the persons who are bound to them by especial ties. The family affections which connect parent and child, husband and wife, brothers and sisters, have their force in every form of human society. The sympathies which bind together a kindred in a wider sense, the feelings of clanship, are powerful,

in communities in which a more comprehensive kind of benevolence is unfelt. In rude and half-savage tribes, in which clansmen assist each other with unbounded zeal, the stranger is looked upon as naturally an object of enmity. The historians of Greece and Rome notice indications of this having been the early condition of man's feelings in those countries. But the progress of the culture of those nations led to a more moral state of the affections. The Greeks had a name for the Love of man as man. This affection they termed *φιλανθρωπία*, and reckoned it a virtue. Aristotle expresses this* by saying that all men have a feeling of kindred and good-will to all. And the Stoics called this tie of general good-will by a name borrowed from the word which Aristotle here uses (*οἰκείωσις*), as *kindness* is connected with the word *kin*. The Romans in like manner, though at first they had but one word to designate a stranger and an enemy (*hostis*), came to be sensible of the universal bond of good-will which unites man to man. They received with applause the verse of Terence :

Homo sum : humani nihil a me alienum puto.
A man am I, and feel for all mankind.

And their philosophers followed the Greeks, in assuming the common social feeling of mankind as one of the foundations of their morality. Thus Cicero adopts, what he calls the *Formula* of the Stoics †: "Detrahere aliquid alicui, et hominem hominis incommodo suum augere comodum, magis est contra naturam quam mors, quam paupertas, quam cætera quæ possunt aut corpori accidere, aut rebus externis; nam principio tollit convictum humanum et societatem." In the same strain Seneca says ‡, "Societatem tolle, et unitatem generis humani quâ vita continetur, scindes."

416 The Roman conception, of a Law, identical with Natural Law, and yet the benefits of which were the peculiar privilege of Roman citizens, for a time impeded the application of such maxims; for men who had no right to justice, could have little claim to kindness. The current conception of a true marriage, as being limited to the union of Roman citizens, and of domestic slavery as being a part of the order of society, were circumstances unfavour-

* *Anth. Eth. Nic.* VIII. 1. *ὡς οἰκείον ἄπας ἄνθρωπος ἀνθρώπῳ καὶ φίλον.*

† *Off.* III. 5. For a man to abstract anything from another man, and to increase his own comfort by the discomfort of another, is more against Nature, than death, than poverty, than any other thing which can happen, either to his

body or to his external havings. For in the first place it takes away human society and community of life.

‡ *De Benef.* IV. 18. Take away society, and you rend asunder the unity of the human race in which our life is bound up.

able to the development of a benevolence equally embracing all men. But these circumstances gradually lost their hold on men's minds. The distinction of Roman and Provincial marriages faded away; and there grew up a feeling of horreur towards the cruelty which slavery involved. We find a recognition of this view in the Roman Lawyers. Thus Ulpian says*, "Manumissio a jure gentium originem sumsit, utpote quum jure naturali omnes liberi nascerentur, nec esset nota manumissio, quum servitus esset incognita. Sed posteaquam jure gentium servitus invasit, secutum est beneficium manumissionis: ut quum uno naturali nomine homines appellarentur, jure gentium tria genera esse cœperunt, liberi, et his contrarium servi, et tertium genus, liberti, id est, qui desierant esse servi." And with regard to marriage, the Roman lawyers sometimes appear to incline to extend the notion of it even to Brute animals†. "Jus naturale est quod natura omnia animalia docuit: nam jus istud non humani generis proprium, sed omnium animalium quæ in terra, quæ in mari nascuntur, avium quoque, commune est. Hinc descendit maris et fœminæ conjunctio, quam nos matrimonium appellamus, hinc liberorum procreatio, hinc educatio: videmus enim cætera quoque animalia, feras etiam, istius juris peritiâ censi." But attempts such as this, to extend the meaning of *Jus*, in any sense, to brute animals, can only perplex the subject. The word *Rights* has no meaning, as applied to animals, which cannot understand the word. Our Rights and our Obligations are necessarily limited by the limits of human nature. They all spring out of the recognition of our common Humanity. Our duties with regard to brute animals depend upon no mutual Rights; but upon the Duty of Self-culture; to which our treatment of them, like our other actions, must be made subservient. Animals offer to us images of some of the lower parts of our nature; but except so far as these elements are directed and governed by the higher elements, they are not subjects of moral consideration. As far as the limits of humanity extend, however, there are mutual

* *Dig. l. i. 4.* Manumission of Slaves had its origin not in natural but in positive Law. For by the Law of nature all are born free, and when there was no slavery there could be no manumission. But when by the positive Law of nations, slavery was introduced; the relief from this infliction by manumission was also introduced. And thus men, who by nature were all alike men, were divided into three kinds, freemen, slaves, and freed

men who had been slaves.

† *Dig. l. i. 1.* Natural Law is that which nature teaches all animals: such Law is not peculiar to the human race, but common also to beasts, fishes, and birds. Hence arises the union of male and female which we call marriage, hence the procreation and nurture of children; for we see that brutes, and even wild beasts, are acquainted with the Natural Law which regulates such matters.

ties of Duty which bind together all men ; and as the basis of all others, a Duty of Mutual Kindness ; which, as we see, is acknowledged by the Jurists, as well as by the Moralists, of Rome, in spite of the originally narrow basis of their Jurisprudence.

417 The progress of the Conception of *Humanity*, as a universal bond which knits together the whole human race, and makes kindness to every member of it a Duty, was immeasurably promoted by the teaching and influence of Christianity. In the course of time, domestic slavery was abolished ; and marriage received the sanction of the Church, and was alike honourable in all. The antipathies of nations, the jealousies of classes, the selfishness, fierceness, and coldness of men's hearts ; the narrowness and dimness of their understandings, have prevented their receiving cordially and fully, the comprehensive precepts of benevolence which Christianity delivers ; but as these obstacles have been more and more overcome, the doctrine has been more and more assented to, and felt to be true, by all persons of moral culture ; that there is a Duty of Universal Benevolence which we are to bear to all men *as men* ; and which we are to fulfil, by dealing with them as men ; as beings having the like affections and reason, rights and claims, which we ourselves have.

418 This conception of *Humanity*, as a Principle within us, requiring us to recognize in others the same Rights which we claim for ourselves, may be further illustrated. Such a principle of *Humanity*, requiring us to recognize men as men, requires us more especially to recognize them as such, in their capacity of moral agents. They have not only like desires and affections with ourselves ; but also, like faculties of Reason and Self-guidance ; by which they discern the difference of right and wrong, and feel the duty of doing the right, and abstaining from the wrong. This view of their condition, as Moral Agents, is that by which we most entirely sympathize with them ; as it is the view of our own condition, in which we are fully conscious of ourselves. *Humanity* requires that we should feel satisfaction in the desires and means of enjoyment of our fellow-men ; but *Humanity* requires, still more clearly, that we should feel a satisfaction in their having the desires and the means of doing their Duty. Now the fundamental Rights of which we have so often spoken, the Rights of the Person, of Property, and the like, are means, and necessary conditions, of Duty. It is necessary to moral action, that the agent should be free, not liable to unlimited and unregulated constraint and violence ; that is, that he should have Rights of the Person.

It is necessary to moral action, that the agent should have some command over external things ; for this is implied in action ; that is, it is necessary that he should have Rights of Property. And in like manner, in order that any class of persons may exist permanently in a community, as moral agents, it is requisite that they should possess the Right of Marriage ; for without that Right, some of the strongest of man's desires cannot be under moral control ; nor can the sentiment of Rights be transmitted from one generation to another. The Right of Contract is a necessary accompaniment of the Right of Property ; for if the person can possess, he may buy and sell. And thus, these Rights are means, and necessary conditions, of men's being moral agents ; and the Humanity which makes us desire that all men should be able to regulate themselves by a Love of Duty, requires that *all should be invested with these Rights.*

419 These Rights, which humanity requires that all men should possess, may be called *Natural Rights* ; and in this sense, we may say that Man has Natural Rights of Personal Security from Violence, of Sustenance and Property so far as is implied in moral agency, and of Marriage. But we must distinguish these *Natural Rights*, which men *ought* to have, from the Rights of which we have hitherto spoken, which men really *have* in Civil Society, and which may be called *Civil Rights*.

420 As the Natural Rights, of which we speak, are those which are implied in Moral Agency ; so, on the other hand, they imply Moral Agency, and consequently imply Duties, or Moral Obligations. As there is a Natural Right of Security against violence, there is a Natural Obligation to abstain from violence. As there is a Natural Right of Property for every man, to some extent or other ; so there is a Natural Obligation to abstain from the Property of others, and to fulfil our Contracts. As there is a Natural Right of Marriage, so there is a Natural Obligation of Forethought, which directs men to make provision for the Sustenance of a Family, before they add to the existing numbers of the Community.

421 Humanity requires us to insist upon these Rights, and upon the corresponding Obligations, with equal Force. We may declare such Rights to be natural, universal, necessary ; but we must declare the Obligations to be equally natural, universal, necessary. Humanity requires that men should have the means of doing their Duty ; she requires also no less that they should do it. She is solicitous about their welfare ; in the first place,

about their welfare in the subordinate sense, the means of enjoyment and of action; in the next place, about their welfare in the superior sense, the pursuit of right ends by right means. To insist upon man's Natural Rights, and to lose sight of the corresponding Obligations, is not the tendency of the Humanity of a moral man.

422 Such Natural Rights as we have mentioned, are sometimes spoken of as *indefeasible*, and *inalienable*. When, by such expressions, it is meant that no act, either of a man's own or of other men, can make it cease to be an object of Humanity that he should possess such Rights, the expressions are just. No constraint and violence, actually exercised upon men, can prevent the humane man from desiring that they should have Rights which may protect them from such inflictions; and even if a man, for himself, renounce the Rights which are requisite to his being a moral agent, the humane man must still desire that they should be restored to him. If these Rights are taken away, or given away, it is right that they should be given back to every man; and in this sense, they are indefeasible and inalienable.

But if it be meant; that when the Law takes away, or the act of the individual gives away, these Rights, the Law and the Act are not to be regarded, this application of the words is not admissible. The Laws of every State have their validity; and if these Laws are contrary to Humanity or to Justice, such vices of the Laws are to be remedied, not by the Moralist declaring such Laws null and void of themselves; but by the Legislator annulling them, or substituting better Laws in their room. And although it may be humane and right, that the Laws should not sanction Contracts by which a citizen renounces the fundamental Rights of man; yet if such a Contract is made according to Law, the Law enforces it, and the Moralist, as before, may say that the Law ought to be changed; but he may not say that, till changed, it ought not to be executed.

423 Thus, those which we have called the *Natural* Rights of man, may be, for a time at least, superseded by their not being *Civil* Rights. They may be Rights in the eye of Humanity; that is, such as *ought to be* the Rights of all members of every community; but not Rights in the eye of Law, that is, such as *are* the Rights of all members of a given community. Natural Rights are the Ideal conditions of moral society; they may be suspended in Fact; the Idea being imperfectly realized. When this is so, it is the business of all good men constantly to make the Fact

approach to the Idea; to make Law agree with Humanity: to make Civil Rights coincide with Natural Rights.

In many communities, this task may at the present, or at any given time, be imperfectly fulfilled; and in such cases, there exist Classes of the Society which possess, in an imperfect degree, or in no degree, the Natural Rights of Man. It will be proper to examine more particularly some of these States of Society, with their characteristic Classes: and to consider the manner in which they exemplify the doctrine which we have been propounding.

CHAPTER XXIV.

SLAVERY.

424 IN ancient nations, we find the existence of Slaves everywhere familiar. Bondmen and Bondwomen, and the buying and selling of men, occur frequently in the Books of Moses. In Homer, and the Greek tragedians, domestic slavery is contemplated as the general lot of those conquered in war, their wives and children. The slaves, thus obtained, were employed, both in the business of the house, in the labours of agriculture, and as workmen in various handicrafts. They were so universally thus employed, that they were considered as a necessary portion of society. A State, says Aristotle*, consists of Families; a Family, of Freemen and Slaves. And in like manner, the Roman Law lays this down as the primary division of persons†, “*Omnes homines aut liberi sunt aut servi.*” Slavery, thus derived from the ancient world, was, in the course of time, nearly extinguished in Christian States. But in modern times, a new form of slavery has grown up; the slavery of the negroes, who are carried from Africa to America; and employed there, they and their descendants, as domestic servants and agricultural labourers.

425 The character of complete Slavery is, that the Slave has no Rights. And this complete kind of Slavery has been recognized and ordained by the Laws of many nations. Gaius, the Roman Jurist, says‡, “*In potestate sunt servi dominorum. Quæ*

* *Polit.* 1. 2.

† *Inst.* 1. 3.

‡ *Dig.* 1. 6. 1. Among the “things in our power” are the slaves of which we are masters. And this “power” is

a general institution of nations; for we may observe that in all nations alike the master has the power of life and death over the slave; and whatever is acquired by the slave, is acquired for the master.

quidem potestas juris gentium est; nam apud omnes peræque gentes animadvertere possumus dominis in servos vitæ necisque potestatem fuisse, et quodcunque per servum acquiritur id domino acquiri." Thus the Slave had neither the Right of protection from extreme violence and death, inflicted by his master, nor the Right of property in anything which he might happen to produce or acquire. The Slave is the property of the Master, in the same manner as a horse or a cart is. And these maxims are promulgated in modern Laws. "A Slave," says the Louisiana Code*, "is in the power of the Master to whom he belongs. The Master may sell him, dispose of his person, his industry, his labour; he can do nothing, possess nothing, nor acquire anything but which must belong to his master." The Laws of South Carolina say, "Slaves shall be deemed, taken, reported and adjudged, to be chattels personal in the hands of their Masters, and possessions to all intents and purposes whatsoever." Accordingly, it is held in America that the cohabitation of slaves, being limited by the pleasure of the master, cannot be marriage; and that a slave cannot be guilty of theft; just as dogs and horses cannot marry and cannot steal. It is true, that in some countries, in which the most complete slavery prevails, the master is not allowed by the Laws to put his slave to death; and some punishment is inflicted if he does so. But such a Law does not invest the slave with any Rights. It is only a Law against what is shocking to the general feeling, like the English Laws against cruelty to animals. It is now penal in this country to torture a horse or a dog; but a horse or a dog are still only objects of possession, without any Rights or any acknowledged moral nature.

426 Slavery is contrary to the Fundamental Principles of Morality. It neglects the great primary distinction of Persons and Things (45); converting a Person into a Thing, an object merely passive, without any recognized attributes of Human nature. A slave is, in the eye of the State which stamps him with that character, not acknowledged as a man. His pleasures and pains, his wishes and desires, his needs and springs of action, his thoughts and feelings, are of no value whatever in the eye of the community. He is reduced to the level of the brutes. Even his Crimes, as we have said, are not acknowledged as Wrongs; lest it should be supposed that, as he may do a Wrong, he may suffer one. And as there are for him no Wrongs, because there are no Rights; so

* Channing's Works, Vol. II. p. 17.

there is for him nothing morally right; that is, as we have seen, nothing conformable to the Supreme Rule of Human Nature; for the Supreme Rule of his condition is the will of his master. He is thus divested of his moral nature, which is contrary to the great Principle we have already laid down; that all men are moral beings;—a Principle which, we have seen (414, 418), is one of the universal Truths of Morality, whether it be taken as a Principle of Justice or of Humanity. It is a Principle of Justice, depending upon the participation of all in a common Humanity: it is a Principle of Humanity as authoritative and cogent as the fundamental Idea of Justice.

427 All men are moral beings, and cannot be treated as mere brutes and things, without an extreme violation of the Duties of Humanity. In some communities, the Conception of Humanity may be dimly and vaguely developed; and the guilt of this violation of Duty, in this as in other cases, may be modified by this circumstance. The offense of the defender and promoter of Slavery, may not be that of acting against Conscience, but of not enlightening his Conscience; of not raising his standard of morality. And this offense, again, may be modified by the circumstances in which a person is placed. In the ancient world, especially in the earlier periods, when the friendly intercourse of nations was rare, the feeling of Humanity very imperfectly unfolded, and the thoughts by which such feelings are fostered and supported not yet familiar among men; the opportunity of enlightening the conscience and raising the moral standard were wanting; and if, in such cases, virtuous men practised slavery without doubt or misgiving; using the natural mercy, in their treatment of slaves, which benevolence, cultivated in the other relations of life, would usually produce in this; we may pronounce them to have been excusable, on the ground of the defects of their natural standard of Morality (357): though upon such men, as upon all men, there was a duty incumbent, of raising the national standard of Morality. But now, after morality and religion have so far raised the standard of morality in Christian nations, that among them, the Slavery which they inherited from the ancient world has been extinguished; Nations, which do not adopt the Standard of Morality thus elevated, are chargeable with a voluntary preference of inhumanity and injustice to humanity and justice (359).

428 A very little progress in humanity is sufficient to lead men to see the cruelty and immorality of making slaves, of men

of our own race. Plato* notices it as a necessary result of an improved morality, that Greeks should not make slaves of Greeks. This injunction had already been given to the Jews†: *If thy brother* (which in this place and others means thy fellow-countrymen) *be sold unto thee, thou shalt not make him serve as a bondman.* No man can think it conformable to Justice and Humanity that he himself, or his Family, should be thrown into a state of slavery; and in considering his fellow-countrymen, he can readily sympathize with them, and identify his case with theirs; and thus, he acknowledges that to make *them* slaves, is inhuman and unjust. The Romans, as we have seen, extended this feeling to all the world; and their Jurists declared, that no man was a slave by nature. It is indeed plain that our Humanity, in order to be consistent, must extend to all men. To conceive slavery a cruel and unjust lot for our countrymen, but a reasonable and suitable fate for foreigners, can arise only from dulness and narrowness of mind, and benevolence scantily cultivated. In the eye of Morality; all men are Brothers; and the crime of maintaining Slavery, is the crime of making or keeping a Brother a Slave.

429 There is one defense of negro slavery, which represents the negro as a being inferior to the white man in his faculties. He is asserted to approach in his nature to the inferior animals; and hence it is inferred that he may be possessed as a Thing, like the animals. But this defense is manifestly quite baseless. The same faculties of mind have appeared in the negro, as in the white, so far as the condition of negro nations and negro classes has afforded opportunities for their development. The negroes do not appear to be duller, ruder or coarser, in mind or habits, than many savage white nations; or than nations, now highly cultured, were, in their early condition. The negro has a moral nature, and is therefore included in the consequences which follow from the Principle, that all men have a common nature. The negro has the same affections and springs of action as we ourselves. He loves his wife, his children, his home, and any security and stability which is granted him. He can buy and sell, promise and perform. He has, as much as any race of men, moral sentiments. He can admire and love what is good; he can condemn and hate what is bad. He has the Sentiment of Rights and Wrongs also. Though the Law allows him no Rights, he can feel bitterly the monstrous Wrong of the Law. His Reason is the Universal Reason of men.

* *Rep.* v. 14.† *Levit.* xxv. 39.

He understands the general and abstract Forms in which Language presents the objects and rules, with which Reason deals. He recognizes, as we do, a Supreme Rule of Human action and Human being; for, like us, he can direct his thoughts and acts to what is absolutely right. In short, there is no phrase which can be used, describing the moral and rational nature of man, which may not be used of the negro, as of the white. The assertion that there is, between the white and the black race, any difference, on which the one can found a Right to make slaves of the other, is utterly false.

430 If it be said, that the negro approaches in his external form to some kinds of monkeys; and if it be asked how we draw the line between man and such inferior animals; we reply, that all beings are men, who have a moral and rational nature, such as we have described: but if some plain and simple criterion of the difference between man and brutes be required; we can point at such a character at once, in the use of *Language*. A being who can understand and apply the general terms of which language consists, can apprehend Rules of action, Means and Ends, and hence, the Supreme Rule. He is a rational, and consequently a moral being. He is our brother.

431 It is difficult to believe that those who, in defense of their own practice of slavery, allege the inferiority of the negro race, do really think their assertion true. To such persons, negro women are objects of sexual desire. Upon their asserted view, they are thus guilty of an offense which men have everywhere looked upon as bestial and horrible. Moreover, the Laws of Nature contradict their assertion; for the offspring of such mixtures are marked with the physical and moral characters of both parents, as in other human unions. And when the slave-owner treats his own child, thus produced, as a slave; and works him, tortures him, or sells him, as he would a brute animal; (which it is said slave-owners do;) he tears out of his heart those affections which are the roots of all Morality, and the absence of which makes lust entirely brutal.

432 Again, in States where negro slaves are numerous, to teach them to write or to read is forbidden by Law, under the severest penalties. Such Laws suppose the capacity of negroes for intellectual culture; and are an implicit confession that it is necessary to degrade their minds, in order to keep their bodies in slavery. When such practices and such Laws prevail, to defend negro slavery by asserting the inferiority of the negro race, can

hardly be free from the guilt of wilful blindness of conscience, persisted in, in order to uphold conscious wrong.

433 The Moralist, then, must pronounce Slavery to be utterly inconsistent with Humanity; and with Principles, which, being derived from the universal nature of man, may be deemed fundamental Principles of Justice. Slavery is utterly abhorrent to the essence of Morality, and cannot be looked upon as a tolerable condition of Society, nor acquiesced in as what may allowably be. Wherever Slavery exists, its Abolition must be one of the great objects of every good man.

434 It will, of course, be understood, from what has already been said, that this Abolition is to be sought by legal and constitutional means only. When Slavery exists, its annihilation is an end which must be constantly kept in view; but to which we must sometimes be content to approach by degrees. It is an Idea to which we must endeavour to make the Fact conform; but the conformity may not be immediately brought to pass. The laws of the State are to be submitted to, even when they enact Slavery; for the Moralist cannot authorize the citizen to choose what Laws he will obey, and what he will not. Natural Rights must yield to Civil Rights, in the hope that Civil Rights will be more and more made to harmonize with Natural Rights. Slavery is never to be acquiesced in, always to be condemned; but we may, and must, tolerate a gradual transition from Slavery to emancipation, such as the conditions of Legislation, and even the benefit of the slave, render inevitable. Still, on the other hand, we are to recollect, that delay is to be tolerated, only so far as it is inevitable: and that to quicken the course of Emancipation, is no less humane and just, than it is to give Legislation this direction, and to prepare both slaves and masters for the change.

435 It may be hoped, by the Moralist, that the emancipation of the negro race will go on with accelerated rapidity; for every State in which free negroes live, as moral and rational beings, is a refutation of the solitary argument in defense of negro slavery, drawn from the asserted unfitness of the negro for freedom. When the free negro population of cultured communities have, by the manifestation of their moral and rational nature, made themselves recognized as brethren by their white fellow-citizens, it cannot be that *their* black brethren will long be kept in slavery in neighbouring States professing a like reverence for freedom.

436 Slavery nowhere exists in Europe in a form so repugnant to Humanity as is negro slavery. But there are, in some

parts, many vestiges of slavery, and classes intermediate between slaves and freemen. The *Serfs*, who have existed and still exist in different countries, may be considered as holding such an intermediate place; and in different countries in different degrees. In Russia, serfage is hardly distinguishable from slavery. The labourers are bound to the soil by the Law: they are *prædial* serfs. By the general custom of the country, they are bound to work on the demesnes of the landowner three days in the week; and have land allotted to them from which they extract their own subsistence. But the peasant is, with all his family and descendants, at the disposal of the lord. In some parts, the Serfs have been allowed the privilege of acquiring and transmitting personal property; and in some, they may even purchase or inherit land. In other parts of Europe, Serfage has assumed a less slavish character. In some parts of Germany, the peasant is no longer attached by the law to the soil: and his labour which he owes to his landlord is definite in kind and amount. Such peasants are called *Leibeigener*. In other parts this labour-rent is commuted for a corn-rent or a money-rent, though the tenant is still liable for some trifling services. Such tenants are called *Meyer**.

437 The social structure of England has gone through these several forms. For two centuries after the Norman Conquest, a large proportion of the body of cultivators was in the situation of the Russian serf; they were termed *Villeins*. During the next three hundred years, the unlimited labour-rents paid by the Villeins were gradually commuted for definite services, still payable in kind; and the Villeins had a legal Right to their lands which they occupied, which legal Right was called *Copyhold*. It is only about two hundred years since the personal bondage of the Villeins ceased to exist in England.

438 The contemplation of the change which has taken place in this country, and which appears to be taking place elsewhere, from a condition in which men are little better than Slaves, to one in which they are Freemen; and of the manifest and immense advance in moral and intellectual culture, which such a change has brought with it; must strongly stimulate the Moralist to recommend and promote the progress of social freedom and the removal of every law and custom that contains any trace of Slavery.

439 We distinguish *social* from *political* freedom; the former depending upon the domestic or *prædial* relation of Servant and Master; the latter, upon the relation of Subject or Citizen, and

* Jones *On Rent*.

Government. If men have Rights of the Person, of Property, and the like; they may be *socially* Freemen; however despotic the established government be. They are, *politically* free, when each Class has such a share in the Government, as enables it to assert and secure its Rights. But Social Freedom can hardly exist without Political Freedom: the Lowest Class can hardly have and retain Rights, without possessing some political power of maintaining them. In countries where Serfage prevails, the Serfs have no political power. The landlords form an Aristocracy; and the Sovereign and they possess, between them, the powers of the State. When Serfage gives place to Social Freedom, there must be, in the Constitution, an *Estate* of the People, or some other Political Authority, representing and protecting the general body of free citizens.

But the subject of Political Freedom must be considered hereafter.

CHAPTER XXV.

PLEASURE, INTEREST, HAPPINESS, UTILITY, EXPEDIENCY.

440 WE may follow the subject of Humanity or Benevolence somewhat further. Humanity is, as we have said, a Principle, in virtue of which we represent to ourselves other men as of the same nature with ourselves, and enter into their feelings, hopes, and prospects, as if they were our own. We desire the good of others as we desire our own good.

But the *Good* which we desire for ourselves is contemplated under various aspects. We may have, as the Object of our desires in a general form, *Pleasure*, Enjoyment, or Gratification; we may have *Interest*, or Advantage; we may have *Happiness*. And as our desires point to one or other of these general Objects for ourselves, they may also aim at the like Objects for others. Our Benevolence may urge us to give pleasure to others, or to promote their interest, or to make them happy.

In order to see how these views affect the Duties of Benevolence, we may examine further the Conceptions of Pleasure, Interest, and Happiness.

441 Pleasure arises from our attaining the objects of our

Desires. It is what we feel, when our Desires are satisfied, or in some measure gratified. All actions which are not directed by the Reason, may be conceived as performed in order to obtain Pleasure, or to avoid its opposite, Pain. Actions directed by Reason, may also be directed to Pleasure. They may be directed to the objects of Mental Desires, which Reason presents to us under general abstract forms; as Wealth, Power, and the like: and to obtain such objects, may give us Pleasure. But Pleasure is more especially considered as the object of less abstract and reflective Desires, as Bodily Pleasure, and the like. Pleasure is sought simply and *for itself*; not as a means to an end, nor in obedience to a Rule. If we seek Wealth or Power *as means* to an end, we do not seek them merely *as pleasure*.

442 Since Pleasure is sought, not in obedience to a Rule, but simply for itself, to make Pleasure our highest object, is not consistent with the Supreme Rule of Human Action. To make Pleasure the highest object of human action, is to reject the supposition of a Supreme Rule, and a Supreme Object. For if Pleasure be the Highest Object, it is also the Lowest. If Pleasure be the Highest Object of Human Action, nothing can be absolutely *right*; nor can be right in any other sense, than as the right road to Pleasure. If Pleasure be the object of human action, we must reject Duty as the guide of Human Actions. The good man makes Pleasure his object, only so far as it is consistent with the Supreme Rule of Duty. He does not desert Duty for Pleasure, but he finds his Pleasure in Duty.

443 Since we cannot rightly desire for ourselves Pleasure, as our ultimate object, we cannot rightly desire it for others, whom we love in some degree as ourselves. Merely to give Pleasure to men, without regarding whether the Pleasures be right or wrong, is not a moral kind of Humanity.

But though we may not make it our business to promote the Pleasures of those around us, as an ultimate object, for them and for us; we may rightly make the promotion of their Pleasures, so far as they are not wrong Pleasures, one of our main objects; both as a manifestation of Benevolence, and as a means of cultivating that affection. The sympathy with other men, which Morality requires of us, is best fostered and strengthened, by an habitual participation in their efforts to obtain those objects which give them pleasure.

444 Though Pleasures are sought, as independent and ultimate objects of desire, they often involve references and conse-

quences, and trains of feeling and thought, which connect them with higher objects, and with Moral Rules. The Desires of the Body point simply to Selfish Pleasures; but the Pleasures of the Affections imply a Sympathy with other persons, which is a kind of benevolence; and therefore, is of the nature of virtue. The Pleasures to which the Love of Knowledge leads, involve a culture of the mind, which gives activity to the Reason; and which, thus, may aid the moral culture. And when the moral culture is so far advanced, that Conscience is heard clearly, and Virtue is loved; the approval of Conscience, and the conscious activity of Virtue, may be sought, as the greatest Pleasures of which man's nature is susceptible.

But in general, *Pleasure*, as an object of action, is distinguished from, and opposed to, *Duty*; and so far as this is done, although we may aim at promoting the Pleasures of others, as a step in our moral culture, a due regard for the moral culture of others will not allow us to make their Pleasure a supreme and ultimate object.

445 Another general form under which the object of action presents itself to us, is *Interest*. We seek our own Interest: and hence we are bound, by the Duties of Benevolence, to seek the Interest of others also: Interest is conceived as an object of affection or desire, approved of, to some extent, by Reason. A prudent man seeks his own Interest. When Interest and Pleasure come in competition, Reason directs us to follow our Interest, and to resist the temptation of Pleasure. We may estimate our Interest according to various Standards; but in speaking of Interest, we suppose *some Standard*. We say that one thing is *more* for our Interest than another: for example, we may say, that it is more for our Interest to be honest than to be cunning. In stating such a maxim, we take, for our standard of Interest, the acquisition of wealth, or the establishment of our good name. The Standard of Interest is not an absolute, but an assumed Standard; just as the ends aimed at by Prudence are not absolute, but assumed ends (151). But we sometimes suppose an absolute and supreme Standard of Interest; we speak of our *true* Interest, our *highest* Interest. We say that our true and highest Interest is, the elevation and purification of our moral being. Also, the Affection which we feel towards a person, or for a mental object, is spoken of, as an Interest which we take or feel: that is, the person or object is conceived as of considerable amount, according to our Standard of Interest. But we may estimate another man's interest

differently from his own feeling respecting it. We may say, it was such a one's *Interest* to improve his estate, but he *took no Interest* in it. Again; different classes of objects of action imply different Standards of Interest. A man's affections are employed on one set of objects, his thoughts on another. Hence we have the Interests of the Heart, and the Interests of the Intellect. The Interest of the Individual may point one way: the Interest of the State, another.

446 Of course, Benevolence directs us to promote the true and highest Interest of other men, as it directs us to seek our own. We may also seek to promote the Interest of others, in a lower and narrower sense; as we may seek to promote their Pleasures: and such a course may be a part of morality, either as a manifestation, or as a discipline, of Benevolence. But to promote any Interest of men, which is not the highest; or any seeming Interest, which is not a true one; cannot rightly be made our ultimate object.

447 It has sometimes been said, that men, in all their actions, necessarily *seek their Interest*, or what appears to them their Interest. The notion involved in this assertion appears to be, that every action may be considered as a tendency to some object, which may be included in the term *Interest*. The brave man, when he rushes into battle, seeks victory, or glory, which, for the time, he thinks are his Interest. The timid man, when he runs away from the enemy, seeks safety, which seems to him his Interest. But the assertion thus made, involves a confusion of thought and language, such as not only would prevent our being able to state any distinct doctrines of Morality, but such as even common usage may teach us to correct. The brave man is not impelled to seek victory or glory, nor the timid man, to seek safety, by any view of Interest, such as that with which the prudent man thoughtfully seeks his Interest. The springs of action in these cases are Courage, and Fear: not any seeking of an Abstract Object, which Interest is; still less, any seeking of an Abstract Object involving a Standard of value by which all things are compared, which Interest also is. If we say that the brave man rushes into the battle, and the timid man rushes out of it, each seeking his Interest, we must also say, that the bull-dog attacks his antagonist, and the frightened horse runs away from his master, seeking his Interest; which, it would be reckoned absurd to say. The proposition, that all actions are prompted by the prospect of our own Interest, is not asserted, in general, as

any thing more than an identical proposition: but to make it true, even in that character, the common usage of language must be violated.

448 *Happiness* is the object of human action in its most general form; as including all other objects, and approved by the Reason. As Pleasure is the aim of mere Desire, and Interest the aim of Prudence; so Happiness is the aim of Wisdom. Happiness is conceived as necessarily an *ultimate* object of action. To be happy, includes or supersedes all other gratifications. If we are happy, we do not miss that which we have not; if we are not happy, we want something more, whatever we have. The Desire of Happiness is the Supreme Desire. All other Desires, of Pleasure, Wealth, Power, Fame, are included in this, and are subordinate to it. We may make other objects our ultimate objects; but we can do so, only by identifying them with this. Happiness is our being's end and aim.

449 Since Happiness is necessarily the Supreme Object of our Desires; and Duty the Supreme Rule of our actions, there can be no harmony in our being, except our Happiness coincide with our Duty. That which we contemplate as the Ultimate and Universal Object of Desire, must be identical with that which we contemplate as the Ultimate and Supreme Guide of our Intentions. As moral beings, our Happiness must be found in our Moral Progress, and in the consequences of our Moral Progress: we must be happy by being virtuous.

450 How this is to be, Religion alone can fully instruct us: but by the nature of our faculties, this must be. And as this is the nature of the Happiness which we are to seek for ourselves, so is it the nature of the Happiness which we are to endeavour to bestow upon others. We are directed by Benevolence, to seek to make them happy, by making them virtuous; to promote their Happiness, by promoting their moral Progress; to make them feel their Happiness to be coincident with their Duty.

The identification of Happiness with Duty on merely philosophical grounds, is a question of great difficulty. It is difficult, even for the philosopher, to keep this Identity steadily fixed in his mind, as an Operative Principle; and it does not appear to be possible to make such an Identity evident and effective in the minds of men in general. But Religion presents to us this Truth, of the identity of Happiness and Duty, in connexion with other Truths, by means of which it may be made fully evident and convincing, to minds of every degree of intellectual culture: and the

minds of men, for the most part, receive the conviction of the Truth from their Religious Education.

451 We may also, as an exercise and discipline of Benevolence, seek to make them happy, in a more partial view; namely, by placing them in a condition in which they have no wants unsupplied; for, as we have said, this is part of the conception of happiness. If we make this our object, we shall have to supply those wants which are universal, and do not depend upon special mental culture; and we shall have to impart such mental culture, as may make them feel no wants which cannot be supplied. We shall have to minister to their human needs; and to moderate their wishes: in short, to make them content. *Content* is a necessary part of Happiness; and men may be rendered content, by gratifying their desires in part, and limiting them in part, till none remain unsatisfied. That men's desires should be moderate and limited, is a condition very requisite to Content; and therefore, to Happiness: for except some moderating influence be exercised, the Desires, both bodily and mental, grow with indulgence. Hence, we promote the Happiness of men by moderating their Desires: and any influence of this kind, which we can exert upon them; as for instance, by teaching and discipline, may be a work of Benevolence. But on the other hand, we must recollect that the objects to which many of our Desires tend, are means of moral action; and that it is necessary to the moral activity and moral culture of a man, that he should desire and obtain such objects. We ought not to wish to reduce a man to a state of Content, by taking away the desire of the fundamental Rights of man. We ought not to wish the Slave to be contented in his Slavery; living like a brute animal in dependence upon his master, and looking to no law, higher than his Master's Will. On the contrary, we ought to wish that he should both desire and have Liberty, in order that he may enter upon that course of moral agency, and moral progress, which is the only proper occupation of his human faculties. In order to promote the Happiness of mankind, we must endeavour to promote their Liberty: both the Social Liberty, which invests them with the Fundamental Rights of man; and the Political Liberty, which is the guardian of such Rights, and the most favourable condition for moral and intellectual progress. We shall pursue this subject hereafter.

452 In some Systems of Morality, the Desire of our own *Happiness*, and of that of mankind, has been made to occupy a larger space than we assign to it. This Desire has, indeed, been

made the basis of the whole of Morality, and the ground and measure of all our Duties. It has been said, that our Principle of action, so far as we ourselves are concerned, must be to attain, as much as possible, our own Happiness; and that the Rule which is to guide us in actions which affect others, is to increase as much as possible their Happiness. This view of the subject has been so much insisted on, that we may make a few remarks upon it.

We may remark, that according to the explanation which we have given above, of the Conception of Happiness, it is quite true; that we ought to act so as to increase as much as possible our own Happiness and the Happiness of others; but we must add, that this Truth cannot enable us to frame Rules of Duty, or to decide Questions of Morality. It is an *identical* Truth. Since Happiness is the ultimate object of our aims, and includes all other objects; whatever else we aim at, we identify with Happiness. Whatever other end we seek, we seek that as the *far* end. And with regard to other persons; Benevolence urges us to promote their Happiness; for in that, all good is included, and we wish to do them good. But these Maxims, though true, are, of themselves, altogether barren. The Questions still occur, *What* are the things which will increase our own Happiness? *What* will increase the Happiness of others? Of what elements does Happiness consist? According to our account of it, Happiness does not imply any special elements; but only a general conception of an *ultimate* and *sufficing* Object. How are we to measure Happiness, and thus to proceed to ascertain, by what acts it may be increased? If we can do this, then, indeed, we may extract Rules and Results, from the Maxim that we are to increase our own and others' Happiness: but without this step, we can draw no consequences from the Maxim. If we take the Conception in its just aspect, how little does it help us in such questions as occur to us! I wish to know whether I may seek sensual pleasure; whether I may tell a flattering lie. I ask, Will it increase or diminish the Sum of Human Happiness to do so? This mode of putting the question cannot help me. How can I know whether these acts will increase or diminish the Sum of Human Happiness? The immediate pleasures of gratified sense or of gratified vanity, I may, perhaps, in some degree, estimate; but how am I to estimate the indirect and remote effects of the acts, on myself and others; and how am I to measure the total effect thus produced, on Human Happiness? By a sensual act, or by a lie, I weaken, it may be said, the habit of temperance and of truth in my own mind; and by my example,

I produce a like effect on the minds of others. Suppose, then, that I regard this consequence, and see that the act thus leads to something of unhappiness; still, this effect is perhaps slight and precarious; how am I to balance this result, against those direct gratifications which are produced by the acts now spoken of? It does not appear that, under this form, the question admits of an answer.

453 The mode in which Moralists have been able to apply this Principle, of aiming at the greatest amount of Human Happiness, to the establishment of Moral Rules; has been, by assuming that man must act according to Rules. I say, *assuming*; for it does not appear, that we can *prove* that the Principle of increasing as much as possible the Happiness of man requires us to act by general Rules. The man who is tempted to sensual pleasure, or mendacious flattery, may say, I do not intend that what I do now should be a Rule for myself, or for others. At present I seek to promote Human Happiness, by making an exception to Rules: in general I shall conform to the Rules. To this, the Moralist replies, that to speak and think thus, is to reject Rules altogether: that Rules are not recognized, except they be applied in all cases, and relied upon as the antagonists of the temptations which particular cases offer. In short, he says, that man, by his nature, must act by Rules; and that he, the Moralist, who has to decide respecting the character of human action, has to establish Rules of human action. Thus he assumes, in addition to his Principle of the Greatest Amount of Human Happiness, another Principle, of the Universality of Rule; and it is this latter Principle, which really gives a Moral character to his results. If we are to have Rules of action, we must have Rules, that men are to be temperate and truthful; though special violations of temperance or of truth may seem to offer an increase of human happiness. Such Rules as, that we may lie to please a friend, or may seek bodily pleasure where we can find it, are inconsistent with man's nature. But that they are so, is shown, by reasoning from the necessary conditions of Rules of action, not by considering the notion of Happiness; for the pursuit of Happiness does, really, often lead men to follow such immoral Rules as have just been mentioned. The Rules, *to be temperate* and *to be truthful*, are not established by showing that they lead to the greatest amount of Human Happiness; for we have no means of estimating the amount of Human Happiness which results from any given hypothesis. These Rules may, indeed, be said to be proved by a

consideration of the intolerable unhappiness which would result from the absence of such Rules. We have already (66) used this consideration in establishing Moral Rules in general. But this line of reasoning is quite a different course from employing the Conception of Happiness, as a means of comparing one particular Rule of Duty with another; an employment of the notion of Happiness for which it is, as I have said, quite unfit.

454 The Principle of aiming at the greatest amount of Human Happiness, has been strangely dealt with by the Moralists who have principally employed it. As we have already said, in order to deduce Moral Rules from it, it seems to be necessary to find some measure of Happiness; or to resolve it into some more definite elements; and then, to estimate the moral value of actions; by means of this measure, or those elements. But this course has not been usually followed by such Moralists. Dr Paley, who rests Moral Rules upon their tendency to promote Human Happiness, has, indeed, begun by giving some account of his view of Happiness. It does not, he says, consist in the pleasures of sense; nor in exemption from pain, labour, and care; nor in greatness and elevated station: it consists in the exercise of the social affections; in the exercise of the faculties of body or mind in the pursuit of some engaging end; in the prudent constitution of the habits; and in health: and, as he suggests in a note, perhaps in a certain condition of the nerves. Having given this analysis of Happiness, we naturally look to see how he next brings the word into use in his reasonings. We find the word occupying a very prominent place in the first sentence of his next chapter; in which he tells us, that "Virtue is the doing good to mankind for the sake of everlasting Happiness." But it is plain that, in this use of the word, there is no reference to the analysis of Happiness contained in the preceding chapter; and we are therefore, so far as reasoning is concerned, here thrown back upon the general notion which the word *Happiness*, without any special explanation, suggests.

455 When Paley proceeds, a little further on, to establish Moral Doctrines, for instance the Right of Property, he rests the propriety of this Institution of Property upon its advantages;—that it increases the produce of the earth; preserves this produce to maturity; prevents contests; and increases the conveniency of living. Doubtless, all these results may be understood, as *additions* to the Sum of Human Happiness; but there is no attempt made to show that these additions counterbalance the *subtraction* from Human Happiness arising from the wants of some persons,

the superfluity of others, the contests and crimes of many, which Property produces. The Principle of the Greatest Human Happiness, thus loosely applied, leaves the Right of Property to stand upon a general apprehension of its advantages. The same is the case with the other Fundamental Rights of Man, and the Fundamental Rules of Morality. They are not proved, in Paley's work, by showing, in any distinct manner, that they increase the Sum of Human Happiness; for no way is offered of measuring this Sum, or its Increase. But the Fundamental Rights and Fundamental Rules are asserted; and the student is told that they are necessary to Human Happiness. This all can readily assent to; for the end for which Rights and Rules exist, whatever other name it bear, may be considered as included in the term *Happiness*. And thus, Fundamental Rights and Rules, and the vague general notion of Human Happiness as their ultimate end, stand side by side in such systems of Morality, but have not really any logical connexion.

456 There is, however, one character of such Systems which is implied in this mode of employing the term *Happiness*. They seek to deduce the Rules of Action from a Supreme *Object of Desire*; whereas we have deduced them from a Supreme *Rule of Action*. They direct men to aim at Happiness; we direct them to aim at Acting Rightly. We deduce our Rules from the Constitution of man's nature; they, from the Objects of his desires. As expressing this difference, the Terms and Reasonings employed in such systems may be worthy our consideration.

457 There is an expression often used by Moralists of this class, which may be noticed in this point of view. They often declare *Utility* to be the Ground and Measure of the Morality of actions. Now Utility cannot be in itself an Ultimate End. That is *useful*, which is subservient to some further end. A wheel is useful as a portion of a carriage; a carriage is useful, in order to take a journey; a journey is useful, in order to visit a friend; to see and talk with a friend is useful if it makes us happy. All things which have a value for their utility, have a reference to some ulterior end; and if we assume some Ultimate End, such as Happiness is conceived to be, all things may be estimated by their Utility. Thus the estimate of actions by their Utility may be conceived as identical with the estimate of them as contributing to Human Happiness; and accordingly, the two phrases have been principally used by the same school of Moralists.

458 The judgment which we have to pronounce upon Utility,

as a ground of estimating the character of actions, is implied in what has been already said. We cannot estimate the value of anything, as being useful to an End, except by assuming the value of the End. If a Coach be a thing of no value, a Coach-wheel must be a thing of no value. If travelling be of no use, a travelling carriage is of no use. The measure of the value of actions by their Utility, is liable to all the inconvenience and indefiniteness of the determination of the End for which they are useful; and besides, to the difficulty of determining how far they are useful to the end. A system in which actions are estimated by their Utility in promoting Human Happiness, will be liable to the objections already stated against the Principle of the Greatest Human Happiness; and will also require a just mode of measuring the value of Actions as Means, the End being given. We have all along been applying a very different method, in order to judge of actions. We ask, What is *right*? not, What is *useful*? acknowledging, as we have said, a Supreme Rule, and not being content with seeking Means which derive their value from the assumed value of their Ends.

459 Another Term which has been much used by Moralists of this School is *Expediency*. "Whatever is expedient," says Paley, "is right*." Now we have to observe here, as before, that the main significance of such assertions is in the rejection, which they imply, of any independent and fundamental meaning in the term *right*. Those who make such assertions, intend to say, that Actions are right because they promote some object; Human Happiness, for instance; and that those who speak of acts, as absolutely right, are in error. In the common use of language, we speak of actions as *expedient*, when they promote some end which we have selected, and which we do not intend to have questioned. If we are prepared to put forwards the end of our actions as the Proper End of action, we call them, not *expedient*, but *right*. It may be expedient for a man to lie, in order to free himself from captivity. He may stay in captivity, because he will not tell a lie; but in this case, we say, he does what is right, and rejects what is expedient. *Expedient* implies, according to its etymology, a way out of difficulties. But Morality places before us a higher object than merely to escape from difficulties. She teaches us to aim at what is right. What is expedient, may be expedient as a means to what is right. It may be expedient to tell the truth, in order to rescue an innocent person from death. But we do not describe such an

* Paley, B. I. c. 6.

action properly by calling it *expedient*. It is much more than expedient, it is right: it is recommended, not by Expediency, but by Duty. In such cases, we can speak approvingly, not only of the action, as a right means, but of the end, as a right end. Truth is not properly commended, when it is described as a good way of getting out of a difficulty, or of gaining our ends.

Those who use this term, *Expediency*, to describe the proper end of human action, are prompted to do so by a wish to reject Terms which imply a Supreme Rule of action; they wish to recognize none but subordinate Rules determined by the Objects at which men aim. And it is true, in this sense, that whatever is expedient with a view to an end, is the right way to the end: but this does not justify the Moralist in confounding what is *relatively expedient* with what is *absolutely right*: nor in speaking of things as expedient *absolutely*, without pointing out *the purpose* which they are expedient *for*.

BOOK III.



RELIGION.

OF DIVINE LAWS, AND THEIR SANCTION.

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CHAPTER I.

NATURAL RELIGION.

460 THE Moral State and Moral Progress of each man are maintained by his conviction of certain Truths which are the foundations of Morality; and among these Truths, one of the most important is this: that the course of action which is his Duty, is also his Happiness, when considered with reference to the whole of his being (450). This conviction, men for the most part derive from Religion; that is, from their belief respecting God, and his government of Man. We believe God to be the Governor of Man, as a moral being (9). The Moral Law is his command; Conscience is his voice; He sees and knows all the internal actions of which we ourselves are conscious; He possesses an unbounded power to determine the Happiness or Misery of every one of us; He exercises this power so as to give a sanction to his laws; appointing misery as the punishment of transgressions, and making a conformity to his Laws lead us to Happiness; which Happiness will continue in another life when this life is past.

This is Natural Religion: but further, as we have seen (260), we require to be taught by Religion how, when we have transgressed, Repentance and Amendment can avail, as a remedy for the sin committed; how they can restore the health of man's moral life,

and avert from man's condition and destination the consequences of sin. We also (270) require from Religion the hope of some power, in addition to the ordinary powers of our own minds, which is to be exercised upon us, in order to enlighten and instruct our conscience, and to carry on our moral progress. These requirements are responded to by Revealed Religion.

461 The belief which constitutes Natural Religion, takes possession of men's minds, in the course of their intellectual and moral progress. The idea of God is unfolded and fixed, and the points of belief which we have stated, are established, by the intellectual and moral culture of the mind. The steps of thought, which lead to these points of belief, may be different in different minds, according to the course which their intellectual and moral culture takes. In the mode of arriving at a belief in God, and in his moral government, the procedure of one mind is not a rule for other minds. To some persons, the Truths of Natural Religion may seem to be self-evident; to other persons, they may become more evident, when connected by various steps of analogy and reasoning. We shall state some of the reasonings respecting God, and his Government, which may prove the doctrines we have stated, to the satisfaction of those persons who require proofs of them.

We proceed with these reasonings.

462 From the existence of the world, we necessarily infer the existence of a Supreme Being, who is the cause of the world's existence. The assemblage of things and events which we describe by the abstract term *Nature*, directs us to a belief in an Author of Nature. Every thing and every event must have a Cause; that Cause again must have *its* Cause, and so on. But this Series must terminate: there must be a First Cause. This Supreme Being, this Author of Nature, this First Cause, is God; the Creator of the World and of all that it contains, including Man,

463 But further; in many things which exist, and in many events which take place in the world, we see irresistible evidence, not only of a Cause, but of a Final Cause. We discern an End, an Intention, of the Creator of the world. Things are constructed so as to answer a Purpose, and we cannot help believing that they were *intended* to answer this Purpose. The eyes are made so that we can see; and on examining their structure, we are irresistibly led to believe that they were made *in order that* we might see. In the same way by an examination of the structure of man's body, we are led to believe that the muscles were made in order to

move the limbs; and that the nerves were made, among other purposes, in order to excite the muscles to action.

That we see with our eyes; that the nerves excite the muscles, and the muscles move the limbs;—these are Laws of our Nature. But these Laws indicate the Intention of the Author of Nature. They are his Laws; the manifestation of his Purpose; the expression of his Will.

464 The Structure of our Minds, as well as of our bodies, is the work of God the Creator. Our Appetites, Desires, Affections, Reason, are given to us by him, as well as our Organs, Muscles, Nerves, Brain. And in the structure of our minds, as in that of our bodies, the faculties were assigned with intention and purpose. It was intended that Appetite should operate for the preservation of the individual; that the Affections should collect men into Families and Societies; that the Reason should direct and control both the Appetites and the Affections; that the Sentiments of Approbation and Disapprobation should aid the Reason in this office. It was intended, for instance, that Shame should prevent our doing shameful actions.

465 Further; in virtue of his Reason, man seeks objects, as Means to Ends. We cannot believe otherwise than that it was intended, by his Creator, that he should do this; and should conform to Rules of Action, derived from his doing this (18). It was intended, therefore, that he should conform to the Supreme Rule of Action; which is a necessary condition of these subordinate Rules (72). Consequently, this Supreme Rule of Action, namely, the Moral Law, is the Law intended for him by his Creator. The Moral Law is the Law of God, and the Will of God.

466 The Moral Law is expressed by means of certain Moral Ideas, namely, Benevolence, Justice, Truth, Purity, and Order (118). These Ideas, therefore, express the Will of God, with regard to human actions. These Ideas were given to man, in order that he might, by them, direct his Actions. And when man frames his internal Standard of Action, his Conscience, in conformity with these Ideas, this internal Standard represents the Will of God; and his Conscience may be considered as the Voice of God (274).

467 But again; human action may be contemplated, not only as governed by Rules, successively subordinate to each other, and ultimately, by a Supreme Rule; but also, as directed to objects successively subordinate to each other, and ultimately to a Supreme Object (74).

The Supreme Object of human action is Happiness. Happiness is the Object of human action contemplated in its most general form, and approved by the Reason (448):

The Subordinate Rules of human action are enforced and sanctioned, by the belief of success or failure, in the pursuit of some corresponding object. Thus, the Rule, that the Appetites must be controlled by the Reason, is enforced by our expectation of obtaining health and comfort; if we obey the Rule, and of forfeiting these benefits if we disregard the Rule. In like manner, the Rule that we must respect the Rights of all men, is enforced by the hope of Security and Tranquillity, which the general observance of such a Rule produces; by the Prospect of the Turbulence and Insecurity which exist in rude states of Society; and by the fear of the condemnation and punishment which, in more settled Society, the violation of Rights produces to the offender.

In like manner, the *Supreme Rule* of Human Action is enforced and sanctioned by a belief that it leads to the *Supreme Object* of Human Action. As the Rule of Temperance points to Health and Comfort; as the Rule of respect for Rights points to Security and Tranquillity; so the Supreme Rule of Rightness points to Happiness, which includes all other objects; and which is an internal Comfort and Tranquillity requiring nothing beyond itself.

468 The Subordinate Rules are enforced and sanctioned by the belief that they lead to their respective objects; and this belief is confirmed and verified by the result. Temperance *does*, as a general Rule, lead to Health and Comfort. Respect for legal Obligations *does* maintain social Tranquillity and individual Security. By the analogy of these Cases, we are confirmed in our belief that Moral Rightness leads to Happiness.

The Rules of Human Action, approved by the Reason, may be considered as *Laws*, given to man by God; and the Objects of Human Action, which are foreseen and obtained by conforming to such Rules, may be considered as *Promises* to man made and fulfilled by God. The general declarations of God to man, made through his Reason, may be considered as conditional Promises. "If you are temperate, you shall be healthy." "If you conform to the laws of Society, you shall enjoy the benefits of Society." In like manner, there is a conditional Promise, made to man through his Reason, that conformity to the Supreme Rule, will be attended with the Supreme Good of his Nature. "If you are virtuous, you shall be happy." And as the Promises, thus made in the other cases, are verified by the result, we are led to believe, by analogy,

that the Promise, in the last case, will also be verified by the result.

Hence the results of obeying and violating Moral Rules of Action, made known to us by our Reason, may be considered as Rewards and Punishments appointed by God. And thus we are led to look upon Happiness as the appointed Reward of Virtue, and Unhappiness as the appointed Punishment of Vice.

469 We conceive not only Will and Purpose, as residing in God, but also Affections. His creation abounds in Contrivances, which have, for their objects, the health, comfort, and enjoyment, of his creatures; and nowhere exhibits Contrivances which have, for their object, pain or disease. Hence, we conceive God as benevolent towards his creatures. Moreover, being led, as we have just said, to believe him to exercise a Moral Government, in which he rewards Virtue and punishes Vice, we conceive him as loving virtuous men, and hating vicious men; and as loving Virtue, and hating Vice, in the abstract. We conceive Benevolence, Justice, Truth, Purity, and Order, as the objects of his Love. And we are thus led to conceive these Ideas, as elements in our Idea of God. We conceive him as, in the most perfect degree, Benevolent, Just, True, Pure, and Wise. This Moral Perfection is *Holiness*.

470 Benevolence, Justice, Truth, Purity, and Order, are the proper objects of our Love (129); and therefore God, in whom these Ideas are all comprehended, is the proper object of Love. With the Idea of God in our minds, the Love of God becomes a part of our Moral Progress. Our belief in the Holiness of God, and our Love of Him, confirm and uphold our expectation and belief that Happiness is the appointed Reward of Virtue, and Unhappiness the appointed Punishment of Vice.

471 The expectation and belief which are supported by these reasonings and analogies, become constantly stronger, as our moral and intellectual culture proceed. But though men have such a general and settled expectation and belief, that Happiness is the appointed Reward of Virtue; it is a matter of great doubt and obscurity, to the eye of Reason, in what manner this is to be brought to pass. Some have taught that the virtuous man is always happy, by that condition of his mind which Virtue produces. Some have inferred that, since happiness is not always the Reward of Virtue in the life of men; this life must be succeeded by another life, in which the Promise is fulfilled, and the Reward bestowed. They have taught that man has a *Soul*, which

is not destroyed by the accidents which happen to the body; and that the Soul, surviving the death of the mortal Body, is the subject of God's Rewards and Punishments in another world.

472 The doctrine, that man has a Soul, of which Consciousness, Will, Reason, Affections, Memory, Imagination, are Faculties, as Motion, Sensation, Nutrition, are Faculties of the Body, has been generally believed on other grounds also. I am conscious of remaining the same person, while my body is constantly changing by the process of nutrition. I will certain acts, in which the body is only the instrument of the will. I reason; and in doing so, refer to Ideas, or principles of reasoning, common to me along with all mankind: these Ideas or principles cannot be conceived as residing in the body. I love my parents, my brothers and sisters, my children; these affections do not belong to the body. By acts of duty, habits of duty and virtue are formed; which are not habits of mere bodily action. And by all these processes,—Will, Reason, Affection, Acts of Duty,—permanent effects are produced upon our being, which can be understood most simply as effects produced on the Soul. It is the Soul, which is permanently affected by the intellectual and moral culture of which we have spoken (202); as the body is permanently affected by bodily exercises. It is the Soul, which is tainted and distempered by transgression (252); and it is the Soul which is to be restored by Repentance and Amendment, if restoration be possible (260). It is the Soul, in which must take place the constant and unlimited moral progress, of which we have spoken (203): which, as we have said, must go forwards to the very end of life. And it is very natural to suppose that by this Progress, the Soul is fitted for Another Life, in which its condition will correspond with the nature of its Moral Progress in this life. If the Soul have reached a high point of Moral Progress on this side of death, we may suppose that it will, on the other side of death, if not on this, find a corresponding state of Happiness. If, on the contrary, habits of virtue have been neglected, transgressions committed, and habits of vice formed here, the Soul must be unfitted for enjoying, hereafter, any Happiness, such as we can suppose God to give to men's Souls.

473 Thus we are led to believe in a Future State of being, in which God's Moral Government will be carried on to its completion. But even in this present state of being, we must conceive ourselves and the world to be under the Government of God. God must be the Governor, as he is the Creator, of the world; for

as the Creator, he formed, and placed in it, those springs of Progress by which its course is carried on and regulated. We cannot help believing that, like all other parts of the Creation, the course of the world of human doing and suffering, must have a Purpose; and this Purpose must be in harmony with the Moral Government of God, to the belief of which we have already been led (469). The Course of this world, we cannot but believe, is directed by God's *Providence*. It is a Divine Dispensation.

474 The doctrines of Natural Religion, as we have stated them, thus present to us these Ideas: the Moral Government of God, and his Providence. So far as we borrow our Light from Natural Religion, we assume these Ideas, of Moral Government and Providence, to be realized in the World to Come; and we regard this world, as the Prelude and Preparation to that. But we cannot reasonably be satisfied with a mere *Idea* of the Course of this World. We must attend to the *Fact* also, that is, to the History of the World: and thus we are led to Revealed Religion.

CHAPTER II.

CHRISTIAN REVELATION.

475 THE *Idea* of the Course of the World, according to Natural Religion, is that it is directed by God's Providence so as to be in harmony with his Moral Government. The *Fact* which corresponds to this *Idea* is supplied to us by the Scriptures of the Old and New Testament.

We learn, from these Scriptures, that besides the transactions of men with men, the course of the world has also included transactions of God with men. There have taken place, in the History of the World, *Revelations* of the Commands and Promises of God, and of the Methods by which men are to be enabled to obey these Commands, and to receive the benefit of these Promises.

The central point of these Revelations is the coming of Jesus Christ upon Earth. To this point, all ancient History converges, by means of Early Revelations, and Prophecies, and the Selection of a special Nation, the Jews, as the Depositories of Prophecy: and by the successive failure of all attempts, made by moral and philosophical teachers, in other nations, to solve the perplexities of

man's condition, by the light of Reason, without the aid of Revelation. From this point, a new Dispensation begins.

476 A Revelation was made from God to man, through Jesus Christ. And this Revelation amply and entirely confirms the expectation and belief which Natural Religion offers to us (470, 472,) that Happiness is the appointed Reward of Virtue, Unhappiness the appointed Punishment of Sin; that there is a life, after this life, in which this Promise and this Threatening are realized; that the Soul survives the death of the present Body, and is the subject of God's Rewards and Punishments in another world.

477 Along with this confirmation of the expectation and belief which Natural Religion offers, the Revelation made to man, through Jesus Christ and his Disciples, conveys to us many Precepts of Duty, and Doctrines concerning the grounds of Duty, and concerning the best means of attaining Virtue. These Precepts and Doctrines confirm the Precepts and Doctrines of Morality which we have delivered, as far as these go: but the Christian Revelation offers to us many Truths concerning the grounds of Duty, and the means of attaining Virtue, which Morality alone cannot arrive at. These Precepts and Doctrines constitute *Christian Morality*.

478 The ground of our Duty, as presented to us by Religious Teaching, is, that it is the Will of God. The Will of God is the Supreme Rule of our Being.

But we also conceive (469) the Ideas which are contained in the Supreme Rule of our Being, namely, Benevolence, Justice, Truth, Purity, and Order, as parts of the Character of God. Hence, to conform our minds to those Ideas, is to conform our character to the Character of God. To approach to this Character, is to approach to *the Image of God*; and our Moral Progress may be spoken of as an approach to the Image of God. But in using such language, we must ever bear in mind the Supreme Reverence which is due to God, as the Perfect and Central Source of those moral qualities, in which we very imperfectly and distantly participate.

479 The Character of Jesus Christ, while upon the earth, was a Human Character of the highest Benevolence, Justice, Truth, Purity, and Obedience to Law. In his Character, we have the moral perfections, which we conceive in God, embodied and realized in man. Hence, *the Image of God in Christ* is the summit of the Moral Progress, which it is our Duty to pursue: and this

object is presented to us by Christian teaching, as the aim and end of our moral career.

480 But Jesus Christ did not only teach the Will of God, and exemplify the highest moral excellence of man. He also suffered death upon the cross; was buried; rose again the third day; and ascended into heaven. And we learn, from Christian teaching, that these events were most important and essential parts of the New Dispensation. We learn, that, through the efficacy of these events, we may be saved from the consequences of our sins.

481 This part of Christian Doctrine contains an answer to the inquiries which, as we have already said, the Moralist is driven to make of the Religious teacher, respecting the efficacy of Repentance, and the provision made by God for saving man from the effects of sin (260). The Christian Revelation speaks to us of God's Pardon and Forgiveness of Sins, through which those who have transgressed and repented of their transgressions, may in some cases be saved from the punishment of sin, and restored to his favour. It teaches us also* that the Rules of God's Government are such as not to admit of pardon directly and immediately upon Repentance, or by the sole efficacy of it. But it teaches, at the same time, what, without a Revelation, we could only have hoped, that the Moral Government of the world from the beginning was such as to admit of an interposition which might avert the fatal consequences of vice; and that vice, by that means, does admit of pardon. Christian Revelation teaches us, that the Laws of God's Government are compassionate, as well as simply good; and that he has provided an interposition, to prevent the destruction of human kind by the infliction of merited punishment, whatever that destruction, if not prevented, would have been. It was a part of the teaching of Jesus Christ, that (John iii. 15) *God so loved the world, that he gave his only-begotten Son, that whosoever believeth in him should not perish, but have everlasting life. God sent not his Son into the world to condemn the world, but that the world through him might be saved.* He interposed by sending his Son Jesus Christ, so as to prevent that execution of justice upon Sinners, which must have followed, if it had not been for such interposition.

482 Further: the Christian Revelation contains important teaching upon another of the difficulties of Morality (270); namely, the means provided for carrying on our moral progress, in addition to the ordinary powers of our own minds.

* Butler, *Anal.* B. II. c. 5.

Natural Religion suggests to us (472), that by this Progress the Soul is fitted for another Life ; but we learn from Christian Revelation, that there are conditions of this Progress, of which Natural Religion and Morality cannot inform us. These means are described to be ; a Belief in Jesus Christ, the Son of God ; and a Participation in the Spirit which God sent upon earth at his coming, and infused into the Souls of his Disciples. In the same portion of Christian teaching to which we have already referred, it is said (John iii. 18 and 36), *He that believeth on him is not condemned ; but he that believeth not is condemned already, because he hath not believed in the name of the only-begotten Son of God...He that believeth on the Son hath everlasting life ; and he that believeth not the Son shall not see life : but the wrath of God abideth on him.* Jesus Christ himself said (John iii. 5) : *Except a man be born of water and of the Spirit, he cannot enter into the kingdom of God.* He promised to his Disciples a Spirit which was to *guide them into all truth* (John xvi. 13). They were taught that it *helped their infirmities* (Rom. viii. 26). Hence this Spirit was called *the Comforter* (John xiv. 16), and was to *dwell in them* (Rom. viii. 9) ; and when Jesus Christ left the earth, his parting command was (Matth. xxviii. 19), *Go ye and teach all nations, baptizing them in the name of the Father, and of the Son, and of the Holy Spirit : and, lo, I am with you always, to the end of the world.*

483 By the help of the means thus provided by God, and by the aid of this Spirit, a Christian man is lead to approach to the Image of God in Christ (479) : he is in a special sense united with Christ, as the branch is united with the tree (John xv. 5), or as the members are united with the body (1 Cor. xii. 27 ; Eph. v. 30). His Soul receives nutriment from Christ ; which is expressed by saying, that he feeds upon Christ (John vi. 51) ; and is symbolically expressed by eating bread and drinking wine, in remembrance of him (Luke xxii. 19), and in obedience to his command.

484 Believers in Christ, thus united with him, are united with each other, as members of a living Body (Rom. xii. 4 ; 1 Cor. xii. 12 ; Eph. iv. 25). This Body, of which Christ is the head, is the Church (Col. i. 18). *He is the head of the body the Church.* To this Body, thus united in Christ, belong unity in itself, perpetual existence, and the possession of religious Truth, through the guidance of the Holy Spirit. This Body is the Universal or Catholic Church of Christ.

485 The Association of Believers in Christ, of which we have spoken, the Church, is bound together by means of certain habitual

formal social acts. There is one such act by which members of the Church are admitted into it, namely, *Baptism*. There is another such act by which they commemorate their union with Christ according to his command, namely, *the Lord's Supper*. There are acts by which they express their affections towards God, namely, acts of worship, *Prayer and Praise*. There are acts in which they express their Christian belief, or receive Christian Instruction from their Teachers; *Profession of Faith*, and *Preaching*. All these are *Christian Ordinances*.

486 The Souls of men are often also called their *Spirits*; especially when they are considered as the subjects of God's government. His government extending over such subjects is his *Spiritual Kingdom*. Hence religious matters are called *Spiritual*: and to these, as the concerns of an eternal world, are opposed *temporal* or *secular* matters, which belong only to time or to this world (*tempus, seculum*).

CHAPTER III.

CHRISTIAN MORALITY.

487 WE have now to treat of Christian Morality; not as being a different Morality from that Rational Morality of which we have hitherto treated; but as throwing new light upon the Morality of mere Reason, and giving it new supports. The Christian Religion recognizes the same Duties, which we have put forward on grounds of Reason; Duties of Benevolence, Justice, Truth, Purity, Order; and the general Duty of Moral and Intellectual Progress. But the Christian Religion invests all these Duties with new Sanctions; and carries our Progress much further, by making it not only a moral and intellectual, but a Religious Progress. The Religious Progress of our affections and thoughts carries us towards a condition, in which all Special Duties are the necessary development and manifestation of Religious Principles of Action. If we had, in this work, to treat of Religion as our primary and principal subject, it might be the more proper course to begin with Religious Principles of Action, and from them, to deduce Special Rules of Action. Such is the course often followed by Religious Teachers. But since our primary and principal subject is Morality, we shall adopt, in treating of

Religious Morality, that order of matters which we have already found to be presented to us, by the nature of our subject.

488 We may add, that Christian Teaching nowhere presents to us any Authoritative Scheme or System of Duties and Principles, which we reject, in taking the guidance of our own system. The indications of System, in the notices which we have on such subjects, in the New Testament, are vague and various. Christ, in his teaching, recognizes the division of Duties, into Duties towards God, and Duties towards our neighbours. *Matth. xxii. 37 : Thou shalt love the Lord thy God with all thy heart, and with all thy soul, and with all thy mind. This is the first and great commandment. And the second is like unto it: Thou shalt love thy neighbour as thyself. On these two commandments hang all the Law and the Prophets.* And in like manner, in *Mark xii. 30.* This is said of the Law of Moses; but it is spoken of that Law, as being, what in the apprehension of the Jews it was, a complete body of human Duties. We shall explain our Duties towards God, when we come to speak of our Religious Culture. Taking the Ten Commandments as the summary of the Law of Moses, the first four refer to Duties towards God. The fifth, sixth, seventh, eighth and ninth commandments declare Obligations, rather than Duties. We have already referred to the Rules, *Thou shalt obey thy Parents; Thou shalt not kill; Thou shalt not commit adultery; Thou shalt not steal; Thou shalt not utter a solemn falsehood;* as expressions of the Rights of Obedience, Personal Security, Marriage, Property, Contract. The tenth commandment, *Thou shalt not covet,* is, however, a Moral Precept, and not a Law in the strict sense of the term.

489 The Christian teachers justly considered that Obligations are included in Duties, and do not need to be separately enjoined by the Moralist. They also conceived all Duties to be included in the Duty of Benevolence. Thus St Paul says (*Rom. xiii. 8*), *Owe no man anything (that is, reckon no Duty), but to love one another. He that loveth others hath fulfilled the Law. This, Thou shalt not commit adultery, Thou shalt not kill, Thou shalt not steal, Thou shalt not bear false witness, Thou shalt not covet, and if there be any other commandment, it is briefly comprehended in this saying, Thou shalt love thy neighbour as thyself.* When we come to treat of our religious progress, we shall have to speak of this Benevolence or Love, as a Christian Principle of action.

490 In following out the moral Principles of action into

their results in special Duties, the Relative Duties formerly mentioned (171) are naturally arranged according to the Relations to which they belong. Accordingly, we have enumerations of the principal Relations, with their corresponding Duties, in various parts of the New Testament; especially in the two Epistles of St Paul, to the Ephesians (chap. vi.), and to the Colossians (chapters ii. iii.). These two enumerations agree very nearly: and state the Relative Duties of Wives and Husbands; Children and Parents; Servants and Masters. In the Epistle to the Romans (chap. xiii.), we have the relative Duties summarily enjoined; *Render unto all their dues*; with an especial notice of the Duty of Obedience to government.

Duties, as enjoined upon us by Christian teaching, and on Christian Grounds, are *Christian Duties*.

491 We shall now proceed to collect the principal Precepts with regard to Duties, which occur in the New Testament: arranging them according to the Heads of Duty which we have already found it convenient to adopt: namely; Duties of the Affections: Duties respecting Property and other objects of Desire: Duties connected with Truth: Duties connected with Purity: Duties of Obedience and Command. We had, besides these, to speak of Intellectual Duties, and in doing this, we are led to speak of man's Moral Education, and of Religion, as a necessary part of this. The Duties thus arising have, for their object, man's Religious Progress.

CHAPTER IV.

CHRISTIAN PRECEPTS CONCERNING DUTIES OF THE AFFECTIONS.

492 THE Christian Precepts concerning Duties of the Affections include the *Moral* Precepts formerly given (174—185); but carry the teaching farther, both as to its requirements and its motives. Beginning from the obligation to abstain from all violence, these precepts inculcate the duty of controlling and repressing all intention of violence, and all the affections which give rise to such intentions: they inculcate also the duty of fostering and exercising affections of good-will with corresponding intentions

and actions. They enjoin the virtues which consist in the habits of such affections, intentions, and actions. These duties and these virtues are enforced by motives depending upon religious truths. Some of these Precepts are the following.

493 In Matth. v. 21, Christ says, *Ye have heard it was said by them of old time, Thou shalt not kill, and whosoever shall kill shall be in danger of the judgment.* This is the command of law; but the precept of duty goes much further: *Whosoever shall be angry with his brother man without a cause, or who shall use reviling and contemptuous words to him, shall be in danger of the judgment of God and the fire of hell.* And again, ver. 24, *Leave thy gift before the altar, and go thy way: first be reconciled to thy brother, and then come and offer thy gift,* and hope for the favour of God. And these duties extend to adversaries, as well as to friends (191). Thus ver. 25, *Agree with thine adversary quickly whiles thou art in the way with him.* Be ready to dismiss thine enmity, and to disclaim it on the first occasion. It is a duty to dismiss from our hearts all desires of revenge and retaliation. Thus ver. 38, *Ye have heard that it hath been said (in the Law of Moses), An eye for an eye, and a tooth for a tooth; but I say unto you, that ye make not any such rule the measure of your affections.* Instead of retaliating evil, be ready to submit to it. *Resist not evil; but whosoever shall smite thee on the right cheek, turn to him the other also.* Suppress all emotions of anger, even such as are excited by personal violence, so far as your personal resentments are concerned. Not only is anger to be thus suppressed, but the opposite affection of love is to be entertained instead. Thus ver. 43, *Ye have heard that it hath been said, Thou shalt love thy neighbour and hate thine enemy: but I say unto you, Love your enemies. Bless them that curse you; do good to them that hate you, and pray for them that despitefully use you and persecute you; that ye may be the children of your Father which is in heaven: for he maketh his sun to rise on the evil and on the good, and sendeth rain on the just and the unjust.* These precepts are also recorded in St Luke vi. 29—35, where they are summed up with this (verse 36), *Be ye merciful, as your Father also is merciful.*

494 The like precepts against revenge and anger are given by the Apostles of Christ. Thus St Paul says to the Romans (xii. 19), *Dearlly beloved, avenge not yourselves, but rather give place unto wrath: (either, give way to the wrath of an adversary; or rather, leave the punishment of wrong to God; according to what follows :) for it is written, Vengeance is mine; I will repay, saith*

the Lord. In like manner he writes to the Thessalonians (1 Thess. v. 14), *Be patient toward all men: see that none render evil for evil to any man.* And St Peter (1 Pet. iii. 9) says the same thing. *Not rendering evil for evil, or railing for railing: but contrariwise, blessing; knowing that ye are thereunto called that ye should inherit a blessing.* St James (i. 19), says, *Let every man be slow to wrath: for the wrath of man worketh not the righteousness of God.* St Paul says to the Ephesians (Eph. iv. 31), *Let all bitterness, and wrath, and anger, and clamour, be put away from you, with all malice.* He gives the same injunction in nearly the same words to the Colossians (Col. iii. 8). To the Corinthians he says (1 Cor. xiv. 20), *In malice be ye children, but in understanding be ye men.* He calls the angry affections *carnal* (1 Cor. iii. 3; so St James iv. 1); and speaks of *the works of the flesh* (Gal. v. 19), among which he mentions *hatred, variance, wrath, strife, seditions, heresies, envyings, murders.* The forgiveness of injuries is inculcated. Christ taught his disciples (Matth. vi. 14), *If we forgive men their trespasses, your heavenly Father will also forgive you: but if ye forgive not men their trespasses, neither will your Father forgive your trespasses.* And accordingly, St Paul says (Col. iii. 12), *Put on therefore, as the elect of God, holy and beloved, bowels of mercies, kindness, humbleness of mind, meekness, longsuffering; forbearing one another, and forgiving one another, if any man have a quarrel against any; even as Christ forgave you, so also do ye.*

495 The opposite affection, Love, is inculcated by Christ, at first as including in its spirit our obligations towards men: as in Matth. xix. 19, and xxii. 39, *Thou shalt love thy neighbour as thyself: on these commandments hang all the Law and the Prophets.* So Mark xii. 31. Yet in referring to the nature and extent of the affection which he enjoined, he called it a *new commandment.* (John xiii. 34), *A new commandment I give unto you, That ye love one another; as I have loved you, that ye also love one another:* which again is repeated John xv. 12, and again, xv. 17. Accordingly St John often repeats such injunctions in his Epistles; as 1 John iii. 11, *This is the message that ye heard from the beginning, that we should love one another.* And so, 2 John 5; and 1 John ii. 7. Though the commandment was old, the light which Christ had brought into the world made it new. 1 John ii. 8, *A new commandment I write unto you, because the darkness is past and the true light now shineth. He that saith he is in the light, and hateth his brother, is in darkness even until now. He that loveth his brother abideth in the light. But he that hateth his brother is in darkness.*

Again, 1 John iv. 7, *Beloved, let us love one another: for love is of God; and every one that loveth is born of God, and knoweth God. He that loveth not knoweth not God; for God is love.* And after referring to the love of God for us, as shown in his sending his Son to be the propitiation for our sins, he adds, ver. 11, *Beloved, if God so loved us, we ought also to love one another.*

St John extends his injunctions to actions. (1 John iii. 18, 17, 16), *My little children, let us not love in word, neither in tongue, but in deed and in truth. Whoso hath this world's goods, and seeth his brother have need, and shutteth up his bowels of compassion from him, how dwelleth the love of God in him? We ought to lay down our lives for the brethren.* In the same manner, St Paul says (Rom. xiii. 8, 9, 10, and Gal. v. 14), that *all the commandments are comprehended in this one saying, Thou shalt love thy neighbour as thyself: that he that loveth another hath fulfilled the Law:* for he adds (Rom. xiii. 10), *Love worketh no ill to his neighbour, therefore love is the fulfilling of the law.* To the Ephesians he says (Eph. v. 2), *Walk in love, as Christ also hath loved us.* To the Thessalonians (1 Thess. iii. 12), *The Lord make you to increase and abound in love one towards another:* and in many other places. St James calls the precept above referred to a Royal Law, as governing all our duties. James ii. 8, *If ye fulfil the royal law according to the Scripture, Thou shalt love thy neighbour as thyself, ye do well.*

496 The affection here inculcated is described also by other names, as *brotherly love* (*φιλαδελφία*) (Heb. xiii. 1). The term particularly used by the Apostles, and especially by St Paul, is that which we usually translate *charity* (*ἀγάπη*, translated in the Latin *caritas*, from *charus* or *carus*, whence *charity*). St Paul (1 Cor. xiii. 4) describes this affection; *Charity suffereth long and is kind; envieth not; vaunteth not itself; is not puffed up; doth not seek her own; is not easily provoked; thinketh no evil; [beareth all things πάντα στέγει;] hopeth all things; endureth all things.* And this virtue he describes as a proper object of Christian pursuit (1 Cor. xiv. 1), *Follow after charity,* (Col. iii. 14), *Above all these things, put on charity, which is the bond of perfectness.* So 1 Tim. vi. 11, 2 Tim. ii. 22, where the word is the same, though translated *love* in the former place. So Peter (2 Pet. i. 7), *Add to brotherly kindness, charity (ἐπιχορηγήσατε... ἐν τῇ φιλαδελφίᾳ ἀγάπην)* as an additional step in Christian virtue. And this is the word which is translated *love* in many of the passages above quoted, as 1 John iv. 8, *ὁ Θεὸς ἀγάπη ἐστίν: God is love.*

Other terms are also used for the affections of this kind. Thus

Matth. v. 7, *Blessed are the merciful, for they shall obtain mercy* (ἐλεήμονες: but in Luke vi. 36 the Greek word is οἰκτιρῶνες). Σπλάγχνα οἰκτιρῶν, *bowels of mercies*, are enjoined (Col. iii. 12). In 1 Pet. iii. 8, we have a similar expression translated *pitiful* (εὐσπλαγχοὶ); but Eph. iv. 32 *tender-hearted*. *Compassionate*, συμπαθεῖς (1 Pet. iii. 8), is a term also used.

497 The word for *pity* (ἐλεημοσύνη), came to signify the evidence of pity which is given by bounty to the poor. It had this signification among the Jews. So Matth. vi. 1, *Take heed that ye do not your alms before men to be seen of them*. The word *alms* is contracted from ἐλεημδσύνη, *eleemosyne*; as is the case with the corresponding words in other European languages, (Ital. *Elimosina*, *Limosina*. Span. *Limosna*. Old Fr. *Almosne*, *Aumosne*, whence modern Fr. *Aumone*. German *Almosen*. Anglo Saxon *Ælmesse*, *Ælmes*). In Luke xi. 41; xii. 33, we have *give alms*. (So Acts iii. 2; ix. 36; x. 2, 4, 31; xxiv. 17.) In like manner the word *charity* in English is often used in the sense of alms.

498 *Meekness* is a Christian virtue often enjoined. Thus Matth. v. 5, *Blessed are the meek, for they shall inherit the earth* (οἱ πραεῖς). And xi. 29, *Learn of me, for I am meek and lowly in heart: and ye shall find rest unto your souls*. St Paul (Gal. v. 23) enumerates *meekness* among *the fruits of the spirit*, and enjoins it in many places, (Gal. vi. 1; Eph. iv. 2; Col. iii. 12; 1 Tim. vi. 11; 2 Tim. ii. 25; Tit. iii. 2; so Jam. i. 21, and iii. 13; 1 Pet. iii. 15).

499 We are to be meek as to our own claims, and attentive to the claims of others. (Phil. ii. 4), *Look not each man on his own things, but each on the things of others*. (Eph. v. 21), *Submitting yourselves one to another in the fear of God*. (1 Pet. v. 5), *Yea, all of you be subject one to another, and be clothed with humility*. (Phil. ii. 3), *In lowliness of mind let each esteem other better than themselves*. (Rom. xii. 10), *Be kindly affectioned one to another* (φιλόστοργοι), *with brotherly love, in honour preferring one another*. So (Rom. xiii. 7), *Render honour to whom honour is due*. Which St Peter (1 Pet. ii. 17) puts more largely, *Honour all men*. The expression of this feeling is courtesy. (1 Pet. iii. 8), *Be courteous* (φιλιόφρονες). Other marks of good-will are inculcated; as to exercise hospitality (1 Pet. iv. 9), *Use hospitality one to another without grudging*: to avoid quarrels. (Rom. xii. 18), *If it be possible, as much as lieth in you, live peaceably with all men*.

500 The above precepts condemn anger when it is caused by something which thwarts our desires. But religion, as well as

morality, encourages virtuous indignation against what is wrong; and permits the expression of this effect by words and acts. Of this we have examples in Jesus Christ himself, (Mark iii. 5), *He looked round about him on them with anger, being grieved at the hardness of their hearts.* And the like feeling is expressed (Matth. xxiii. 13—17) in words, where he says, *Woe unto you, Scribes and Pharisees, hypocrites! Woe unto you, blind guides! Ye fools and blind!* And this language he uses even to his disciples (Luke xxiv. 25), *O fools and slow of heart to believe all that the prophets have spoken.* St Paul uses the like language (Gal. iii. 1), *O foolish Galatians, who hath bewitched you, that ye should not obey the truth?* St James's expression is nearly equivalent (Jam. ii. 20), *Wilt thou know, O vain man, that faith without works is dead?* We have the like feeling expressed in act (John ii. 15), *When he had made a scourge of small cords, he drove them out of the temple, and poured out the changers' money, and overthrew the tables.* St Paul recognizes blameless anger, and only limits its duration (Eph. iv. 26), *Be ye angry, and sin not; let not the sun go down upon your wrath.* And to the Corinthians (2 Cor. vii. 11) he reckons certain feelings of this kind among the results of *godly sorrow.* *What carefulness it wrought in you, yea, what clearing of yourselves, yea, what indignation, yea, what fear, yea, what vehement desire, yea, what zeal, yea, what revenge!* (πρόσῃν σπουδῆν, ἀλλὰ ἀπολογία, ἀλλὰ ἀγανάκτησιν, ἀλλὰ φόβον, ἀλλὰ ἐπιπόθησιν, ἀλλὰ ζῆλον, ἀλλὰ ἐκδίκησιν.) And he rejoices that they had vindicated themselves with such feelings. Indignation, and carefulness, or earnestness, are here combined with *zeal*; which is often mentioned as a term of praise (Rom. x. 2), *I bear them (the Jews) record, that they have a zeal of God, but not according to knowledge.* So (2 Cor. ix. 2), *Your zeal hath provoked many.* And so in other places (Acts xxii. 3; Phil. iii. 6), *Zeal* is spoken of approvingly, so far as it is *Zeal*, though condemned as *Mistaken Zeal.* The term is used with reference to special objects. Thus to the Corinthians (1 Cor. xiv. 12), *Forasmuch as ye are zealous of spiritual gifts, seek that ye may excel to the edifying of the church.* (Tit. ii. 14), *He gave himself for us, that he might redeem us from all iniquity, and purify unto himself a peculiar people, zealous of good works.*

501 Earnestness is enjoined in other expressions, as (2 Cor. viii. 16), *God put the same earnest care in the heart of Titus for you* (σπουδῆν). (Heb. ii. 1), *We ought to give the more earnest heed to the things which we have heard, lest at any time we let them slip* (περισσοτέρως ἡμᾶς προσέχειν). (Jude 3), *Beloved, when I*

gave all diligence to write unto you of the common salvation, it was needful for me to write unto you and exhort you that ye should earnestly contend for the faith which was once delivered unto the saints (ἐπαγωνίζεσθαι). Expressions including the notion of striving and contending are often used. As (Luke xiii. 24), *Strive to enter in at the strait gate* (ἀγωνίζεσθε). So 1 Tim. vi. 12, *Fight the good fight of faith, lay hold on eternal life* (ἀγωνίζου τὸν καλὸν ἀγῶνα). And 2 Tim. iv. 7, *I have fought a good fight, I have finished my course, I have kept the faith.* (Col. i. 29), *That we may present every man perfect in Christ Jesus. Whereunto I also labour, striving according to his working, which worketh in me mightily* (ἀγωνιζόμενος κατὰ τὴν ἐνέργειαν αὐτοῦ). Also (2 Pet. iii. 14), *Be diligent that ye may be found of him in peace, without spot and blameless* (σπουδάσατε). (2 Cor. viii. 7), *Ye abound in everything, in faith, in utterance, in knowledge, in all diligence* (πάσῃ σπουδῇ).

502 The injunctions not to return evil for evil, and rather (1 Cor. vi. 7), *to take wrong*, and to submit to revilings and blows, do not prohibit Christians from protecting themselves by the aid of laws against violence and contumely. The Magistrate is described by St Paul as *a minister of God, appointed to execute wrath on the man that doeth evil* (Rom. xiii. 1); and by St Peter, as *sent for the punishment of evildoers* (1 Pet. ii. 13). Accordingly, we find St Paul appealing to the existing laws, and expressing indignation at the violation of them. Thus when the magistrates who had put St Paul and Silas in prison at Philippi offered to release them (Acts xvi. 37), *Paul said unto them, They have beaten us openly uncondemned, being Romans, and have cast us into prison: and now do they thrust us out privily? nay verily; but let them come themselves and fetch us out.* When Ananias commanded those who stood near Paul to smite him on the mouth (Acts xxiii. 3), *Paul said unto him, God shall smite thee, thou whited wall: for sittest thou to judge me after the law, and commandest me to be smitten contrary to the law?* And when at Cæsarea Paul was urged to go to Jerusalem, to be there tried on the charges which were brought against him by the Jews, he protected himself by his legal privilege, and said, *I appeal unto Cæsar.*

503 These precepts which have been adduced are not to be received as positive and rigorous laws which are to be applied literally to external acts. When they make mention of external acts; as in the precept, *Whosoever shall smite thee on the right cheek, turn to him the left. And if any man will sue thee at the*

law, and take away thy coat, let him have thy cloak also: that these precepts are not to be thus literally interpreted, is evident from what has been said respecting the conduct of the Apostles themselves. The precepts are to be understood as Moral Precepts; that is, as enjoining internal acts, control of the will and intention, a discipline of the affections, and the promotion of a certain disposition. The precepts indicate the disposition at which Christians are to aim, as the opposite of that resentful unyielding temper, which would return a blow for a blow, and would insist on every particle of its right.

504 The reasons which in these precepts are connected with the injunction, must be accepted in several cases as imperfectly expressing the Christian ground of the duty. Thus, in the injunction Matth. v. 25, *Agree with thine adversary, it is added, lest at any time the adversary deliver thee to the judge, and the judge deliver thee to the officer, and thou be cast into prison: verily I say unto thee, Thou shalt by no means come out thence, till thou hast paid the uttermost farthing.* Such a suggestion must be considered as recommending a placable disposition for its external advantages, in the first place; in order that the acquisition of such a disposition on grounds of prudence, might prepare the way for a true application of it on grounds of religion. In like manner, he who is angry with his brother without a cause, and who reviles him, is said to be in danger of the judgment and of the council, that is, of human tribunals; but from the context it appears, that the condemnation of God is implied, as the true ground of the warning, in these clauses, as well as where it is expressed by the fire of hell. The Benevolent Affections are enjoined as the command of God.

505 But further: Christians are urged to imitate their heavenly Father, and their Saviour Christ. *Do good to them that hate you, that ye may be the children of your Father which is in heaven: Be ye merciful, as your Father also is merciful. If ye forgive men their trespasses, your heavenly Father will also forgive you: forgiving one another, even as Christ also forgave you.* So St Peter (1 Pet. ii. 23), *Christ left us an example, who when he was reviled, reviled not again; when he suffered, he threatened not.* And Christ enjoins, *As I have loved you, that ye also love one another.* So St John, *If God so love us, we ought to love one another. Love is of God. God is love.* Again, our love of our neighbour is the evidence of our love of God. *Whoso shutteth up his compassion from his brother, how dwelleth the love of God in him?* So (1 John

iv. 20), *If a man say, I love God, and hateth his brother, he is a liar: for he that loveth not his brother whom he hath seen, how can he love God whom he hath not seen? And this commandment have we from him, That he who loveth God, love his brother also.* Christians are also reminded that they are brothers, by being all children of one Father; and as brothers, bound to love one another. In opposition to the *works of the spirit* (Gal. v. 22) which are required of Christians, and which are *love, joy, peace, longsuffering, gentleness, goodness, faith, meekness, temperance*; all angry affections are called *works of the flesh*, as it is declared that *they which do such things shall not inherit the kingdom of God.*

CHAPTER V.

CHRISTIAN PRECEPTS CONCERNING PROPERTY AND OTHER OBJECTS OF DESIRE.

506 SUCH kindly affections towards our neighbours as have been above spoken of, show themselves in giving to them what they need: and Christian Precepts enjoining such duties are mixed with those just quoted. But the kindly affections were there urged upon us in opposition to the angry ones; we are now to consider the precepts in which they are urged in opposition to the love of property, which when predominant, is *covetousness*. Thus, in the Sermon on the Mount (Matth. v. 42), *Give to him that asketh thee, and from him that would borrow of thee turn thou not away.* So (Luke xiv. 13), *When thou makest a feast, call the poor, the maimed, the lame, the blind: and thou shalt be blessed; for they cannot recompense thee: for thou shalt be recompensed at the resurrection of the just.* (Acts xx. 35), Paul says to the Ephesian elders, *I have shewed you all things, how that labouring ye ought to support the weak, and to remember the words of the Lord Jesus, that it is more blessed to give than to receive.* So to the Corinthians (2 Cor. ix. 6, 9), *He which soweth sparingly, shall reap also sparingly; and he which soweth bountifully, shall reap also bountifully. Every man according as he purposeth in his heart, so let him give; for God loveth a cheerful giver. And God is able to make all grace to abound toward you, that ye always having all sufficiency in all things may abound to every good work.*

So Paul commends the Philippians for their sending him assistance: and says (Phil. iv. 17), *Not because I desire a gift, but I desire fruit that may abound to your account.* He calls it a sacrifice acceptable, well pleasing to God; and adds, *But my God shall supply all your need according to his riches in glory by Christ Jesus.* So (1 Tim. vi. 17—19), *Charge them that are rich in this world, that they be not highminded, nor trust in uncertain riches; but in the living God, who giveth us richly all things to enjoy; that they do good; that they be rich in good works; ready to distribute, willing to communicate; laying up in store for themselves a good foundation against the time to come, that they may lay hold on eternal life.* (Heb. xiii. 16), *To do good and to communicate forget not, for with such sacrifices God is well pleased.* And St James (Jam. ii. 15, 16), *If a brother or sister be naked and destitute of daily food, and one of you say unto them, Depart in peace, be ye warmed and filled (that is, express a good wish for them); notwithstanding ye give them not those things which are needful for the body, what doth it profit?* So St John (1 John iii. 17), *Whoso hath this world's good, and seeth his brother have need, and shutteth up his bowels of compassion from him, how dwelleth the love of God in him?* and St Peter says (1 Pet. iv. 10), *As every man hath received the gift, even so let him minister the same one to another, as good stewards of the manifold grace of God.*

507 The considerations by which these duties are urged upon Christians, are, that they are the means of obtaining God's favour. In some of the passages, it might appear as if the act of giving money, were represented as directly leading to a reward in heaven: as when Christ (Luke xvi. 9) exhorts his disciples, *Make to yourselves friends of the unrighteous Mammon.* So St Paul (2 Cor. ix. 6, 9), *He which soweth sparingly, shall reap also sparingly, and he which soweth bountifully, shall reap also bountifully.* (Heb. vi. 10), *God is not unrighteous to forget your work and labour of love, which ye have showed toward his name, in that ye have ministered to the saints, and do minister.* But it is evident, by the general tendency of Scripture, that such acts are enjoined, as evidences of our love to men; and thus, of our love to God. St Paul says that when they are not the results of such affections they are valueless. (1 Cor. xiii. 3), *Though I bestow all my goods to feed the poor, and have not charity, it profiteth me nothing.*

508 The first Christians were a small portion of the civil community in which they lived; and had it for a main object of

their lives, to exhibit their abhorrence of the prevailing vices of the society, out of which they had been called. Among these vices, love of money and want of compassion for the poor had a prominent place. The Christians made their protest against these vices, by discarding all regard for money. Christ had said to the rich young man who asked what he should do to attain eternal life (Matth. xix. 21; Mark x. 21; Luke xviii. 22), *If thou wilt be perfect, go and sell all that thou hast, and give to the poor, and thou shalt have treasure in heaven.* And in pursuance of such injunctions, the early Christians had their property common (Acts iv. 32), *The multitude of them that believed were of one heart and of one soul; neither said any of them that ought of the things which he possessed was his own; but they had all things common.*

509 Still this was not carried so far as to put an end to difference of wealth. Peter said to Ananias, respecting his property: (Acts v. 4), *Whiles it remained, was it not thine own? and after it was sold, was it not in thine own power?* For (Acts xi. 29) *The disciples (at Antioch), every man according to his ability (which was therefore various), determined to send relief unto the brethren which dwelt in Judæa.* So (1 Cor. xvi. 2), *Upon the first day of the week let every one of you lay by him in store, as God hath prospered him (for the collection for the saints);* which expression implies that each person possessed the produce of his own employments. So (1 Tim. vi. 17), *Charge them that are rich in this world,* implies that some Christians were rich.

510 It is evident that St. Paul did not approve of the poor living at the expense of the rich; for even though engaged in the labours of his ministry, he wrought for his own living, and repeatedly urges his example upon his converts. Acts xx. 34, 35: *Ye yourselves know that these hands have ministered unto my necessities, and to them that were with me. I have shewed you all things, how that so labouring ye ought to support the weak, and to remember the words of the Lord Jesus, how he said, It is more blessed to give than to receive.* So (1 Thess. ii. 9), *Labouring night and day, because we would not be chargeable unto any of you, we preached unto you the gospel of God.* And (2 Thess. iii. 8), *Neither did we eat any man's bread for nought, but wrought with labour and travail night and day, that we might not be chargeable to any of you: not because we have not power, but to make ourselves an ensample unto you to follow us. For even when we were with you, this we commanded you, that if any would not work, neither should he eat.* And thus (Eph. iv. 28), *Let him that stole steal no more;*

but rather let him labour, working with his hands, that he may have to give to him that needeth. So (Tit. iii. 14), *Let our people learn honest works (or trades), that they be not unfruitful.* The Corinthians are repeatedly reminded that he had not been burdensome to them (2 Cor. xi. 9; xii. 13). And he adds (14), *Behold, the third time I am ready to come unto you; and I will not be burdensome to you: for I seek not yours, but you: for the children ought not to lay up for the parents, but the parents for the children.*

511 As each person was thus exhorted to support himself, so was it urged as his duty to support the members of his family. (1 Tim. v. 8), *If any provide not for his own, and specially for those of his own house, he is worse than an infidel.* (16), *If any man or woman that believeth have widows, let them relieve them, and let not the church be charged, that it may relieve them that are widows indeed; that is, that are destitute of natural supporters.* And (4), *If any widow have children or nephews, let them (the children) learn first to shew piety at home, and to requite their parents; for that is good and acceptable before God.*

512 Hospitality is often recommended in such passages. Hospitality to our friends is a practice that does not need a religious sanction. Hospitality to strangers was urged upon the early Christians with some reference to their special circumstances, and those of the times. Thus (1 Pet. iv. 9), *Use hospitality one to another without grudging.* (Heb. xiii. 2), *Be not forgetful to entertain strangers: for thereby some have entertained angels unawares.* (Rom. xii. 13), *Distributing to the necessity of the saints; given to hospitality.*

513 With regard to riches, Content is recommended. 1 Tim. vi. 6, *Godliness with contentment is great gain; for we brought nothing into this world, and it is certain that we can carry nothing out. And having food and raiment, let us be therewith content.* St Paul urges this by his own example (Phil. iv. 11), *I have learned, in whatever state I am, therewith to be content.*

514 In connexion with such precepts, are the warnings to Christians not to set their hearts on riches. (Matth. iv. 19), *Lay not up for yourselves treasures upon earth, where moth and rust doth corrupt, and where thieves break through and steal...for where your treasure is, there will your heart be also.* And to this effect is the saying of Jesus after his answer to the rich young man (Matth. xix. 23; Mark x. 23; Luke xviii. 24), *How hardly shall they that have riches enter into the kingdom of God!* which is more distinctly explained in (Mark x. 24), *How hard is it for them that*

trust in riches to enter into the kingdom of God! This is further illustrated by St Paul (1 Tim. vi. 9), *They that will be rich, fall into temptation and a snare, and into many foolish and hurtful lusts, which drown men in destruction and perdition. For the love of money is the root of all evil; which while some have coveted after, they have erred from the faith, and pierced themselves through with many sorrows.* So (Luke xii. 15), *Take heed, and beware of covetousness; for a man's life consisteth not in the abundance of the things which he possesseth.* And covetousness is enumerated among the vices (Rom. i. 28; 1 Cor. v. 11; vi. 10). And (Eph. v. 5; Col. iii. 5), we are told that *a covetous man is an idolater, and that covetousness is idolatry; money being the idol.*

Christians are to be *not greedy of filthy lucre* (*αἰσχροκερδεῖς*); this is said of bishops (1 Tim. iii. 2; Tit. i. 7), of deacons (1 Tim. iii. 8), of elders (1 Pet. v. 2).

515 Christians are warned, not only against the love of money, but also against tenaciousness with regard to their rights. Thus (1 Cor. x. 24), *Let no man seek his own, but every man another's advantage.* (xiii. 5), *Charity seeketh not her own.* (vi. 7), *Now therefore there is utterly a fault among you, because ye go to law with one another. Why do ye not rather take wrong? Why do ye not rather suffer yourselves to be defrauded?*

516 When the desires and affections with regard to human possessions are thus controlled and subdued, it becomes easy to carry into effect the rules of justice relative to such matters. Accordingly, St Paul reproves the Corinthians for finding any difficulty in doing this. (1 Cor. vi. 5, 4), *I speak to your shame. Is it so, that there is not a wise man among you? no, not one that shall be able to judge between his brethren? If ye have judgments of things pertaining to this life, set them to judge who are least esteemed in the church.* The most eminent persons in the early church had higher offices than judging concerning property. The objects of Christian teaching, at that time, were not the reformation and pure administration of the laws, for which civil society itself provides; but the reformation and purification of men's hearts. Hence, we do not find in the New Testament such earnest and frequent condemnation of injustice and false judgment as are common in the Old Testament. These latter refer to a community in which religion was the acknowledged basis of law; and where, therefore, the just administration of law was a high religious duty.

517 Justice, in the wider sense of Equity, is enjoined. (Col.

iv. 1), *Masters, give unto your servants that which is just and equal; knowing that ye also have a Master in heaven.* (Phil. iv. 8), *Things which are just* are recommended along with things which are *true, honest, lovely, of good report.* And (Tit. i. 8), *A bishop must be just, as well as a lover of hospitality, a lover of good men.*

518 Perhaps to some readers, justice in matters of property may seem to be made light of, in the parable of the unjust steward, whom *the lord* (that is, his lord) *commended* (Luke xvi. 8), and of the unjust judge (Luke xviii. 6) of whom Christ said, *Hear what the unjust judge saith.* But it is to be recollected that a parable is a mode of illustrating some one truth; and is not to have its subordinate parts drawn into inferences. The parable of the unjust steward is put forwards to illustrate the duty of foresight; the prudence of godliness. The steward's lord commended him as having acted with foresight and prudence, which evidently he had, though not with honesty. The parable is intended, not to illustrate the relative value of prudence and honesty, but of prudence and that imprudence which disregards a future life. The unjust steward is put forward as an example of the *children of this world*, who are opposed to the *children of light.* They are the wiser of the two *in their generation*; but if we look beyond their generation, their wisdom is folly. In the same manner, the parable of the unjust judge is put forth to illustrate the efficacy of prayer, and not the character to which prayer is addressed, as it is stated (ver. 1.) *He spake a parable to them to this end, that men ought always to pray, and not to faint.*

CHAPTER VI.

CHRISTIAN PRECEPTS CONCERNING TRUTH.

519. THE same desires and affections which tend to the appropriation of the property of others, often lead to fraud and falsehood; and thus, the warnings to Christians already quoted, bear upon the subjects now under consideration. But there are many precepts more especially directed to these subjects; as (1 Thess. iv. 6), *This is the will of God: that no man go beyond and defraud his brother in any matter: because that the Lord is the avenger of all such, as we also have forewarned you and testified.* And to the

Corinthians he says reproachfully (1 Cor. vi. 8), *Ye do wrong, and defraud, and that, your brethren. Know ye not that the unrighteous shall not inherit the kingdom of God?* To the Ephesians (Eph. iv. 25), *Putting away lying, speak every man truth with his neighbour; for we are members one of another.* And to the Colossians (Col. iii. 9), *Lie not one to another, seeing ye have put off the old man with his deeds; and have put on the new man, which is renewed in knowledge after the image of him that created him.*

520 Such attributes as *true*; *faithful* as a promiser (Heb. x. 23; xi. 11); *faithful* to him that appointed him (Heb. iii. 2); *sincere*; are constantly used as praise. It is mentioned among the signs of the perilous times that shall come (2 Tim. iii. 2), that men shall be *truce-breakers, false accusers*. (*ἄσπονδοι, διάβολοι*). But such terms as *faithful, sincere*, and the like, are more commonly used with reference to the relation between God and man. The constant exhortations of Christian teachers to the love of our neighbour, and their warnings against those desires which lead to fraud, lying, breach of promise, and the like; make it almost unnecessary for them to condemn such offenses expressly. The words which are translated by *honest*, in our version, are, for the most part, such as imply qualities respected and admired by men, like *honestum* in Latin: as *καλὰ* in (Rom. xii. 17), *Provide things honest in the sight of all men.* (2 Cor. viii. 21), *Providing for honest things, not only in the sight of the Lord, but also in the sight of man.* (xiii. 7), *I pray to God that ye do no evil...but that ye should do that which is honest.* (1 Pet. ii. 11), *I beseech you, abstain from lusts...having your conversation honest among the Gentiles; that, whereas they speak against you as evil-doers, they may by your good works which they shall behold, glorify God.* So *σεμνὰ* (Phil. iv. 8), *Finally, brethren, whatsoever things are true, whatsoever things are honest, whatsoever things are just, whatsoever things are pure, whatsoever things are lovely, whatsoever things are of good report; if there be any virtue, and if there be any praise, think on these things.* (1 Tim. ii. 2), *Pray for kings, and all that are in authority: that we may lead a quiet and peaceable life in all godliness and honesty.* (*σεμνότητι*).

CHAPTER VII.

CHRISTIAN PRECEPTS CONCERNING PURITY.

521 THE Christian is enjoined to be free from the dominion of sensual, as well as of covetous, desires : pure, as well as honest. These epithets are joined (Phil. iv. 8), *Whatsoever things are honest, whatsoever things are just, whatsoever things are pure* (ὅσα ἀργά). The same word is used (1 Tim. v. 22), *Keep thyself pure*. (1 John iii. 3), *Every man that hath this hope in him purifieth himself, even as he is pure*.

The same word is used to express conjugal chastity (Tit. ii. 5 ; 1 Pet. iii. 1). But much more than mere observance of legal obligation is required, in this as in other cases. (Matth. v. 27), *Ye have heard that it was said by them of old time, Thou shalt not commit adultery: but I say unto you, That whosoever looketh on a woman to lust after her, hath committed adultery with her already in his heart. And if thy right eye offend thee, pluck it out, and cast it from thee; for it is profitable for thee that one of thy members should perish, and not that thy whole body should be cast into hell*. So by St Paul *lasciviousness* (ἀσελγεία) is condemned, as well as the acts to which it leads (Gal. v. 19), *The works of the flesh are manifest, which are these: Adultery, fornication, uncleanness, lasciviousness...of the which I tell you before, as I have told you in time past, that they which do such things shall not inherit the kingdom of God*. So 1 Cor. vi. 9, 10. Also (Eph. v. 3), *Fornication and all uncleanness...let it not be once named among you; as becometh saints; neither filthiness (αἰσχρότης), nor foolish talking and jesting, which are not convenient*. (Col. iii. 5), *Mortify your members which are upon the earth; fornication, uncleanness, inordinate affection (πάθος), evil concupiscence (ἐπιθυμίαν κακῆν)...for which things' sake the wrath of God cometh on the children of disobedience*.

Other expressions are also used; as (1 Tim. v. 6), *She that liveth in pleasure is dead while she liveth* (σπαταλώσα). This word is also used by St James in his denunciation of woe against luxurious and tyrannical men. (James v. 5), *Ye have lived in pleasure in the earth, and been wanton (ἐτρυφήσατε καὶ ἐσπαταλήσατε)*.

522 Christian teaching urges an especial argument against fornication (1 Cor. vi. 15—20), *What! know ye not that your body is the temple of the Holy Ghost which is in you, which ye have of God;*

and ye are not your own? for ye are bought with a price: therefore glorify God in your body, and in your Spirit, which are God's. The same argument is used (1 Cor. iii. 16), *Know ye not that ye are the temple of God? If any man defile the temple of God, him shall God destroy.*

523 Other sins of lust are spoken of as the extremes of human depravity, when God gives men up unto vile affections (Rom. i. 20, and 1 Cor. vi. 9).

524 The conjugal union is commended, and its duties sanctioned. (Heb. xiii. 4), *Marriage is honourable in all, and the bed undefiled.* (1 Cor. vii. 3), *Let the husband render unto the wife due benevolence; and likewise also the wife unto the husband. The wife hath not power of her own body, but the husband: and likewise also the husband hath not power of his own body, but the wife.* (1 Thess. iv. 3), *This is the will of God, even your sanctification, that ye should abstain from fornication: that every one of you should know how to possess his vessel in sanctification and honour; not in the lust of concupiscence, even as the Gentiles which know not God.* And (1 Tim. v. 14), *I will that the younger women marry, bear children, guide the house.*

525 There are passages in which St Paul intimates it to be his private opinion, that, under the circumstances of the time, it was better then for Christians to abstain from marriage: but he does not deliver this as the Divine command. Thus (1 Cor. vii. 25), *Concerning virgins, I have no commandment of the Lord; yet I give my judgment as one that hath obtained mercy of the Lord to be faithful. I suppose therefore that this is good for the present distress; I say, that it is good for a man so to be; namely, to be a virgin or unmarried.* In verses 32, 33, he explains further the reasons of this advice, which belongs especially to the condition of his disciples as Christians, occupied by religious duties. *I would have you without carefulness. He that is unmarried careth for the things that belong to the Lord, how he may please the Lord. But he that is married careth for the things that are of the world, how he may please his wife.* He adds (28), *But and if thou marry, thou hast not sinned; and if a virgin marry, she hath not sinned.* He had in the previous part of the chapter (6—9) given the same advice to unmarried and widows, with the same limitation: *I speak this by permission, and not of commandment:* and he repeats it again in like manner in the end of the chapter.

526 The conjugal union is further invested with a religious significance. (1 Cor. xi. 11), *Neither is the man without the woman,*

neither the woman without the man, in the Lord. For as the woman is of the man, so is the man also by the woman. (Eph. v. 23), The husband is the head of the wife, even as Christ is the head of the church...Husbands, love your wives, even as Christ also loved the Church, and gave himself for it...So ought men to love their wives as their own bodies. He that loveth his wife loveth himself. For no man ever yet hated his own flesh: but nourisheth and cherisheth it, even as the Lord the Church. For we are members of his body, of his flesh, and of his bones. For this cause shall a man leave his father and mother, and shall be joined unto his wife, and they two shall be one flesh. This passage (Gen. ii. 24) had already been quoted by Christ (Matth. xix. 4; Mark x. 5), He answered and said unto them, Have ye not read that he which made them at the beginning made them male and female; and said, For this cause shall a man leave father and mother, and shall cleave to his wife; and they twain shall be one flesh? Wherefore they are no more twain, but one flesh. What therefore God hath joined together, let not man put asunder.*

527 The precepts of the New Testament which speak of cases in which marriage may be annulled, have a reference to the law of the Old Testament. Moses had commanded (Deut. xxii. 1), That if a man marry, and *his wife find no favour in his eyes*, he should write her a bill of divorcement, and send her away. After this, she might be married to another man, but never to her former husband. The practices which, in virtue of this law, prevailed among the Jews at the time of Christ's coming, led to a question which was proposed to him, (Matth. xix. 3; Mark x. 2), *The Pharisees came unto him, tempting him, and saying unto him, Is it lawful for a man to put away his wife for every cause?* He answered as in the passage just quoted, referring to the first institution of marriage by God, and ending, *What therefore God hath joined together, let not man put asunder. They say unto him, Why did Moses then command to give her a writing of divorcement, and to put her away? He saith unto them; Moses, because of the hardness of your hearts, suffered you to put away your wives; but from the beginning it was not so. And I say unto you, Whosoever shall put away his wife, except it be for fornication, and shall marry another, committeth adultery, and whoso marrieth her which is put away doth commit adultery.*

528 The part of this passage in which it is said that Moses gave the Jews his command *because of the hardness of their hearts*, appears to imply, like the rest of Christ's teaching, that the Chris-

tian was to aim at a higher degree of moral purity than was placed before the Jew. The Jew was commanded or permitted to put away his wife *if she found no favour in his eyes*: the Christian was enjoined to aim at making the marriage union as complete as it was *in the beginning*, at its first institution. The latter part of the passage appears, to some commentators, to refer to a case in which the putting away the wife and the marrying another are part of the same design; such a design is declared to be adulterous. They urge, that if the passage be understood without this connexion, the Law of Moses permitted or commanded adultery. They also urge, that a settled unfitness in the minds of two persons may be a greater obstacle to the ends of marriage, than the condemnation, mistrust, and grief occasioned by a bodily sin. But to this latter argument, it may be replied, that bodily sin may properly be made the ground of a judicial proceeding, because it is a thing capable of proof, and for the most part operating inevitably upon all persons' minds in the same manner, in virtue of the universal affections and habits of mankind: but that the permanent unfitness of two minds to the conjugal union is not capable of proof, since the effects of transient passion, caprice, or design, are not distinguishable from permanent unfitness of mind; and further, that it does not appear that, in any case, such unfitness may not be overcome, by cultivating those affections which religion and morality enjoin us to cultivate; kindness, gentleness, meekness, patience, cheerfulness. It may also be remarked, that the cultivation of such affections, in such a case, will be prosecuted more resolutely and successfully, if the parties believe that the marriage cannot be dissolved merely because this task of self-cultivation is imperfectly executed; and if they further believe that such an ordinance respecting marriage is sanctioned by the Divine command.

529 It was a question among the early Christians, whether religious disbelief in Christ, on the one side, annulled the marriage. St Paul gives his opinion, not the Divine Command. (1 Cor. vii. 12), *To the rest speak I, not the Lord: If any brother hath a wife that believeth not, and she be pleased to dwell with him, let him not put her away. And the woman which hath an husband that believeth not, and if he be pleased to dwell with her, let her not leave him. For the unbelieving husband is sanctified by the wife, and the unbelieving wife is sanctified by the husband: else were your children unclean, but now are they holy. For what knowest thou, O wife, whether thou shalt save thy husband? Or how knowest thou, O man, whether thou shalt save thy wife? It is to*

be observed, that the Greek word by which the consent is expressed (*συνευδοκεῖ*) implies *mutual* consent, according to the opinion of some.

It would appear, however, that if the wife or the husband were deserted on this account, St Paul held the marriage bond to be broken. Verse 15, *But if the unbelieving depart, let him depart; a brother or a sister is not under bondage in such cases; but God hath called us to peace.*

530 Christian teaching exhorts us to moderate, and rightly direct, other bodily desires, as well as those which belong to the conjugal state. Christians are enjoined to be sober and temperate. Thus, (1 Tim. iii. 2, and Tit. i. 7), *A bishop must be blameless as the steward of God; not self-willed, not soon angry, not given to wine, no striker, not given to filthy lucre, but a lover of hospitality, a lover of good men, sober, temperate.* So (Tit. ii. 2), *Teach that the aged men be sober, grave, temperate...The aged women likewise that they be in behaviour as becometh holiness,...not given to much wine, teachers of good things; that they may teach the young women to be sober.* (1 Tim. iii. 8), *Likewise must the deacons be grave, not double-tongued, not given to much wine, not greedy of filthy lucre.* And (ver. 11), *Even so must their wives be grave, not slanderers, sober, faithful in all things.* (Eph. v. 18), *Be not drunk with wine, wherein is excess (ἀσωτία, intemperance), but be filled with the Spirit.*

531 But the exhortations to Sobriety imply generally Sobriety of Mind, as well as bodily temperance. We see that *grave* is joined with *sober*. So (Eph. v. 4), the Apostle forbids *foolish talking and jesting* (*μωρολογία καὶ εὐτραπέλεια*): though the latter disposition, in Aristotle's Ethics, (there usually translated *facetiousness, pleasantry, wit,*) is enumerated among the virtues, and described as intermediate between the opposite vices of *βωμολοχία* and *ἀγροικία*, buffoonery and churlishness.

532 The Christian condition affords special reasons for this sobriety of mind. Thus (1 Thess. v. 5), *Ye are all the children of light, and the children of the day: we are not of the night nor of darkness. Therefore let us not sleep as do others, but let us watch and be sober.* (1 Pet. i. 13), *Gird up the loins of your mind, and be sober.* (iv. 7), *The end of all things is at hand: be ye therefore sober, and watch unto prayer.* (v. 8), *Be sober, be vigilant; because your adversary the devil, as a roaring lion, walketh about, seeking whom he may devour.* (Tit. ii. 11, 12), *The grace of God that bringeth salvation hath appeared to all men, teaching*

us that, denying ungodliness and worldly lusts, we should live soberly, righteously, and godly, in this present world.

533 Moderation in dress and ornaments is also enjoined. (1 Tim. ii. 9), *I will that women adorn themselves in modest apparel, with shamefacedness and sobriety; not with broided hair, or gold, or pearls, or costly array.* (1 Pet. iii. 3), *Ye wives; your adorning let it not be that outward adorning of plaiting the hair, and of wearing of gold, or of putting on of apparel.*

534 In addition to this, are enjoined regard to domestic duties, and moderation in the enjoyment of company, (Tit. ii. 4), *Teach the young women to be sober, to love their husbands, to love their children, to be discreet, chaste, keepers at home (οἰκουρός).*

535 Among the duties thus enjoined upon women, is that of being obedient to their own husbands (Tit. ii. 3). So (1 Pet. iii. 1), *Likewise, ye wives, be in subjection to your own husbands.* And St Paul says (Eph. v. 22), *Wives, submit yourselves unto your own husbands, as unto the Lord. For the husband is the head of the wife, even as Christ is the head of the Church.* In 1 Cor. xi. 7, St Paul says, *The man is the image and glory of God, but the woman is the glory of the man. For the man is not of the woman, but the woman of the man.*

This Duty, however, more properly belongs to the next chapter.

CHAPTER VIII.

CHRISTIAN PRECEPTS CONCERNING OBEDIENCE AND COMMAND.

536 THE duty of obedience of children towards their parents, which is recognized by the laws and customs of all countries, is sanctioned by Christian teaching. (Matth. xv. 3), *Christ said unto them, Why do ye transgress the commandment of God by your tradition? For God commanded, saying, Honour thy father and mother, and, He that curseth father or mother, let him die the death: but ye say, that if a man refuse to his parents what they require on pretence that he has vowed it to sacred uses, and honour not his father or mother, he shall be free. Thus have ye made the commandment of God of none effect by your tradition.* And St Paul, in the same manner, refers to this part of the law of

Moses (Eph. vi. 1), *Children, obey your parents in the Lord, for this is right. Honour thy father, and mother; which is the first commandment with promise: that it may be well with thee, and thou mayest live long on the earth.* So (Col. iii. 20), *Children, obey your parents in all things, for this is well-pleasing unto the Lord.* And disobedience is mentioned (2 Tim. iii. 2) among the signs of the *perilous times* that shall come. *Men shall be lovers of their own selves, covetous, boasters, proud, blasphemers, disobedient to parents, unthankful, unholy, without natural affection.*

537 Natural affection, thus sanctioned by religion, is termed *piety* by the Christian teachers; as it was by the Roman and Greek writers. This piety must show itself in acts. (1 Tim. v. 4), *If any widow have children, or nephews, let them learn first to shew piety at home, and to requite their parents; for that is good and acceptable before God.*

538 Along with the duty of obedience in children, is inculcated the duty of good and gentle government in parents. (Eph. vi. 4), *Ye fathers, provoke not your children to wrath, but bring them up in the nurture and admonition of the Lord.* (Col. iii. 21), *Fathers, provoke not your children to anger, lest they be discouraged.*

539 There are other duties of the heads of families: as provision for bodily needs. (1 Tim. v. 8), *If any provide not for his own, and specially for those of his own house, he is worse than an infidel.* And (though said in the way of illustration) (2 Cor. xii. 14), *The children ought not to lay up for the parents, but the parents for the children.* Also government (1 Tim. iii. 4), *A bishop must be one that ruleth well his own house, having his children in subjection with all gravity.* A family contains servants, as well as children; and Christian teaching enjoins, between them and the masters, the duties of obedience on one side, and good government on the other. (Eph. vi. 5), *Servants, be obedient to them that are your masters according to the flesh, with fear and trembling, in singleness of your heart, as unto Christ: not with eye-service as men-pleasers, but as the servants of Christ, doing the will of God from the heart: with good will doing service, as to the Lord, and not to men...And, ye masters, do the same things unto them, forbearing threatening: knowing that your Master also is in heaven, neither is there respect of persons with him.* Nearly the same precepts and reasons are given (Col. iii. 22; iv. 1). So (Tit. ii. 9), *Exhort servants to be obedient unto their own masters, and to please them well in all things, not answering again; not purloining, but*

shewing all good fidelity, that they may adorn the doctrine of God our Saviour in all things. Also (1. Pet. ii. 18), *Servants, be subject to your masters with all fear; not only to the good and gentle, but also to the froward. For this is thankworthy, if a man for conscience towards God endure grief, suffering wrongfully. For what glory is it, if, when ye be buffeted for your faults, ye shall take it patiently? but if, when ye do well and suffer for it, ye take it patiently, this is acceptable with God.*

In this passage in St Peter, the word translated *servant* is οἰκέτης, *domestic*; in the passage from St Paul, it is δοῦλος, *slave*.

540 Some of the precepts respecting servants have an especial reference to their being bound to their masters as slaves; and also to the change which, it appears to have been expected by some, the acceptance of Christianity by masters and servants might produce in their domestic relation. (1 Tim. vi. 1), *Let as many servants as are under the yoke (slaves), count their own masters worthy of all honour, that the name of God and his doctrine be not blasphemed. And they that have believing masters, let them not despise them, because they are brethren (Christians), but rather do them service, because they are faithful and beloved, partakers of the benefit (of the Gospel).* And (1 Cor. vii. 21), *Art thou called being a servant (a slave)? care not for it: but if thou mayest be made free, use the opportunity, rather than omit to do so. For he that is called in the Lord, being a bondman, is the Lord's freeman: likewise he that is called, being free, is Christ's bondman. Ye are bought with a price (by Christ); therefore be not the servants of men, so that this shall interfere with your service of Christ.*

541 As Christians were thus enjoined to observe, respect, and heartily conform to the relations in families which were at that time established by law or usage, so were they enjoined to do the same with respect to the relations established in the State. Thus, Christ paid tribute to the State (Matth. xvii. 24—27), saying to Peter, *Lest we should offend them, go thou...thou shalt find a piece of money, that take, and give unto them for me and thee.* And (xxii. 21), he enjoined others to pay tribute: *Render unto Cæsar the things that are Cæsar's.* So St Paul (Rom. xiii. 7), *Render to all their dues: tribute to whom tribute is due; custom to whom custom; fear to whom fear; honour to whom honour.* And this is joined with general injunctions of obedience to magistrates (xiii. 1—5), *Let every soul be subject to the higher powers. For there is no power but of God: the powers that be are ordained of God. Whosoever therefore resisteth the power, resisteth the ordinance of*

God; and they that resist shall receive to themselves damnation. For rulers are not a terror to good works, but to the evil. Wilt thou then not be afraid of the power? do that which is good, and thou shalt have praise of the same: for he is the minister of God to thee for good. But if thou do that which is evil, be afraid; for he beareth not the sword in vain: for he is the minister of God, a revenger to execute wrath upon him that doeth evil. Wherefore ye must needs be subject, not only for wrath, but also for conscience sake. And (Tit. iii. 1), *Put them in mind to be subject to governments (ἀρχαῖς) and power's, to obey magistrates.* Also St Peter (1 Pet. ii. 13), *Submit yourselves to every ordinance of man, for the Lord's sake: whether it be to the king as supreme; or unto governors, as unto them that are sent by him for the punishment of evil-doers, and for the praise of them that do well. For so is the will of God, that with well-doing ye may put to silence the ignorance of foolish men, who speak of you as bad subjects. As free (in spirit), and not using your liberty for a cloke of wickedness (or sedition) (κακίας), but as the servants of God. Honour all men. Love the brotherhood. Fear God. Honour the King.*

542 The early Christians are here enjoined submission to the magistrates, as a course not only prudent, but also right and religious; *not only for wrath* (by reason of the menace of punishment), *but also for conscience sake: for the Lord's sake.* These powers, and the higher powers especially, are said to be *of God; to be ordained of God; to be the ministers of God:* to resist them is to resist the ordinance of God, and to incur danger of damnation.

The powers to which this applied, as appears by the condition of the early Christians, and by the facts, are the powers of the established government; they are called by St Paul *the powers that be;* and by St Peter, *every ordinance of man.* The term *King* appears to be also used, only because it was the name of the supreme magistrate at that time in that country.

543 And thus, in general, it is a Duty to obey the government established in the land where the Christian resides. The passages just quoted do not restrict this Duty to any form of government; and from the history of the times, we may infer that it is not confined to cases in which the ancient constitution, or the ancient line of sovereigns, subsists. For the constitution of the Roman State had recently been altered by violence, from a republican to an imperial form; and the ancient line of kings no longer ruled in Judæa.

Such passages, therefore, cannot afford any reason for imagining a religious Duty to oppose or disturb the existing government, in order to restore an ancient Constitution, or an ancient Dynasty.

544 On the other hand, these passages do not at all show that, in any State, it may not be the duty of *the powers that be* to alter the laws, to appoint new magistrates, new magistracies, and the like; and allowable in extreme cases, in cases of necessity (328), to alter the Constitution of the country, or to depose the Sovereign. Whether this is the case, must depend upon considerations belonging to Polity; in which religious as well as civil Polity must be taken into the account.

545 In a constitutional form of government, in which the whole or a large part of the citizens possess more or less political power, the Constitution, as much as the person or family of the Sovereign, may be considered as *the ordinance of man*, to which all are commanded to submit themselves. And every citizen, who thus possesses by Law a share of political power, is one of *the powers that be*. Every Christian, in such a situation, may and ought to exert his constitutional Rights, so far as they extend, both to preserve the State and the Laws from all needless and hasty innovation, and to effect such improvements in both as time and circumstances require; using the light of Religion as well as of Morality and Polity, to determine what really is improvement (see 237).

546 It is the office of the State to make Laws regulating the details of its Institutions, and the Duty of the Citizen to obey them (233). In like manner, in religious matters it is the office of the Church to make laws respecting the detail of its Institutions; and it is the Duty of the Christian to conform to such Laws. Laws, Rules, and Customs on such subjects, are *Christian Ordinances*; and will be treated of hereafter.

CHAPTER IX.

THE CHRISTIAN RULE OF CONSCIENCE.

547 WE have already spoken of Conscience; and have distinguished it into Conscience as Law, and Conscience as Witness (263). We have further stated, that our Conscience as Law, is

that view at which we have arrived, of the Supreme Law of our being ; and is thus, a stage in our Moral and Intellectual Progress (264). We have added, that we can never rightly assume that we have reached an ultimate stage in this Progress ; we must always continue to labour further to enlighten and to instruct our Conscience (269). We have further added, in anticipation of the present part of our work, that in attempting constantly to carry on this process towards its completion, we find the need of light and power which we can only hope to obtain from Religion (270).

Religion presents to us the Supreme Law of our being as the Will of God ; and hence, if we now inquire what is the Supreme Rule of Conscience, the answer can only be, that it is the Will of God. But the Will of God becomes the Rule of our Conscience, only by becoming known to us ; and it is an important question, where we are to look for that knowledge of the Will of God, which is to be the Rule of our Conscience. Religion is to aid us to instruct and enlighten our Conscience ; and we are led to inquire in what forms this instruction, and this light, are to be obtained.

548 The answer, in a general shape, can be no other than this ; that the Will of God, so far as it is made known to man, in whatever manner, is the Rule of man's Conscience. Conscience, as Law, is Morality, the Law of our being. But we have already seen, that we are led to consider Morality under two main aspects ; the Morality of Reason, and Christian Morality : both these give us a knowledge of the Will of God ; and these are the two main portions of the Supreme Rule of Conscience.

549 Christian Morality is the Will of God as revealed to us by the coming of Christ ; of which Revelation, the authoritative account is contained in the Scriptures. We here include the Scriptures of the Old, as well as of the New Testament, for both are parts of the same revelation. The Christian Morality, thus revealed, includes and comprises Rational Morality ; carries its claims much deeper into our Spiritual Being ; and invests it with far more certain and more powerful sanctions. Hence it may perhaps be thought by some, that Christian Morality supersedes the Morality of Reason ; and that the Scriptures alone may be declared to be the Supreme Rule of the Christian's Conscience.

But a little consideration will show us that we cannot look upon the Scriptures of the Old and New Testament as the Supreme Rule of Conscience ; that is, as the sole and complete Rule of Human Action.

550 This will appear from the Scriptures themselves, as well as from the reason of the case. The Scriptures themselves take for granted the light of reason, and the natural knowledge of moral rules to which men are thus led. Thus St Paul says (Rom. ii. 14), *When the Gentiles, which have not the law (of the Scriptures), do by nature the things contained in the law, these, having not the law, are a law unto themselves. They show the work of the law written in their hearts; their conscience also bearing witness, and their thoughts the meanwhile accusing or else excusing one another.* The precepts of Scripture cannot be a rule to those who have not received the Scripture: and such persons have for their proper guide the suggestions of reason, *the law written in their hearts.* The writings of heathen moralists, and the whole history of heathen life, show that the heathen were aware of a moral rule, and of the guilt incurred by its violation. The conception of sin implies the assumption of a law: as St Paul says (Rom. iv. 15), *Where no law is, there is no transgression;* as St John also says (1 John iii. 4), *Sin is the transgression of the law.* Since then we ascribe sin to heathens, we must suppose them to have a moral law; and this law cannot be the precepts of Scripture, which have not found the way to them. The precepts of Scripture are not the sole rule of action for mankind.

551 But further; even Christians are referred to the natural sense of right on many occasions. Thus Christ says (Luke xii. 57), *Why even of yourselves judge ye not what is right?* St. Paul says (1 Cor. xi. 13, 14), *Judge in yourselves...doth not nature itself teach you?* and again (1 Cor. x. 15), *I speak as to wise men: judge ye what I say.* And the same application of the light of the reason, to judge of right and wrong, is implied, whenever Christ and his Apostles express indignation at offenses, not expressly forbidden in Scripture, but only necessarily condemned by inference from commands which are given. But it is to be remarked that, in Scripture, appeals to the natural conscience of man are very much mixed up with references to the revealed Divine commands. This results from the nature of the case; since the Divine commands contain a distinct promulgation of the main points of the natural moral law; and the law thus promulgated was appealed to, both as agreeable to reason, and enjoined by the will of God.

The religious teacher, instead of looking upon the moral law as the dictates of man's Reason, considers it as the law of God, who gave to man his Reason. But this does not prevent his

recognizing the law written on the heart of man, as well as the law inscribed on the tables of the Mosaic covenant.

552 There is another reason why we should not look upon the precepts of Scripture as the sole and complete rule of human action. Namely this: it was not the main object of the Scriptures to promulgate laws of human action, but to publish the mode by which men were to find favour with God. St Paul describes this very distinctly when he speaks to Timothy (2 Tim. iii. 15) of the *Scriptures, which are able to make thee wise to salvation*. For this purpose, Scripture has to teach us Doctrines, such as have already been spoken of, which the light of human reason could not discover. And the rules of human duty are there set forth, rather in proportion as their connexion with those Doctrines requires, than in such manner as to produce a complete body of moral rules, requiring nothing besides itself for the guidance of human life.

553 Further: if we consider the form, character, and spirit of the books of Scripture, it will appear that we cannot expect to find in them a complete and systematic body of moral rules. For the precepts which the Scriptures contain are of various kinds; some refer to moral conduct, others to ceremonies; some apply to all men, others to particular persons; some are temporary, others perpetual commands. Some precepts are delivered *by opinion*, or *by permission*. 1 Cor. vii. 6, *I speak this by permission* (*κατὰ συγγνώμην*): and verse 40, *After my judgment* (*κατὰ τὴν ἐμὴν γνώμην*), as counsels directed to particular times and conditions: other precepts are delivered *by commandment* (1 Cor. vii. 6) (*κατ' ἐπιταγήν*), as to be observed by all at all times. We must distinguish these kinds of precepts from each other; the particular from the general, the temporary from the perpetual; and this must be done by the light of reason.

Scripture itself does not always separate these kinds of precepts. Thus (Levit. xix. 18), we have the general precept, *Thou shalt love thy neighbour as thyself*; and in the next verse we have, *Thou shalt not sow thy field with mingled seed; neither shall a garment mingled of linen and woollen come upon thee*. No one will doubt that the former precept is a command for all men at all times, the latter a ceremonial command confined to the Jews. We allow the common reason of mankind to draw this distinction between the obligation imposed by these two successive verses; and we thus recognize the authority of human reason conjointly with that of Scripture, in defining the rules of human action.

554 Thus the precepts of Scripture are not the complete and sole Rule of human action *for us*, because they are evidently not intended by God to be so. The Will of God, in whatever manner made known to us, whether by Scripture, or by Reason, or by the joint light of the two, is our Rule of action. That by taking advantage of both, we may obtain a body of rules of action in harmony with the will of God as revealed in Scripture, we have endeavoured to show, in the Chapters on Christian Morality.

555 This body of morality is enjoined upon us as a part of the plan of man's salvation. James iv. 12, *There is one law-giver, who is able to save and to destroy.* And any part of the legislation which thus expresses the will of God, cannot be superseded by any other obligation. Thus St Peter and the Apostles declared (Acts v. 29), *We ought to obey God rather than men.* And (iv. 19), *Whether it be right in the sight of God to hearken unto you more than unto God, judge ye.*

556 Having thus taken a survey of the Christian Precepts which relate to special classes of Duties, we have still to speak of those religious Principles of action, of which all Duties are manifestations and developments (450). Our Progress towards the condition in which such Principles become operative in us, is our Religious Progress; as our Progress towards the condition in which Moral Principles become operative in us, is our Moral Progress. It is a Duty to aim at Religious Progress, as it is a Duty to aim at Moral Progress; for our Moral Progress is incomplete, except it go onwards so as to be also Religious Progress. A Belief in God is a part of our Moral and Intellectual Progress; and this Belief, once arrived at, gives a new aspect to our views of Duty and its foundations. We cannot stop short of this belief, and of its influence, without making the progress of thought with regard to the foundations of Duty come to a termination; and to acquiesce in such a termination, is contrary to the nature of the moral and intellectual progress at which we are bound to aim.

Our endeavours to promote this religious Progress in ourselves, or in others, may be termed *Religious Culture*. Such Religious Culture is one of our Duties: and as was said before of the Duty of Moral Culture (208), this Duty is of so fundamental and comprehensive a character as to include all other Duties. We must now attend to some of the parts of this Duty of Religious Culture of ourselves.

CHAPTER X.

NATURAL PIETY.

557 THE belief in God, which most men possess, as a part of their mental habits, from the first dawn of thought; which is unfolded into a distinct form in the course of their moral and intellectual culture; and which is supported and confirmed by many reasonings, drawn both from the material and the moral world, brings with it corresponding Duties of the affections. We have already said (176) that man has, among his natural affections, a deference for something better, wiser, more stable, more permanent than himself. This feeling finds its employment in our regards towards human Authority, especially when this Authority is manifestly combined with Goodness and Justice; and makes Reverence and Obedience to such Authority to be Duties. But in order that our view of Duty may be consistent with itself, these Affections of Reverence and Justice must be conceived as equally due, wherever these conditions of Authority, combined with Goodness and Justice, are conceived to exist; and as due in a greater and greater degree, in proportion as the Authority, the Goodness, and the Justice, are more complete. In our Idea of God, we include Supreme Authority over his creatures, along with perfect Goodness and Justice. To him therefore, in an eminent and especial manner, Reverence and Obedience are due.

558 This Duty has been acknowledged by the universal feelings of mankind in all nations and in all ages. Men have always and everywhere declared their belief in God, and have looked upon him as the proper object of the most profound Reverence. In rude nations, whose moral and intellectual nature was very imperfectly developed, the idea of God has been entertained in a coarse and confused manner, under the forms of Polytheism, Hero-worship, and the like. In such cases, the Character ascribed to Deity has been Power, rather than Authority, Justice, and Goodness; and the Affection has corresponded to the conception of the Character, and has been Fear, rather than Reverence. But when the moral attributes of God are more steadily apprehended, the Fear receives a mixture of Love, and becomes Reverence. And in proportion as the Goodness of God becomes more and more fixed in man's belief, Love predominates over Fear in the feelings which they have respecting him.

559 In like manner, Obedience to God has everywhere been recognized as a Duty. That he has made us what we are, and given us the faculties which we have, makes it right that we should obey him; for the Supreme Rule of our being, according to which right things are right, is what He has made it by his Will. The Rule of human action has been, in all stages of man's progress, commonly apprehended as identical with the Will of God. In proportion as the Rule of human action has been more completely conceived, and reduced to the Moral Principles of which we have spoken, Benevolence, Justice, Truth, Purity, and Order, those Principles have been conceived as attributes of God. And this identity, between the Will of God and the Supreme Rule of Human Action, being assumed, any special indications of the Will of God have been accepted, as having a supreme claim to our Obedience.

560 This is universally recognized with regard to those indications of the Will of God, which we discern in the constitution and circumstances of man. That man was *intended* by God, or by Providence, to follow this or that course, if the intention be allowed, is universally accepted as proving it *right* that he should follow such course. There are many indications of this kind, which all thoughtful men agree in acknowledging. We cannot doubt whether it was intended by the Creator that certain kinds of birds should do what they invariably do;—build nests, pair, feed their young, live in flocks, migrate. And when we look at man, as the naturalist looks at him, and find that property, marriage, civil society, trade, are habits of men quite as universal as the habits of birds just mentioned, we cannot doubt that the institutions are a part of the intention of Providence in the Creation of man, just as the habits of birds are a part of the intention of Providence in the creation of birds. And this intention of Providence makes it *right* that man should conform himself to these Institutions, and to the Rules which are necessary for the existence of the Institutions in each community. We do not say that it is *right* for mere *animals* to conform themselves to these intentions of Providence; because for animals there is no rightness. They act by Instinct, which feels, not by Reason, which sees, a Rule. They are driven forward by implanted impulses, men by conscious intention. But man, himself capable and conscious of intention, can apprehend the existence of intention in his Maker, and cannot help apprehending it as a paramount Rule for his own intention.

561 The acknowledgment of the intention of the Creator as the proper Rule of man's actions, has sometimes been expressed by

saying that man ought to live according to Nature; and that Virtue and Duty are according to Nature, Vice and moral Transgression contrary to Nature. For man's nature is a Constitution, in which Reason and Desire are elements; but of these elements, it was plainly intended that Reason should control Desire, not, that Desire should overmaster Reason. And in a like form might be presented some of the reasonings which we have employed. In order to establish the Duties of the Affections, for instance, we might have said, that it is plainly according to nature that men should be drawn together by Affection, and yet should possess distinct Rights;—that therefore those benevolent Affections are Duties, which draw men together, as family affection and the like; and those defensive Affections are also Duties, which tend to the maintenance of Rights, as indignation at wrong.

562 The acknowledgment of the Intention of the Creator, as the proper Rule of our being, implies the acknowledgment of Obedience to his will as our Duty, and as the Source of Duties. When we include in our view the Idea of God, his Will, whether learnt from Revelation, or from reasoning, and from whatever course of reasoning, becomes the Supreme Rule of Human Action, and that from which all other Rules are derived. He it is who makes our Duty and our Happiness coincide; and whether we say that Moral Action will lead to Happiness because it is our Duty, or that it is our Duty because it will lead to Happiness, we rest the reality and force of our Moral Rules upon the idea of God, who has established this coincidence of Duty and Happiness.

563 But we are not bound to God merely by the bonds of the Duty of Obedience. There are Affections which are naturally and necessarily due to him, and which further bind us to him. We are bound to him by the ties of Gratitude for innumerable and immeasurable benefits which we have received; for from him we have received all that we have or are. We are bound to him by relations of Order, as being, by the nature of things, our Sovereign Master and Lord. We are bound to him by Love and Admiration, as containing in his essence the perfection of that Goodness and Justice which are the proper objects of Love and Admiration.

564 This, our Connexion with God by ties of Dependence, Obedience, and Affection, is often and fitly expressed by speaking of him as our Father, and the Universal Father of mankind. We are his children, and he is the proper object of our Filial Affection; only that our filial affection to Him may assume, and ought to assume, a character of entire and confiding Reverence, which has

no reserve, doubt, or limit; as the affection to our human parents sometimes may or must have.

565 Looking upon God as our Father, and the Father of all men, we are naturally led to look upon all men as our Brethren. All mankind form one great Family; and as all the mutual Duties and Services between the Members of a Family become manifestations and results of the Family Affections, when these are fully and freely unfolded, so all Duties and Services between the members of the Great Human Family (184) become results of the fraternal love which belongs to their condition as common children of one universal Father.

566 A sense of our Dependence, our Gratitude, our Reverence, when these feelings exist towards men, find their expression in various forms of language and other indications. But God does not present himself to us as a person to whom we can speak face to face. We conceive him as an Energy and Intelligence, producing, upholding, pervading, seeing, knowing, and judging all things. He created and unfolded, he continually preserves, continually observes us. In him we live and move. He is not far from every one of us. He is acquainted with our thoughts and feelings, as soon as they arise in our minds. Hence when our feelings of Dependence, Gratitude, and Reverence, take any definite shape in our thoughts, and become clothed in Conceptions and Images, we may conceive that these forms of our affection become known to him of themselves, without the use of words on our parts. But in fact, our affections cannot be very definitely clothed in conceptions and images, without at least the mental use of words; and for the most part, these forms of feeling, become more distinct by being uttered and heard by men among men. Besides, in the common participation of such feelings, and in the common contemplation of the conceptions and images in which they are clothed, there is an influence by which they become more intense in men's minds, and are communicated from one mind to others. Hence, to mould our feelings of Gratitude and Reverence towards God into words, will tend to cultivate these feelings both in our own minds, and in the minds of other men. Such feelings are *Natural Piety*; and this Piety may be promoted, by being expressed both in solitude, and in the company of men.

567 But we may not only express our feelings of Piety; we may direct these expressions to God. God is a Mind, in which are Intelligence, Purpose, Will, Thought, as in our own. We necessarily conceive him as a Person, and we can address ourselves to him

as a Person; this address must be made in our thoughts; for though God is near to each of us here, he is far off, or rather unapproachable, as an object of outward apprehension. And our internal addresses to God must necessarily be such as to imply that entire Dependence upon him, which is the first of the affections due to him. This may be implied, by humbly asking from him some of the benefits which he can give us. Such internal address of our thoughts to God, in which our dependence is expressed by words of Petition, are *Prayers*. Benefits, as they come from him, and express his Benevolence to us, are *Blessings*. And as we pray to God for future or continued Blessings, we express our gratitude for past Blessings in *Thanksgivings*. We express our admiration of God's character in *Praises*. Such expressions of Natural Piety have been common in all ages; although, for the most part, mixed with vague or arbitrary images and conceptions, arising from the imperfection of men's moral and intellectual, and still more, of their religious culture.

568 Prayer, Thanksgiving, and Praise, are properly and primarily the language of each man's thoughts to God, when the feelings of Natural Piety have been duly unfolded. A man, in his Private Prayers, asks for Blessings for himself, and especially for such Blessings as may aid him in his moral progress; for strength to resist temptation, and to elevate and purify his mind. But also, since the affections which are due to God, arise from the condition of human nature which is common to all men, men feel that a common expression of such feelings, by assemblies of men, is also suitable to their condition. Accordingly, Public Prayer, by assemblies of men, and other public expressions of religious feelings, have been employed in all ages and nations. Such acknowledgments of the dependence of man on God, and man's reverence for God, expressed in words or by other indications, are *Worship*; and men have in all times and places worshipped God; although their notions of Deity have often been gross and fantastical, and their worship often inconsistent with moral and rational views.

569 Public Worship by assemblies of men necessarily implies Places and Times appointed for such Ceremonies: and these Places, Times, and Ceremonies themselves, are naturally looked upon by men with a religious reverence: they are fixed by a rule, and separated from all common uses: they are *Sacred*. Special Sacred Places, as Temples, Fixed Sacred Times, as Festivals, appear to be universal dictates of Natural Piety. Religious Ceremonies are very various in various countries; but some, which may

appear to our Reason to be arbitrary, prevailed very extensively among the ancient nations, and from the earliest times; as *Sacrifices of Animals*. These Sacrifices were understood as an acknowledgment of Sin on the part of the Worshipers, a Supplication for Forgiveness, and a means of Propitiation.

570 The Natural Piety, of which we have spoken, is a part of our Duty; for it is a part of the Christian Piety, of which we shall have to speak. Paul spoke to the people of *Eystra* of God, as manifested to man's natural reason by the works of nature. God, he said, even before the teaching of Revelation, *left not himself without witness, in that he did good, and gave us rain from heaven, and fruitful seasons, filling our hearts with food and gladness* (Acts xiv. 17). And when he preached to the Athenians, taking occasion from an altar with the inscription *To the Unknown God*, he said (Acts xvii. 23), *Whom ye ignorantly worship, him declare I unto you*. And he went on to deliver the views of Natural Piety: *God that made the world and all things therein...hath made of one blood all nations of men for to dwell upon the face of the earth; and hath determined their appointed time, and the bounds of their habitation: that they might seek the Lord, if haply they might feel after him till they found him. And yet he is not far from every one of us; for in him we live, and move, and have our being; as certain also of your own poets have said, For we are his offspring*. So too the Psalms of David, which are adopted and confirmed by Christ and his disciples as a part of the Revelation of God, are full of the Recognition of God and his character, as manifested in the works of his creation. In these songs of Praise, God is constantly spoken of, as alike declared to us by the visible heavens and earth which surround us, and by the moral law which is within us; as in the nineteenth Psalm; *The heavens declare the glory of God, and the firmament showeth his handy-work*; and a few verses later, *The law of the Lord is perfect, converting the soul*. And Jesus Christ himself speaks to us of *God who clothes the lilies of the field, and without whom not a sparrow falls to the ground*. Thus the convictions of Natural Piety are adopted as a fundamental part of that belief which Christ and his Apostles taught.

The dictates of Natural Piety, in so far as they direct us to fixed times, places, and forms of worship, are also adopted and carried into detail by Christian ordinances; but for our purpose it is not necessary to dwell upon these in detail.

CHAPTER XI.

CHRISTIAN PIETY.

571 THE Duties and Affections which belong to Natural Piety are also, as we have said (570), a part of Christian Piety. The Duty of Obedience to God (548) is the foundation and measure of all other Duties. That which is wrong, is so because it is contrary to his Will. Moral Transgression derives an especial depravity from its being Sin against God. Sin is the object of his condemnation: it is spoken of, in figures borrowed from the constitution of humanity, as the object of his *Anger*. Obedience to his Will, and the Dispositions which produce such obedience, are the object of his Love. Sin will be the subject of his Punishment, Obedience of his Reward. There will be a *Resurrection of the dead* to this end (John v. 28): The hour is coming, when all that are in the graves shall hear the voice of the Son of God, and shall come forth; they that have done good unto the *Resurrection of Life*, and they that have done evil to the *Resurrection of Damnation*. And the life here spoken of is elsewhere called *Eternal Life*. Thus the Supreme Rule of Human Action, on which the final happiness or misery of each man depends, is identified with the Will of God, and receives its Sanction and its force from this identity.

572 The Will of God with regard to Human Actions is known to man, partly by Reason, and partly by Revelation. We have, in the preceding Book, given a view of that Morality which is supplied to us by our Reason; and in the present Book, we have added to it a view of Christian Morality, as it is supplied to us by the Scriptures of the New Testament. The Precepts there given point out the Christian's Duties, as they are expressed by means of special Precepts.

But the general views which the Christian Revelation discloses to us, also give us new light with regard to our Duties, and with regard to the Dispositions which are to lead us to perform them. We are taught, That our failures in Obedience to God's Will, our Sins, are to be repented of; that our Repentance must necessarily be addressed to God, and must take the form of a Supplication for his Mercy and Forgiveness, to be extended to us, notwithstanding our sins: that (481) God has provided a means by which we may find Mercy and Forgiveness; namely, the sending of his Son Jesus

Christ upon earth to suffer death for our sins, and to rise again for our Justification (Rom. iv. 25). We are taught further (482), that God has provided means not only for our Justification, but for our Sanctification; not only for the Remission of our sins, but also for the elevation of our nature to that Holiness (470) without which we cannot be admitted to his Blessedness.

573 These provisions for the Instruction, Pardon, and Sanctification of man, impose upon us a far larger Duty of Gratitude than the benefits which Natural Piety contemplates; inasmuch as the eternal life, and blessedness of the soul, thus provided for, are far greater benefits and evidences of God's Love, than mere human life, with its accompaniments as discerned by reason. The Christian's gratitude to God is founded mainly on his Christian blessings; and ought to be infinite as those blessings are infinite.

574 The Christian is especially taught to look upon God as his Father. Christ taught his disciples to begin their prayers with a recognition of this relation: *Our Father, which art in Heaven*. The special manner in which Christians become the sons of God, is often referred to. Thus 1 John iii. 1, *Behold, what manner of love the Father hath bestowed upon us, that we should be called the sons of God*.

This privilege of being the sons of God, implies, we are told, not only that we have had great benefits brought within our reach by his coming on earth, but that we may, as one of the greatest of these benefits, become like him. Thus in the passage just quoted, St John adds: *Therefore the world knoweth us not, because it knew him not. Beloved, now are we the sons of God: and it doth not yet appear what we shall be: but we know that when he shall appear we shall be like him*. St Paul carries this further (Rom. viii. 14): *As many as are led by the Spirit of God, they are the sons of God. For ye have not received the spirit of bondage again to fear (ye are not in the condition of slaves, who obey through fear merely); but ye have received the spirit of adoption, whereby we cry, Abba, Father. The Spirit itself beareth witness with our spirit that we are the children of God; and if children, then heirs; heirs of God and joint-heirs with Christ; if so be that we suffer with him, that we may be also glorified together*. And in the same way elsewhere (Gal. iv. 5) we are told that *God sent forth his Son...that we might receive the adoption of sons. And because ye are sons, God hath sent forth the Spirit of his Son into your hearts, crying, Abba, Father. Wherefore thou art no more a servant, but a son; and if a son, then an heir of God through Christ*. And the Apostles

naturally and forcibly urge this as a ground of the Love of God : as 1 John iv. 9, 19, *In this was manifested the love of God toward us, because that God sent his only begotten Son into the world, that we might live through him... And we love him, because he first loved us.*

575 The Love of God, our heavenly Father, like the love of a Human Father, tends to produce an Obedience of the Heart (284). So far as the Love of God is unfolded and established in the Christian's heart, it supersedes all other motives to obedience to the Moral Law, and becomes his constant and universal Principle of action.

576 The relation of Christians to each other, as Children, in an especial manner, of God their common Father, is urged upon them by the Apostles, as a motive for a brotherly Love, which ought to exist between them, and out of which all Duties to men must spring. Thus St John says, in a passage lately quoted (1 John iv. 11), *Beloved, if God so loved us, we ought also to love one another.* This mutual Love is constantly enjoined by the same Apostle as the evidence of our Love of God ; (1 John iv. 20), *If a man say, I love God, and hateth his brother, he is a liar.* The same is the general tenour of the whole of the Epistles of St John. St Paul, following the teaching of Christ, says (Gal. v. 14), that *all the commandments are comprehended in this one saying, Thou shalt love thy neighbour as thyself.*

577 This Christian Love of men as our brethren includes, as St Paul states in the passage just cited, all other duties ; and includes them in a form more complete than mere Morality can give them. This love will necessarily exclude all thought of mutual injustice and falsehood. The Christian teacher says (Acts vii. 26), *Ye are brethren ; why do ye wrong one to another ?* And (Eph. iv. 25), *Speak every man truth to his neighbour ; for we are members one of another.* Christianity taught men that they were to reject the tenacity of their own Rights, out of which opposition and unkindness rise, and were to seek each other's good as members of one family. The effect of this teaching showed itself in the manner in which, at the first preaching of the Apostles, the converts threw their possessions into the common stock (Acts iv. 34) ; and has constantly operated since, to make those who are Christians in spirit ready to give and glad to distribute, and specially careful of the interests and comforts of their neighbours. In this respect Christian Morality has introduced into the world a standard much higher than the Morality of Reason.

578 The Duty of Prayer to God, which is suggested by the feelings belonging to Natural Piety, is confirmed and more strongly enjoined by Revealed Religion. The Old Testament contains the account of God's more especial dealings with men, as shown in the History of the Jews, the nation selected to be the especial channel of his Dispensations. The passages in the Old Testament, which enjoin or take for granted, this Duty, are too numerous, and too familiar to our minds, to require to be cited. In the New Testament, this duty is still more earnestly enjoined. Christ taught his disciples (Luke. xiii. 1), *That men ought always to pray, and not to faint in such exertions.* And he himself taught his disciples how to pray; and spoke of many special occasions of prayer: thus (Matth. v. 44), *Pray for them that despitefully use you.* (Matth. ix. 38); *Pray ye the Lord of the harvest, that he will send forth labourers into his harvest.* And he was himself frequently engaged in earnest prayer. (Matth. xiv. 23; Mark vi. 46; Luke vi. 12; ix. 28; John xiv. 16; xvi. 26; xvii. 9; Matth. xxvi. 36; Mark xiv. 32). The injunctions and examples of the Apostles on this subject are perpetual. The same is the case with Thanksgiving. Christ says (Matth. xi. 25), *I thank thee, O Father, Lord of heaven and earth.* And (John xi. 41), *I thank thee, Father, that thou hearest me.* In Acts xvi. 25, *Paul and Silas prayed, and sang praises to God;* and so on, in innumerable other places. No duty is more frequently and strongly enjoined than these are.

579 It has been suggested, as a difficulty respecting the Duty of Prayer, that in prayer we desire God to alter the course of the world, in order to comply with our wishes, as if we mistrusted his goodness and wisdom. But to this we reply, that the things which we desire of God in our prayers are, for the most part, spiritual blessings. *Forgive us our trespasses. Lead us not into temptation. Deliver us from evil.* The course of things to which these events belong is the Spiritual Government of God (486), and to that Spiritual Government our prayers also belong. In the spiritual world, the prayers of believers are events as real as their temptations, their deliverance, their forgiveness; and the former events may very naturally be conceived to produce an effect upon the latter. There is therefore, in such prayers, nothing inconsistent with our belief in God's goodness and wisdom. And prayers for temporal blessings, as, *Give us this day our daily bread,* are rather to be understood as expressing our sense of our dependence upon God, than our desire that he should direct the

course of the world according to our wishes. Such prayers are the expressions by which our mere natural desires show, that though submitted to the will of God, they are not annihilated. We know that, except through the goodness of God, we cannot receive even our daily bread; and the desire of life, and of the supports of life, which religion cannot and does not seek to extinguish, she converts into a desire that God would give us what we need.

580 We are taught to combine, with our prayers to God, a *Resignation* to his will, whatever it may be, and a belief that what he does is for the best; whether he grant or refuse our prayers, and whether he give or take away apparent benefits. In the Prayer which Christ taught his Disciples to offer, he bids them say, *Thy will be done in earth as it is in heaven.* And though this clause expresses our Hope of the religious progress of men on earth, it also expresses our Acquiescence and Submission to the Will of God, whatever it may be. And Jesus Christ himself used this language in prayer as an expression of Resignation (Matth. xxvi. 42). The same lesson is enforced by the Apostles in their teaching. Thus (1 Pet. v. 6), *Humble yourselves under the mighty hand of God, that he may exalt you in due time; casting all your care upon him, for he careth for you.* And so iv. 19, *Let them that suffer according to the Will of God, commit the keeping of their souls to him in well-doing, as unto a faithful Creator.*

581 A main use of Prayer, however uttered, is to express and confirm a habit of Mental Worship. Christ himself said, when speaking of external forms of worship (John iv. 24), *God is a Spirit, and they that worship him must worship him in spirit and in truth.* And in comparison with the practice of ostentatious individual prayer which prevailed among the Jews, he enjoined Private Prayer (Matth. vi. 5). Such Private Prayer is indeed the natural utterance of piety, as we have already said. And this utterance will be both more significant and more likely to confirm the affections of piety, if it form a part of the business of each day. Private Prayer every Morning and Evening may be so employed, as to tend to fix upon our minds the thought of God, of his blessings, his laws, and the hopes and encouragements which he sets before us; and thus may aid in giving a moral and religious turn to our disposition and will during the whole course of our days.

582 Public Prayer and the other acts of Public Worship,

and the Disclosures made by him and his Disciples, concerning God's dealings with men, are Facts, which men could not know by the aid of Reason alone. Involuntary Ignorance of Facts is not culpable, as we have already said (343). But this does not excuse those to whom these Facts have been presented with adequate evidence. Such persons fall under the blame which lies upon all persons who neglect or reject the evidence of those Facts, which are of the highest importance in the right conduct of their lives.

588 When it is said, that—because the belief in Christian Religion was not necessary for the moral progress and final happiness of the ancients, or the heathen, who never heard of Christ,—therefore it cannot be necessary for us; we reply, that our moral progress is checked and destroyed, if we willingly stop, when we might go further; and if we do not use means of advance which are presented to us. Christianity affords to us means of moral progress, which the ancients and the heathen had not. If we refuse these, we are not in the condition in which they were, who never had them offered. If we reject the opportunity of becoming, in the especial Christian sense, the sons of God, we are in a very different condition from the pious heathen, who did all that their light enabled them to do, in order to approach to God. And this may be said, without our knowing, what perhaps the Christian revelation does not very distinctly teach,—the nature of the advantage, in the condition of final happiness, to which man's moral and religious progress leads—which the man, who has lived in Christian light, has, over the devout heathen who lived in unavoidable darkness:

589 In stating that men are blameable in disbelieving truths, after they have been promulgated, though they are ignorant without blame, before the promulgation; we follow the judgment of mankind, as formed in other similar cases. We attribute to a man an intellectual fault, we despise him as ignorant and confused in his thoughts, who thinks the earth to be flat, *now*, that it has so long been ascertained to be globular. We regard him as blind and foolish, if *now* he is not satisfied that the earth moves round the sun; though for so many centuries, the wisest and most clear-sighted of men never doubted that the earth was at rest. When such truths are once indisputably established as facts, we cannot help condemning those who reject the evidence of them. They violate the Duty of rational thought, of which we have spoken (350). And this is still more the case, in regard to moral truths.

We excuse those who in early and rude stages of society practise or praise plunder of strangers, slavery, polygamy, concubinage; but when the progress of the Standard of Morality (365) has shown that such things are immoral; if any one among us defends such practices, we no longer think him free from blame. We are indignant at the low morality of his doctrines; or at least we lament his moral blindness as his calamity. And in like manner with regard to Religion, although we do not blame, for their religious ignorance, the ancients, who could not know the Revelation of Christ, and the heathen, to whom it has not been preached; we do not excuse the moderns, who, now that there has taken place this great Revelation, elevating the moral views and spiritual hopes of men, refuse to believe the Truths thus established. They who do this, reject a light which has come into the world; and the blindness in which they remain is not only their misfortune, but their fault.

590 This view of the Duty of accepting Christian Truth; namely, that the Duty is incumbent upon men according to the opportunities which belong to their condition; agrees with the lessons of the Christian teachers. The duty of Believing in Christ, of accepting Religious Truth in general, is strongly urged by Christ and his Apostles. Yet this is not urged without regard to difference of opportunities. Christ taught (Luke xii. 48), *Unto whomsoever much is given, of him shall be much required.* When St Paul preached to the Athenians, after describing their past idolatry, he added (Acts xvii. 30), *And the times of this ignorance God winked at; but now commandeth all men every where to repent.* To the same effect, he preached at Lystra (xiv. 15), *The living God, which made heaven, and earth, and the sea, and all things that are therein: in time past suffered all nations to walk in their own ways: nevertheless he left not himself without witness.* This was joined with an exhortation to turn, now at length, to the living God. The whole scheme of the Christian Religion represented the Jewish Dispensation as an inferior and preparatory condition; in which men did not see the meaning and tendency of the commands which they obeyed, and were to be judged according to the imperfect light which they thus possessed. The Epistle to the Hebrews states this. (Heb. i. 1), *God, who at sundry times and in divers manners spake in times past by the prophets, hath in these last days spoken to us by his Son;* and then goes on to explain the superiority of Christ, in nature and office, to the ministers of the Old Testament. Again, St Paul says (Rom. ii. 12), *As many as have*

sinned without law (the law of Moses), *shall also perish without law ; and as many as have sinned in the law, shall be judged by the law.* So in St John (xv. 22), Christ says, *If I had not come and spoken to them, they had not had sin ; but now have they no excuse (πρόφασις) for their sin.*

591 When the truth of the Gospel is presented to men, those who do not accept it are charged with blindness and hardness of heart. Thus (Mark vi. 52), *They considered not the miracle of the loaves ; for their heart was hardened.* And when the Disciples referred his warnings to earthly matters, Christ said (Mark viii. 17), *Perceive ye not, neither understand ? Have ye your heart yet hardened ? Having eyes, see ye not ? and having ears, hear ye not ?* So (Mark iii. 5). And (John xii. 40), the expressions of Isaiah are applied to the Jews who had seen the miracles of Christ, and did not believe : *He hath blinded their eyes, and hardened their heart ; that they should not see with their eyes, nor understand with their heart, and be converted.* So Acts xix. 9, *Divers were hardened, and believed not.* And Christ (Mark xvi. 14) *appeared unto the eleven as they sat at meat, and upbraided them with their unbelief, and hardness of heart, because they believed not them which had seen him after he was risen.* And to the two disciples on the way to Emmaus he said (Luke xxiv. 25), *O fools, and slow of heart to believe all that the prophets have spoken !*

592 As in these and many other passages, blame is imputed to men when they reject revealed truth, so is it represented as a merit to believe and accept such truth. Thus Acts xvii. 11. The Berean Jews were *more noble (εὐγενέστεροι, of a better disposition) than those in Thessalonica, in that they received the word with all readiness of mind, and searched the Scriptures daily, whether these things were so.* And this is implied in all the commendation bestowed upon *faith* ; which, although it be not merely a speculative belief, includes belief of Christian truths. And as unbelief is threatened with punishment (Matth. xi. 21 ; Luke x. 13), *Woe unto thee, Chorazin ! woe unto thee, Bethsaida !* so is belief represented as the occasion of God's favour. (John i. 12), *As many as received him, to them gave he power to become the sons of God, even to them that believe on his name.*

593 We have spoken (589) of the Progress of Science, as illustrating the manner in which errors which are excusable at an earlier time, are inexcusable at a later period, when the truth has been more fully discovered and promulgated.

There is one material difference, however, between the course

of truth and knowledge, in Science, and in Religion. In the knowledge of scientific truth, men go on from step to step, at every step advancing to the knowledge of a new Truth; which new truth includes all that was true in previous knowledge, while it adds to it something more. Thus, the cycles and epicycles in which, according to the Ptolemaic system of astronomy, the planets moved round the earth, explained their motions, for the most part. The step made by Copernicus, consisted in adopting this explanation; adding to it the new truth, that the sun, not the earth, was the center of the motions. Kepler still retained the same explanation of the motions; but added again the new truth, that the epicycloid motion, duly corrected, might be conceived as elliptical motion. Such is ever the progress of human knowledge, retaining old truths, in spite of their mixture with error; and correcting them, where they are erroneous, by means of new truths. The last true doctrine contains all the previous true doctrines in the most general form; and contains, moreover, the new general truth.

But in Revealed Truth, the case is necessarily different from this. There, the Revelation contains all the Truth; and to this Truth, succeeding thoughts of men cannot add, though they may develope and methodize it. The doctrine, as revealed, contains all the true Doctrines which can be unfolded out of it. The first form of the Truth is, here, the most comprehensive and fundamental. In Science, earlier views, so far as they are true, are summed up in the latest Discovery. In Religion, later views are true, so far as they are derived from the original Revelation. If Christianity were a Science, additions might be made to it from time to time; but as it is a Revelation, we can only have, from time to time, new expressions, arrangements, and combinations, of the same original fundamental Truths.

594 We may, however, observe further, that the progress of moral and intellectual culture among men, and the changes which philosophical opinions undergo, may make it necessary, for the sake of a due apprehension of the truth, and for the sake of a mutual understanding among men, that the original and fundamental Truths of the Christian religion should be expressed in various manners, on various occasions, and at various times. Abstract terms, and especially those which contain a reference to the powers of the mind, the operations of thought, and the most general relations of things, derive their significance and force, in a great measure, from the prevalent systems of philosophy. Such

terms are necessarily employed, in expressing the relation of man to God, and the facts which affect the religious condition of the human soul. Hence, it may be necessary to modify the expression of religious belief, in consequence of revolutions in philosophy, or other changes in the prevalent habits of thought. Statements, which, at one time, did not convey an erroneous meaning, may come to be assertions of errors; if the significations of the terms which they involve be, in the course of years, so limited or enlarged, so defined and distinguished, that the statements declare more or less than the truth. In such cases the *Creed*, or formal Declaration of Religious Belief, may need to have some Articles added or altered. But it is to be remarked, that such additional Articles are not additions to the matter, but corrections of the form, of the Creed. They do not denote the acceptance of Truths hitherto unknown, but the exclusion of Errors hitherto unnoticed. The truths of Revelation are always the same; but the means which man possesses, to express them without Error, vary, as the habits of thought and of language vary; and it has been possible, and being possible, it has been the Duty of the church of Christ, to make, from time to time, such alterations in her Creeds, that they might express, with more complete exclusion of Error, the Truth as revealed by God to man.

595 Our Religious Belief is a part of that Religious Culture, of which we have spoken (450). A true apprehension of our relation to God, and of the conditions of his dealings with us, is the foundation and source of the Affections of Christian Piety, which we have already noticed.

CHAPTER XIII.

CHRISTIAN EDIFICATION.

596 As it is our business to seek a knowledge of Christian Truth, and to aim at Christian Dispositions for ourselves; so is it our Duty, also, to endeavour to impart these benefits to other persons. As it is (249) a Moral Duty to promote the Moral Progress of other men, as well as our own; so is it a Christian Duty to promote the Christian Progress of other men. Chris-

tian Love is a stronger motive for doing this than any other kind of benevolence can be; and the Christian progress of the Soul is a so much higher object to aim at, than mere moral progress of the Mind, that it may very fitly excite men to more strenuous exertions. The Christian, who has made any progress in Christian knowledge and Christian dispositions, cannot help wishing that all other men should be as he is. He has received a Gospel of Good Tidings, which he must needs impart to all whom he loves; and this very Gospel has taught him to love all men. He would, if possible, communicate to every human creature the Call to repentance, the Offer of Pardon, the Light, the Purification, the Hope, and the Joy, which he has, in a greater or less degree, found.

597 This Christian desire impels men to teach Christian truths and Christian precepts, to those who are under their more immediate influence; to their children, and their dependents. They bestow, on those who thus belong to them, *Christian Education*. They employ themselves in forming, in such persons, Christian Dispositions, and in unfolding their minds to the Truths of the Christian Revelation. But further; the Christian is naturally impelled by Christian love to endeavour to promote a Christian progress, not only in those whose Education in some measure especially belongs to him, but also in all whom he has any occasion of influencing; his neighbours, his fellow-citizens, the whole world, so far as his opportunities extend. He is bound to aim at the Christian improvement of those with whom he has intercourse; to teach them, if by position or gifts he be especially qualified as a Christian Teacher: above all, to avoid doing or saying anything which may interfere with their Christian progress.

This duty of mutual religious improvement and Christian culture is frequently enjoined in the Scripture. (Eph. vi. 4), Parents are directed to *bring up their children in the nurture and admonition of the Lord*. The Colossians are exhorted (Col. iii. 16), *Let the word of Christ dwell in you richly...teaching and admonishing one another*. And Heb. iii. 13, *Exhort one another daily; (x. 24), Let us consider one another, to provoke unto love and good works*. Thus the Christians were to exhort each other to what was good; to admonish and warn them who were in danger of transgression; and if need were, to rebuke transgressors (1 Tim. v. 20).

598 The notion of Mutual Instruction in Religion so familiarly occurs in the writings of the Apostles, that the metaphor

by which it is expressed no longer suggests the figure from which it was originally derived. A Christian's mind is *edified*, that is, literally, *built up*, by religious instruction; indeed the term *instruction* itself has, originally, nearly the same sense. Thus Acts xx. 32, *The word of his grace is able to build you up*. Col. ii. 7, *Walk ye in Christ, rooted and built up in him*. And in this sense, the term *Edification* (οἰκοδομή) is commonly used; as 1 Cor. xiv. 3, *He that prophesieth speaketh to edification**: and under this form of expression, the duty is often enjoined; as Eph. iv. 29, *Let no corrupt communication proceed out of your mouth, but that which is good to the use of edifying* (πρὸς οἰκοδομήν τῆς χρείας). So Rom. xiv. 19; xv. 2; 1 Cor. xiv. 5; 1 Thess. v. 11.

599 As a necessary requisite of their common and mutual culture, it is the duty of Christians to preserve, unimpaired and pure, the Truth originally revealed through Christ. (Jude 3), *It was needful for me to write unto you, and exhort you that ye should earnestly contend for the faith which was once delivered to the saints*. St Paul says to Timothy (2 Tim. i. 13), *Hold fast the form of sound words, which thou hast heard of me, in faith and love which is in Christ Jesus. That good thing which was committed unto thee keep by the Holy Ghost which dwelleth in us*. It is plain that the good thing thus committed to Christian ministers, was Christian Truth. So St Paul again (1 Tim. i. 11 and 18), *The glorious gospel of the blessed God, which was committed to my trust...This charge commit I unto thee, son Timothy*. And those who deviate from the truth of the Gospel, are spoken of with strong condemnation. Thus (Gal. i. 7), *There are some that trouble you, and would prevent the gospel of Christ. But though we, or an angel from heaven, preach any other gospel than that ye have received, let him be accursed*: which condemnation he instantly and emphatically repeats (ver. 9). St Peter says (2 Pet. ii. 1), *There shall be false teachers among you, who shall privily bring in damnable heresies, even denying the Lord that bought them*. St John (2 John 10), *If there come any man to you, and bring not this doctrine, receive him not into your house, neither bid him God speed*.

Thus, as unbelief and false doctrine are calamities to our own souls, and, in that sense at least, transgressions against ourselves;

* In other cases, however, the metaphor is differently applied, when mention

is made of building up a Church, as a body of Christians; as Rom. xv. 20.

the promulgation of false doctrine, or of unbelief among others, is evil done to them, and a violation of Christian Duty.

600 To this condemnation of religious unbelief and false doctrine, objections are sometimes urged of the following kind: That thus to declare one selected form of Opinion to be the only form which men can blamelessly entertain, is hurtful to the Progress of Truth; for the Progress of Truth among men requires free Inquiry and Freedom of Opinion: that free Inquiry is a Right, and the Love of Truth a Duty; both of which are infringed by proscribing certain condemned Opinions, since these may be the very Opinions to which the Love of Truth and the pursuit of Inquiry lead some men: that our supposition that *our* Opinions are true, and the contrary ones false, is mere assumption, which may with equal Right be made on the other side: and that a condemnation of men, founded upon this assumption, is, therefore, unjust and unreasonable.

601 In reply we say, that, in other subjects than Religion, men do not proceed on the supposition that persons holding two opposite Opinions have each an equal Right to assume his Doctrine to be the true one: that on the contrary, we go upon the supposition that there is Truth and Falsehood, as well as mere Opinion; and we condemn the man who holds false opinions, when he has had the means of knowing the Truth. If a geographer reasons on the hypothesis that the earth is flat, not round; if a physician gives his direction on the supposition that a well-known poisonous drug is harmless: we do not say that he is blameless, and has a Right to his Opinion. We think him foolish and irrational; and if his error lead to mischief, we blame him as criminal. In like manner we go, and must go, upon the supposition that, in Morality and Religion, as well as Geography and Physiology, there is a Truth which it is the Duty of every one to hold; or, at least, without which his Progress towards Truth is altogether incomplete. If a man stop short of this point, or turn aside in any other direction, he must be in the wrong. Whether we call him culpable or unhappy, he is at least not moral and religious. And when he attempts to draw other people after him in his error, we cannot abstain from condemning him.

602 The belief in the coincidence of Virtue with Happiness, in the long run, depends upon the belief in God's government of the world; and thus, this belief is the foundation of Morality. Without this belief, the Conceptions of Duty, and of right and wrong, have no reality and no force. When we say that the Love

of Truth is a Duty, we cannot so understand the word *Truth*, that there shall be no such thing as Duty. If the Love of Truth be a duty, Truth must include the foundation of the reality of Duty; which is, as we have said, the belief in God. And so, of the Right of free Inquiry; there cannot be a Right of free Inquiry in such a sense, that Inquiry may lead to the result that nothing is right or wrong. If there be a Right of Inquiry, there must be some real basis of Rights; which, without the belief in God, there cannot be.

603 The general judgment of mankind has given its sanction to these views. As we have already said (350), men do not consider those persons to be blameless who hold immoral Principles: and in like manner, they have always bestowed strong condemnation on those persons who have rejected or opposed that belief in God, which, in common apprehension, as in reality, is the necessary basis of Morality. Atheists have always been odious. The universal voice of human nature has pronounced condemnation on those who say, "There is no God." The Right and the Duty of Inquiry have always been asserted without producing assent, when Inquiry has led to this result. Men have constantly, and everywhere, felt that the Right and Duty of Inquiry could not be things more certain, than the being of God, who made them able to inquire and to conceive Duty. And the Atheist has been regarded as a man who broke a universal and fundamental tie, by which all mankind are held together; and hence, has been looked upon as a common enemy.

604 The mere belief in God, on grounds of Reason, is too vague and incomplete a doctrine to satisfy men. If there be a Creator and Moral Governor of the world, there must be also a Providential Government of the world. The history of Man must bear traces of the Mind of God. The first origin of man on earth, for instance, cannot be an event in the common course of things; and we can easily conceive this origin of man to have been accompanied by something of the nature of a Revelation. Men have everywhere felt, thoughtful men still feel, the need of something more than our natural powers afford, to purify and elevate their minds. To carry on the Moral Progress of man, the Ancient World needed to be transformed into the Modern World; but this could not take place by natural means. The Christian sees the only consistent and possible solution of these difficulties, in the Christian Revelation; according to which the coming of Christ upon earth is the Central Point in the Providential History of the world; giving definiteness to the relations of God and man; and

supplying the needs of man's spiritual nature. Thus, he sees, in Revealed Religion, the necessary completion of Natural Religion ; and is compelled to look upon the infidel, who does not believe in Christ, as believing in God to no purpose. The Christian judges, as we have already said, that such unbelief is either a violation of Duty, or a calamity which produces the same effect upon the person's mind as a transgression of Duty ; since, without a belief in Christ, a man cannot have the benefits which Christ's coming brings to believers. And the promulgation of such infidel doctrines, he deems to be a heavy calamity to those who fall under such influence. The tie of a common belief in God is, among Christians, identified with the tie of a common belief in Christ ; and hence, he who denies the truth of the Christian Revelation, is necessarily looked upon in nearly the same light as the Atheist.

605 It by no means follows, that we check or limit the Progress of Speculative Truth among men, when we condemn the denial of certain fundamental Principles which are assumed in the very idea of Speculative Truth. Such Principles are these :—that there is a difference of true and false ; a distinction of right and wrong ; that there is a God who gives reality to that distinction ; that there is a duty of unlimited progress towards what is right. These doctrines being assumed as steadfast and unquestionable, there is still abundant room for Inquiry ; and for various views to which Inquiry may lead. The wide space between General Principles and Special Instances, is occupied by a region of obscurity and confusion, in which we need all the clearness which we can give to our intermediate chain of conceptions, in order that our reasonings may be coherent and conclusive. Different minds may form such chains of conceptions, various, yet each consistent with itself ; and depending for their variety, only upon different kinds of intellect and of intellectual culture. It is our business to seek to establish such a clear and firm connexion among our thoughts. It is a part of the duty of Intellectual Culture, of which we formerly spoke (245). The pursuit of speculative Truth, under the conditions already stated, and in proportion to our powers and habits of speculation, is a part of the life of a good man. He must think as well as feel. As we have said (241 and 350), it is his duty to act and to think rationally ; and what is rational thought, he can know only, by carefully unfolding his Reason. So far as he really arrives at Speculative Truth, he will see more distinctly the Supreme Law of his Being, and will have increased

means of conforming to it. It is his business constantly to aim at Truth; and his Progress towards Truth, like his Progress towards Moral Perfection, can never rightly have an end. Hence, if any one were to argue that the opinions to which he had been led must be blameless, since he had done all he could to arrive at Truth; we should reply, that a man has never done *all he can* to arrive at Truth; that every man should go on to the end of his life, constantly endeavouring to obtain a clearer and clearer view of the Truths, on which his Duty depends; and that his renouncing this task, and making up his mind that he has done all which he needs to do, is itself a Transgression of Duty, which prevents his Error and Ignorance from being blameless.

606 The Inquiry after the Truths which are connected with Morality and Religion, must be conducted in a *serious* and *earnest* disposition. To bring to the task any spirit of levity, or of ready-made contempt for the doctrines whose Truth we have to examine, is to trifle with or pervert our Duty. Such a spirit makes our inquiry worthless; and may make us both mischievous and culpable in the influence which we exert upon others. Levity or Ridicule, which has any tinge of impiety, is a most grave offense; implying the absence of all due appreciation of the importance of religion: and such behaviour is the more plainly culpable, inasmuch as the spirit of Levity and Ridicule is inconsistent with 'calm and candid Inquiry.' As we have said (140), Ridicule implies that the object ridiculed is compared with some standard, and is deemed so glaringly below the standard, as to make comparison absurd. To ridicule Religious Opinions, is to take for granted that they are unworthy of serious examination. To ridicule Religious Opinions, does not prove, but assumes their falsity. Ridicule is no test, either of truth or falsehood, in the opinion ridiculed; but it is a test of assumption, combined with levity, in the person who so uses it. Yet such assumption often carries away with it by sympathy the weaker kind of intellects, and puts them out of the frame of mind in which they can attend to serious inquiry. Ridicule often influences men more than argument; and is more difficult to reply to; because the replicant has first to overcome the feeling of Contempt, in the expression of which the force of Ridicule dwells. But this feeling of Contempt is not really any advance towards a discernment of Truth. It may be assumed on the side of Falsehood as well as of Truth. It may be communicated by sympathy, by the play of fancy, the ambiguities of language, and the fallacies of shallow thinking, in favour of

what is false, as well as of what is true. Hence, even those Moralists who allow an unlimited Freedom to the Inquiry after speculative Truth, still condemn the use of Ridicule with regard to Religious Doctrines. To employ Jests and Grotesque Images, Sarcasms and Sneers, on such subjects, is to intoxicate men, while we are leading them among the most difficult and dangerous paths.

607 As implying a degree of Levity, the familiar mention of the deeper matters which belong to Religion is not without evil. For the deeper matters of Religion cannot be properly apprehended and meditated upon, without a degree of reflexion and abstraction which is inconsistent with familiar mention of them. This is especially the case with the Idea of God. The thought of God, the Author of Duty, the end of Hope, the ever-guiding Intelligence of the World, the ever-present Witness of our Thoughts, our Holy Lawgiver, our Righteous Judge; cannot fitly be called up in our minds, without being detained a moment, as the object of Reverence. To turn our thoughts towards God, is almost to address ourselves to him; and we are not thoughtlessly to use words which may make this demand upon us.

608 Hence a good man will employ the Name of God cautiously and sparingly in his speech; and will never introduce it on any slight occasion, or in any trifling spirit. Still less will he employ it as an indication of some confused vehemence or reckless fierceness in his thoughts; as is done in common *Profane Swearing*. Such are the dictates of Natural Piety. They are confirmed by being enjoined by God himself, in one of the Ten Commandments given to the Israelites. *Thou shalt not take the Name of the Lord thy God in vain; for the Lord will not hold him guiltless that taketh his Name in vain.* And this is further indicated in the teaching of Christ (Matth. v. 35). For the Jews had apparently applied the commandment to the name JEHOVAH only: but Christ extends it to every expression, in which the thought of God is virtually referred to. *I say unto you, Swear not at all; neither by heaven, for it is God's throne; nor by the earth, for it is his footstool; neither by Jerusalem, for it is the city of the Great King.*

609 All the Duties of which we have been speaking may be included in the term *Christian Edification*, of which we have already spoken. But it is the Christian's duty to edify or communicate religious instruction to those around him, in a larger sense. The body of Christians who are in the world at every period, have

it for their business to diffuse, to the whole world, the knowledge and the spirit of Christ; as the first Disciples, in their time, had this for their business. The true Disciples of Christ are always a *Church*, an *Ecclesia*, a Body called out of the great body of the world; not only to be themselves brought to God, but to bring all men to God. They are always the Salt of the earth; the element by which it is to be preserved from corruption. Every Christian is bound to labour to make other men truly Christians, as far as his influence extends;—first, as we have said, his family and neighbours; next, his nation; and then the whole of mankind—the whole Human Family of his Brethren. Every Christian, and every Community of Christians, so far as they possess this Christian spirit, will be led to look upon themselves as *Christian Missionaries*, whose business it is to impart to all men Religious Truth.

CHAPTER XIV.

OATHS.

610 THE injunctions of Jesus Christ which we have referred to (608), and corresponding precepts given by several of his disciples in the Epistles, have led some persons to doubt whether it is allowable for Christians to confirm their testimony by Oaths, as the laws of all States, ancient and modern, have in some cases required them to do. In order to examine this point, we shall begin by considering Oaths as they are regarded by the light of Natural Religion. As we have already said (221), we may make, or may wish to make, a promise or a declaration in a manner more earnest, more considerate, more *solemn*, than ordinary. Natural Piety suggests, as the most solemn way in which this can be done, the doing it with express reference to our belief in God, in the presence of other men, in some form of this kind: I promise, or I declare, *in the presence of God; as God is my Witness; as God is my Judge.* We stated that, in the violation of a solemn promise or declaration, the transgression of morality is very great, because we have willingly and purposely rested a great share of our moral progress upon our truthfulness in this instance. It is consistent with this view to confirm a solemn promise by an Oath. For in the eye of the religious man, the end and aim of our moral progress is the happiness which God makes to be the consequence of moral pro-

gress rightly pursued. By acting as in his presence, by purposely referring to him as our witness, and as our Judge, we involve in the consequences of our acts, so far as we can, our total future happiness in this world and the next. If we transgress, we renounce our claim to the happiness which God will give to Truthfulness, without which no character can be otherwise than depraved.

611 It may perhaps be objected to the use of such expressions as this; *In the presence of God*; and the like, we make a difference between one action and another, which we ought not to make; since a religious man will do all things as in the presence of God. But to this the reply is obvious; that the use of such words brings the thought more home to us, for the moment, however familiar it may commonly be: and that such public references to the truths which we believe in common with other men, are among the means by which the belief becomes specially effective on our actions. We may add, that in those acts which especially consist of words, as promises and assertions, the religious thought, which ought to accompany our words, may very justly be also expressed in words. To avoid sins of thought, it may be enough that we *think* ourselves in the presence of God: but when we have to speak, we may utter this thought among the rest, and say that we *speak* as in the presence of God.

612 As an Oath implies hope of the happiness which God gives to virtue; it implies also fear of the unhappiness with which he will punish falsehood, and especially falsehood committed in a case in which he has been thus appealed to by an Oath. God is regarded as the avenger of Perjury. And this has sometimes been expressed in the Oath; God being spoken of, not only as the *Judge* of men, but as the *Punisher of Falsehood*. In some cases, there have been added *Imprecations*, that is, prayers for evils upon the swearer, if he break his Oath. But it is more suitable to the Reverence which we owe to God as our Judge, that we should leave the details and mode of his Justice to him. On the other hand, an oath seems to imply a prayer for Divine assistance to enable us to keep our Oath. Man's command over his future actions, still more over his affections and wishes, is not absolute; and temptations may occur, when the assistance which religious men seek to obtain by prayer, may be needed, in order that the sworn man may keep his Oath inviolate. This appears to be implied in the phrase used in many Oaths, *So help me God*; *Ita me Deus adjuvet*.

613 It has been said by some, that these phrases mean: *On that condition* alone, and no other, may God help me: If I break this oath, may he cease to help me, and leave me to misery. On this view, the clause, *So help me God*, has been spoken of as a kind of Imprecation. But it is difficult to accept this view. If this were the sense intended, the more proper expression would be, *So bless me God, So reward me God, or So save me God*; expressions which are not commonly used in Oaths. The expression, *So help me God*, agrees very well with the view which we have given of a solemn promise, that upon our truthfulness in this instance, we are willing to risk our whole moral progress; or, as the religious man rather views the matter, our favour in the eyes of God, and the happiness which he can give. For in incurring such a risk, a man may well say, "May God help me to escape this danger." And the word *So*, in this formula, must then mean; "May God so truly strengthen me when I am weak, as I truly intend to use all my strength in order to keep my Oath*."

614 It has sometimes been objected to the use of Oaths, that it is irreverent towards God, to employ his name, and invoke his agency, for the purpose of carrying on human affairs. But we reply to this, that an Oath is really an act of reverence. We do not doubt that God does so far attend to human affairs, that he judges our actions, and will punish us if we commit wilful and deliberate falsehood. We do not pretend to call in his agency; but to express our conviction that he will act as our Judge. A falsehood, uttered with this thought brought before us, is really a more flagrant sin against him, and must be supposed to draw upon us a heavier punishment, than an offense done thoughtlessly. In short, in an oath we do not pretend to direct the attention of God to man, but the attention of man to God.

615 We may add, that an Oath, by referring the matter to the Providence of God, secures us from all claim of regard to man. If we had, unsworn, to give evidence which would inflict loss or disgrace upon a very powerful man, or a very dear friend, the per-

* This view, that the expression *So help me God* cannot be understood as imprecatory, is still more manifestly true, when we take into consideration the forms equivalent or nearly equivalent, which are used on various occasions. *So help me God and his Holy Gospels*, one of these forms, cannot, without great violence to its obvious meaning, be taken as an imprecatory expression. And in the Ordination Services, where the most so-

lemn declarations are plainly intended, the expression *So help me God* is varied and paraphrased in accordance with the view maintained in the text. The answers to questions there proposed—*Will you do thus and thus?—are these: I will do so by the help of God: I will do so, the Lord being my helper: I will endeavour myself, the Lord being my helper.* Surely no one would call these Imprecations.

son might, if he were one who thought that some falsehoods are excusable, expect us to withhold or distort the truth, for his benefit or exculpation ; but no one holds Perjury to be excusable ; and the fact of our giving our evidence on Oath, at once destroys all expectation that we will violate or trifle with the truth. It destroys this expectation so completely, that even the person proved to be guilty, feels commonly no resentment against the Witnesses who prove him so. This could result from nothing but from the establishment of an absolute and supreme obligation to tell the truth, such as an Oath alone can establish.

616 Instead of using the name of God, the phrase *I solemnly affirm*, and the like, have sometimes been used. The reason for this substitution would be intelligible if the phrase were employed to avoid a recognition of the existence of God ; but among men who believe that God will judge them, it does not appear what sense can be conveyed by the word *solemnly*, except that they recollect that there will be such a judgment. If the expression do not excite the same thought as if they had said, *In the presence of God*, it does not seem to have any meaning.

617 It is sometimes said, that if a man cannot be believed upon his word, he cannot be believed upon his oath ; that if he will commit falsehood, he will commit perjury. And undoubtedly, a perfectly good man is as incapable of the one, as of the other. A person in whom the operative principle of Truth is completely established and developed, will not tell a lie ; and on him, an Oath would produce no effect which could not be produced without it. But the world is not composed of perfectly good men. The moral culture of many, we may say, of most persons, is very imperfect, with regard to Truth. Besides that they often speak thoughtlessly, there are kinds and occasions of falsehood, which they deem allowable or excusable. We have noticed some of these, in speaking of Cases of Conscience respecting Truth. We have there stated that our moral culture requires entire truthfulness ; or, as the religious man will express this, that God's approval cannot be given to anything short of entire truthfulness. But men, in their common daily actions, do not think much of their moral culture, and of God's approval. The object of an Oath is, to raise them from their common mood, in which they claim excuses and allowances for falsehood, into that state of mind which the thought of God's judgments is fitted to call forth. And Oaths do produce this effect. Men's minds are solemnized by this form of an engagement. Under this impression of an Oath, they no longer claim

excuses and allowances for their falsehood. They speak with consideration and gravity. If they give testimony on Oath, they are careful in their recollection of the fact. If they promise on Oath, they are watchful over themselves for the future.

618 The Oaths commonly in use among men are principally of the two kinds just referred to; Oaths of Testimony or Assertion, and Oaths of Promise or Engagement for the future. Oaths of Testimony impose upon us an especial duty of careful recollection and exact narration. The formula used in the administration of English law expresses this; it requires men to speak *the truth, the whole truth, and nothing but the truth, touching the matter in question*. But in the cases in which this is employed judicially, it is for the Tribunal, rather than for the Witness, to determine what is the *whole truth touching the matter in question*: and the English Courts of Law expect only that the Witness shall answer the questions put to him. They also excuse him from doing this, when the answer would criminate himself. These definitions of the Obligation of the Witness, are also the definitions of his duty *as a Witness*. As a lover of Justice, it will often be right for a man to do much more than this.

619 In the same manner, Oaths of Assertion; as when we declare the value of our income, or of anything belonging to us; impose upon us a Duty of careful examination of the matter concerning which we assert; and an entire sincerity in asserting, without reserve, equivocation, or straining of the truth. Thus an Oath that we have not received or paid money, or reward, (as in oaths against bribery at elections, sale of ecclesiastical offices, and the like,) is violated not the less, if the money be received and paid by some contrivance which escapes detection or evades the law.

620 Oaths of Promise with regard to special acts are not much in use among us. We do not require a man to swear that he will perform a contract, or resign an office, or the like. The Law has other ways of enforcing its Will on such points. Our Oaths of Engagement for the future are, for the most part, promises of a general course of action; and promises of certain dispositions as suitable to the condition to which we look forward. Thus we have Oaths of Office administered to Magistrates, Judges, Jury-men, Legislators, and to the Sovereign himself; and Oaths of Allegiance, administered to the subject. In these Oaths, the Swearer engages to conform to the Laws of the Land in the discharge of his office; and also, generally, to act with care, impartiality

and equity. He promises to be faithful to the law, and to the intention of the law; which intention is understood to be, the administration of justice. The subject promises *Allegiance* to the Sovereign; which was formerly further explained in the Oath itself: *I promise to be true and faithful to the King, and not to know of any ill or damage intended him without defending him therefrom.* These Oaths all engage the swearer to that conduct, and those dispositions, which morality would require without the Oath. For the Magistrate's Duty is generally to administer the law, to regard the intention of the law, and to identify this intention with justice (235). And the Subject's Duty is generally, as we have already said (233), a willing obedience to the laws, an affection for his country, a love of its institutions and of its constitution, a loyalty to its sovereign. There may be special cases of exception to these Duties; as when the Magistrate cannot look upon a particular law as other than unjust: or when the Duty of Allegiance is broken, under the pressure of a case of extreme necessity. Oaths such as we have just mentioned, which engage the Swearer to that course of action which forms the General Rule of Morality, are inconsistent with a contemplation of the cases of Exception, as prominent or frequent. A person cannot, without the guilt of Perjury, take an Oath to administer the laws faithfully and justly, if he believe that to administer the laws faithfully will be to commit habitual injustice. A Subject cannot swear allegiance to the reigning Sovereign, if he not only believe him to be an usurper, but if he also be ready to join in a scheme for deposing him, if a favourable occasion should arise. Oaths of Office, of Allegiance, and the like, are to be taken in such a manner, as to identify the citizen's Duties with his Obligations: and by being Oaths, they further express his conviction that the discharge of Duties, and therefore of legal Obligations, is the only way to obtain the approval of God, and the happiness which he bestows with his approval.

621 Besides the general moral engagements contained in Oaths of Office, such Oaths often include some specification of a particular subject, with a prescribed course of action relative to it; thus, the English Sovereign, at his Coronation, swears that he will maintain the Protestant Reformed Religion as established by Law: Members of Parliament take a similar Oath: Officers of special bodies, as Colleges and Corporations, in many cases take Oaths to observe the Special Laws of their body, to maintain its privileges, and the like. Along with the Oath of Allegiance to the

Sovereign, there has often been demanded an Oath of Allegiance also to his Heirs; or an Oath of Renunciation of the Obligation of Obedience to some rival Authority: as, in this country, we have, in addition to the Oath of Allegiance, the Oath of *Abjuration*, in which we abjure the Authority of the Pope.

622 All such Oaths require of him, who takes them, a sincere and unchanging purpose to do what he thus engages to do.

For instance, If an officer of a corporation, having sworn to maintain the Established Religion, should afterwards endeavour to overthrow it, by the use of his official power; it would be no exculpation for him to say that he had become convinced that the Established Religion was erroneous. If a man has entered upon an office engaging himself to a certain course of official conduct, and afterwards, thinks such conduct wrong; he is bound by Justice and Truth to give up his office; and cannot honestly pursue any other course. In this case, as in others, Law supplies the Definition, which is requisite to give form to Justice. The Oath of Office is the expression of a Contract between the Body and the individual. If he breaks the Contract, and keeps his share of the advantage which it gave, he is guilty of fraud and falsehood, aggravated by Perjury.

623 An important question in many cases of this kind is, how the Oath is to be *interpreted*. Of course, a Promise so made, like other Promises, is to be interpreted according to the common intention of the two parties; or according to what is the intention of the party imposing the Oath, and is understood to be its intention by the party taking the Oath. And this is, accordingly, the Rule generally given. The Rule is stated by saying that the Oath is to be understood *secundum animum imponentis*. But here the question occurs, in Oaths of office, and the like, Who are the Parties between whom the transaction takes place? Who is the Imposer of the Oath?

624 We reply, that in Oaths of Office, the Imposer is *The State*; which we have already described as a permanent Moral Agent; and which is, of course, capable of being Party to a Contract. The State is the Imposer of all such Oaths; for all Offices derive their Authority from the State, and all Special Corporations derive, from the State, their power of making Laws; and therefore, the Authority of their Laws. Hence those Oaths which express the conditions on which the authority or the advantages of the Office, are assigned to the individual, express the conditions imposed upon him by the State.

625 The State, as we have said (374), is one and permanent, while the persons of whom it consists are many and transitory. The intention of the State is expressed in the language of the Oath; and if there be, in this, anything which requires interpretation, the Laws and Legislative Proceedings which accompanied the enactment of the Oath may often aid in pointing out the right interpretation. But this is not the main source of interpretation. The State continues to exist after each such act of Legislation: and the State which to-day imposes the Oath, is not identical with the Legislature which, many years, perhaps centuries ago, enacted it. The State may itself interpret the Oath, by a Declaratory Act; and may often prefer this course to the substitution of a new and clearer Oath; on the ground of many inconveniences which attend the change of ancient and usual forms. There are also other ways, in which the State may give its interpretations of the Oaths which it imposes; as in the decisions of Courts of Law, and the like. But yet, if these interpretations be in apparent contradiction with the most obvious meaning of the words of the Oath, religious men and lovers of truth, especially if they have not fully considered the difficulties of such legislation, will be shocked with the incongruity; and the offense thus given to them, may be a reason for the State changing the form of the Oath.

626 There are cases in which even the silence and inaction of the State may be looked upon as implying, in some measure, its view of the meaning of an Oath. If an Oath contain clauses which plainly imply usages or conditions notoriously obsolete, and if it be still enforced by Authority; it may be reasonably supposed that the State, the Imposer of the Oath, is aware of the practical omission of what is obsolete, and acquiesces in it. But here, also, when the discrepance between the words of the Oath and the practice becomes glaring, it is desirable, on that account, to alter the words, in order to avoid the shock which the incongruity causes to religious men and lovers of truth, who have not fully considered the difficulties of such legislation.

627 Yet there may be other reasons which may, for a time, balance this; and may reasonably prevent the change from taking place. The doctrine, that an implication of, and reference to, obsolete conditions, in the words of an Oath, renders it desirable or right to alter the Oath, cannot be carried out rigorously. For such is the constant progress of human affairs, and such, in consequence, the constantly proceeding changes in the use of terms,

that we cannot employ words which will not, after a time, imply something no longer existing in practice. And this implication of obsolete things does not necessarily make the words of an Oath unfit to be retained. When we swear *Allegiance* to our *Sovereign Lord* the King, the terms *Allegiance* and *Sovereign Lord*, imply the relations of the feudal system; but the Oath has been still properly retained; it being understood, by the State and by the Swearer, that the fidelity which is thus denoted, is such as suits the altered relations of the Governor and the governed; and this has been supposed, at every step of the gradual change, from the original to the present condition of the Constitution. The same implication would be involved in an Oath in which the terms *fealty*, *loyalty*, *homage*, should occur; but such an Oath would not, on that account, be a bad one. In like manner, if the term of an ancient form should engage us to *worship* a person, the sense being to show personal respect and regard, (as in the English Marriage Service) we might still use the form with a safe conscience. And thus, when the terms of an Oath have gradually changed their meaning, or become obsolete, or inapplicable to the existing state of things, if the State continue to impose the Oath, it may be supposed that in imposing it, the State assents to the modification of meaning which is necessary, in order to make the declaration significant and applicable. And the person taking the Oath, if he intends to fulfil the engagement as nearly as the altered condition of things allows him to do, may be considered as taking it *in the sense of the Imposer*; and therefore may do so with a good conscience.

628 If it be objected to this, that we thus make Custom the Interpreter of the Law, instead of making Law the Regulator of the Custom; we reply, that the Custom, which we take for this purpose, is Custom sanctioned by the State; that is, by the Giver and Guardian of the Law. We may add, that to a great extent, we cannot avoid making Custom, or, more properly speaking, History, the Interpreter of the Law; for Custom and History determine the meaning of words and phrases; and often determine them to have a different sense, when used in official formulæ, and when used in common speech; as we see in innumerable examples in laws and law proceedings. History modifies the relations of men, classes, offices, and occupations, from time to time; and must necessarily modify the meaning of the language in which such things are spoken of.

629 If we were to insist upon this,—that Laws and Oaths

should always be interpreted according to the *common usage* of speech at the present day;—we should make it necessary to alter a great part of our present law language; and on such a supposition, no oaths could be employed, except their terms were—either so general as to apply alike to all periods of history, which would deprive them of all special meaning, and of all effect;—or else, except their terms were constantly changed, as fast as common Language and the relations of men change; and the changes thus requisite would need to be made every few years. This would defeat the purpose of many of our Oaths; which is, to produce a permanence and continuity in the general structure of our institutions (as, for instance, Colleges,) in spite of the constantly proceeding historical changes. Such a course of public administration would require a perpetual interference of the Legislature, for the purpose of remodelling Oaths; which interference would, in fact, be a constant innovation. Those who wish for the permanence of ancient Institutions, are aware of this; and are very reluctant to alter ancient *forms*; and Oaths among the rest.

630 If the person, taking an Oath, of which the object is plainly the permanence of the Institutions to which it refers, assent cordially to this purpose, this cordial agreement in purpose with the Imposer, (for the State, by retaining the Oath, must be supposed to assent to the object of the Oath,) will enable the Juror to interpret, also, in the sense of the Imposer, the parts of it which are obsolete and inapplicable. He will necessarily interpret such parts, so that they shall be in consistency with the main purpose. There are many cases, in which great changes have been gradually effected in the Institutions to which Oaths refer; changes, not produced at any period wilfully, but brought in necessarily, in order to keep the Institutions in coherence with the general state of the nation, and to carry on the design and business of the Institution. It is evident, that in such cases, to revive, at the present day, the obsolete usages and conditions which the terms of such Oaths originally denoted, would be to defeat the main purpose of the Oaths; namely, the Stability of the Institutions. Such restoration of Antiquity would be a most perilous innovation. Such a literal fidelity would be a real treachery, or at least a practical hostility, to the purpose of the Founders.

631 Even if the predecessors of the present generation were to blame in admitting such changes, (although in many cases they had no choice in the matter,) still the present generation have inherited the changed state of the Institution, and cannot,

however much they might wish and try to do so, recall the original condition of things. All they can do, so long as the State does not change the Oaths, is to observe them, interpreting them in good faith, according to existing conditions, notorious to the State as well as to the jurors. But probably, in such cases, there may be no need to blame preceding generations, in order to exculpate the present. Probably each generation, in its turn, has had the same excuse. The changes were gradual; each generation interpreted the ancient Oath in good faith; and intended to fulfil it, as nearly as altered circumstances permitted, in the sense of the Founders; and, therefore, as we have said, truly in the sense of the Imposer. And if there have been this continued good faith, regulating the practice of succeeding generations, such practice may be taken as an Interpretation of the engagement, sanctioned by the Imposer.

632 It is however quite necessary to attend carefully to the condition, that the practice of each generation should be adopted *in good faith*; in order to give it authority as an Interpretation. If men deviate from the course which the terms of their engagement imply, wantonly, carelessly, or unnecessarily, they are, no doubt, guilty of breaking their engagement; and if an Oath have been taken as a confirmation of it, guilty of Perjury. If they have disregarded both the Purpose of the Founder and the Letter of the Oath which he framed, they are without any excuse. The changed circumstances of the times, which make literal observance of the engagement impossible, do not thereby make the Oath unmeaning. It must be carefully interpreted according to the intention of the Founder; admitting, into the Interpretation, only such changes of the meaning of terms and details, as have been produced by the general progress of change; and not by any purposes different from those of the Founder. Each generation of the members of an Institution, endeavouring, in care and good faith, to conform to their engagements, may have authority as Interpreters of their own Rules, but not as Rivals of the Founder.

633 Moreover, in order thus to act in good faith, it is not sufficient that the existing members of the Institution so conduct it, and so apply its Laws, that they do what they conceive the Founder *would have wished* to be done, if he had lived in present times. This Supposition, of what the Founder *would have wished*, is far too vague to afford any good ground of action. To make such a Supposition the Interpretation of the engagements pre-

scribed by the Founder, is contrary to the nature of an engagement. In a Contract, it is not sufficient to do what we suppose the other party *would wish*; we must do what we *have contracted* to do. The same is the case in an Institution with written Laws, which we have engaged to observe. The Founder has made his body of Laws, and his Oaths, because he was not content with a general statement of the purposes which he wished to promote; just as all Legislators prescribe detailed modes of action, and not merely general courses of action. The Founder has prescribed means, in subservience to his end. If some of these have been silently excluded by time, without any choice of ours, we may blamelessly acquiesce in the exclusion; and perhaps we may deem the Founder short-sighted; as, in truth, no Legislator is long-sighted and sagacious enough to provide for all the changes which arrive. But we may not, without blame, substitute other means for his, when we have a choice. We may not, after engaging to conform to his plan, reject it, and substitute one of our own.

634 What degree of particularity it is prudent to introduce into the special Laws of Institutions, with a view to their permanence, is a question of Polity, which we shall not here consider. But it is evident that if particular details and arrangements, which are judicious at first, are prescribed by Laws; and if the Laws are interpreted according to the Rules above laid down; such Laws will contribute greatly to the permanence of the Institutions, so regulated; and will tend to secure their consistent effectiveness in promoting their original object, amid the external changes which the course of the national history brings.

635 But though we must thus allow to the State—the Imposer of the Oaths, and other Engagements, which we are now speaking of,—some range of power, in interpreting the terms of such engagements in a sense different from the original sense; and though we must hold that the Interpretation of the Imposer relieves the Conscience of the Juror; we must not carry this doctrine and its application too far. There are strong moral reasons for being careful on that side. The State may be regarded as having, for one of its objects, the moral Education of the people; and its Laws, and the administration of its Laws, are among the means by which it promotes this object. And it will fail in teaching lessons of Truthfulness by its Laws, if it lightly sanctions an interpretation of an Oath which differs from the obvious sense of the words. By the currency of such *forced* interpretations, so

sanctioned, many persons will be led to carelessness and indifference about Truth, in taking such engagements; and thus the State becomes a teacher of immorality.

636 And again, on the other part; though the Juror's conscience may be relieved in such cases, it can hardly be quite satisfied; especially when the interpretation is only *presumed*, from the silent acquiescence of the State in notorious changes. For the notoriety may be imperfect, and the acquiescence must be more or less doubtful. The silence of the State may imply, not that it acquiesces in the existing practice, but that, though it disapproves of the practice, the time and the occasion for legislative interference have not yet arrived. In this case, the Juror does not swear according to the interpretation of the Imposer; and his conscience must be the more disturbed, according as this is more probably the case.

637 Hence, in all cases in which there is a manifest contradiction between the words of an engagement, and the sense in which it is commonly performed; and especially if there has not been any authoritative sanction of the usual practice; it is desirable, on moral grounds, to alter the words, so as to remove the contradiction. The Legislators ought to endeavour to do this, as acting for the State, and being, on its behalf, desirous of promoting Truthfulness and Integrity. The Jurors ought to aim at the like alteration, as being desirous of having no grounds for dissatisfaction in their consciences. And since in England, every man has, by Petition or otherwise, the means of seeking a Legislative change; the persons who are required to take an Oath or an Engagement, under circumstances such as have been described, are bound in conscience, when the contradiction between the words and the practice is apparent, and still more, if all sanction of the practice be wanting, to aim, by constitutional means, at the removal of the contradiction.

638 In this discussion on the subject of the interpretation of Oaths and Engagements, we have had to touch upon questions which rather concern the Duties of Truth, than the subject of Natural Piety, with which we began. But this could not easily be avoided: for the Duties of Truth, though they belong to all our engagements, are never so carefully studied as when they depend upon our *most solemn* engagements; namely, those which are confirmed by Oaths. And though the breaking of an Oath is an Offense against Piety, a transgression of the Reverence due to God, and a disregard of the Fear of his Punishment; it is so,

because he is the God of Truth, and will punish Perjury as aggravated Falsehood.

CHAPTER XV.

OATHS OF CHRISTIANS.

639 WE have already spoken of Oaths in general, as a custom arising from the dictates of natural Piety; we have now to speak of Christian Oaths as a Christian Ordinance. The Oaths commonly used in this country contain a reference to Christianity. The ancient form of the Oath was that the Juror touched the Gospels, and said, *Ita me Deus adjuvet et hæc Sancta Dei Evangelia*; and the present form is, that in taking the Oath he holds the Gospel in his hand, and kisses the book after saying *So help me God*.

640 Christian Oaths have been taken in various forms. As to its general character, the Ordinance is supported by various grounds; Natural Piety has made the use of Oaths universal. In the Jewish Revelation we find them abundantly used, and approved and enjoined by God. Christ and his Apostles sanctioned the use of Oaths by their practice, but nowhere clearly enjoined them. There are even some passages in the New Testament which have been understood as forbidding Oaths, but without good ground for such an interpretation. And the Universal Usage of Christian Communities, down to modern times, has given its authority to that interpretation of the Christian Precepts, which allows the use of Oaths on solemn occasions. We shall further illustrate some of these assertions.

641 Among the Israelites, the custom of swearing on solemn occasions existed, and is constantly taken for granted in the Old Testament. Oaths are there commanded as a part of the usual judicial procedure: thus Exod. xxii. 11, if a man deliver unto his neighbour an ox, &c. and it die, or be hurt, or be driven away, no man seeing it, *Then shall an oath of the Lord be between them both*. And Ps. xv. 4, it is mentioned among the characters of a good man, that *he sweareth to his neighbour, and disappointeth him not, though it be to his own hindrance*. The denunciations of God's anger against false swearing, imply a sanction of swearing when truly employed; and we cannot suppose God to disapprove of the prac-

tice, when he is repeatedly represented as himself having sworn an oath to Abraham (Gen. xxii. 16), to David (Psalm lxxxix. 3), and to the people of Israel on various occasions (Isaiah xlv. 23 ; Jerem. xlix. 13 ; li. 14 ; Amos vi. 8). The command, *Thou shalt not take the Name of the Lord thy God in vain*, implies that the name might be used on important and fit occasions ; and the command appears fitted to keep up the solemn reverence for the thought of God, which an Oath implies.

642 When Jesus Christ taught the true import of the law of Moses, he noticed, among other things, the Jewish practice of Oaths. His injunctions, on this subject, were to the same effect as with regard to other parts of the Jewish usages. As with regard to retaliation, to divorce, to honouring of parents, to angry expressions, the Jewish teachers had made subtle distinctions as to what was and was not a transgression of the law, while they had neglected the spirit of the law, so with regard to swearing. The trivial and thoughtless use of forms of swearing had become common, and the teachers had laid down rules as to which of these forms were binding, and which were not so. In this, as in the other cases, Christ rejects these distinctions, and says of such cases (Matth. v. 34), *I say unto you, Swear not at all*. That this is the import of his words, is plain from the course of teaching in this place. Christ begins by saying (v. 17), *Think not that I am come to destroy the law and the prophets* ; and then goes on to various points with the expressions, *Ye have heard it hath been said by them of old time...But I say unto you* (v. 21, 22, 27, 28, 31, 32, 38, 39). And the same form he uses here : *Ye have heard that it hath been said* (v. 33), *Thou shalt not forswear thyself, but shalt perform unto the Lord thine oaths : but I say unto you, Swear not at all*. If, in this instance, he had forbidden judicial Oaths, it is plain that he would have been destroying the law and the prophets. For the Law enjoined judicial Oaths, as we have seen ; and if a hearer of Christ, thinking to obey him, had refused to answer upon his Oath before a judge, he would have been violating the law of Moses and of his country, as we have seen. We do not find that Christ was ever accused of having violated the law of Moses in this part of his teaching. And when we consider how different the Oaths he spoke of were in form from the judicial Oaths of the Jews, it seems impossible to suppose that his hearers would understand him to speak of these.

643 In this passage, Christ refers to what had been said, namely, *Thou shalt perform unto the Lord thy oaths*. But we learn

from another passage that this *had been said* with various distinctions. In Matth. xxiii. 16, Christ reproaches the Scribes and Pharisees on this subject: *Woe unto you, ye blind guides, which say, Whosoever shall swear by the temple, it is nothing; but whosoever shall swear by the gold of the temple, he is a debtor!...And whosoever shall swear by the altar, it is nothing; but whosoever sweareth by the gift that is upon the altar, he is guilty.* And he then explains, that all these distinctions, which were used to show Oaths to be no Oaths, were futile. (v. 17, 19, 20, 21, 22), *The temple sanctifieth the gold...the altar sanctifieth the gift. Whosoever shall swear by the altar, sweareth by it, and by all things thereon. Whoso shall swear by the temple, sweareth by it and him that dwelleth therein. He that shall swear by heaven, sweareth by the throne of God, and by him that sitteth thereon.* These are very forcible considerations against the light or familiar use of Oaths; but of no apparent force to overthrow the Jewish law which, given by God himself, had till then permitted and enjoined Oaths. Indeed, the precept given by Christ, *Swear not at all*, cannot be considered as having reference to judicial Oaths. The forms mentioned of swearing, *by heaven, by Jerusalem, &c.*, were not judicial forms, and the precept is combined with other precepts which would put an end to all judicial contests: *Resist not evil...And if any man will sue thee at law, and take away thy coat, let him have thy cloke also* (Matth. v. 40). When Christ says (ver. 37), *Let your communication be, Yea, yea; Nay, nay; for whatsoever is more than these cometh of evil*, we may readily apply this to judicial Oaths, for these come as lawsuits come, from the cupidity and anger, the falsehood and levity of man. Oaths come of evil sources, and judicial Oaths among others; but there is in the precepts now referred to nothing which denies them, so far as they are evils, to be necessary evils, as all judicial proceedings may be said to be, if we look at their origin.

644 Accordingly, it is related that Christ (Matth. xxvi. 63) held his peace when he was accused till *the high priest said unto him, I adjure thee by the living God, that thou tell me whether thou be the Christ, the Son of God. He then answered, Thou hast said; or, as St Mark gives the answer (xiv. 62), I am.* This is conceived by commentators to be a submission to an Oath imposed in a judicial procedure. An oath for judicial purposes is mentioned with apparent approval in the Epistle to the Hebrews (vi. 16), *An oath for confirmation is the end of all strife*; and this is stated, in order to explain God's condescension, in accommodating himself to

the customs of men, as when he swore to Abraham ; thus adding to one immutable thing, God's promise, another immutable thing, his oath. It cannot be supposed that such illustrations and expressions would have been used by the writer, if he had held the oaths of men to be sinful.

645 For the like reasons, we cannot understand the precept given by St James as applicable to Judicial Oaths. It is almost a verbal repetition of the words of Christ (James v. 12), *But above all things, my brethren, swear not, neither by heaven, neither by the earth, neither by any other oath ; but let your yea be yea ; and your nay, nay ; lest ye fall into condemnation.* This precept occurs in an Epistle in which the government of the tongue is especially dwelt on (ch. iii). It does not occur along with precepts for the conduct of Christians in their intercourse with the world ; but is connected with injunctions of the feelings which were to be excited by the approaching coming of the Lord. Thus ch. v. 8, *Be patient ..for the coming of the Lord draweth nigh.* ver. 9, *Grudge not one against another...behold, the judge standeth before the door.* ver. 10, *Take the prophets for an example of patience.* ver. 12, *Above all things, swear not.* ver. 13, *Is any afflicted? let him pray. Is any merry? let him sing psalms.* It is plain that we have here a train of injunctions respecting the seriousness of thought and demeanour which were suited to the near coming of the Lord ; and it is evident that any light or trivial mention of sacred things, such as familiar swearing involves, was grossly at variance with this seriousness : but we have here no ground for concluding anything against the serious and faithful discharge of an important task, like that of giving to our solemn declarations a religious sanction.

646 Besides the allowance given to judicial Oaths by the above passages, we find countenance given to religious asseverations in other cases by the example of St Paul (Rom. i. 9), *God is my witness...that I make mention of you always in my prayers.* (2 Cor. i. 23), *I call God as a witness on my own soul, that to spare you I came not to Corinth.* These expressions so far assume the form of an Oath as to show us that in that form there was nothing repugnant to the religious views of St Paul.

647 The examples of swearing which are given in the precepts above quoted are all of the same form : *by heaven, by earth, by the altar, by the temple.* The forms of asseveration used by St Paul are different : *God is my witness : I call God as a witness.* The forms used in other cases are still different, but nearly resembling those employed by St Paul : *God do so to me, and more also,*

if ought but death part thee and me (Ruth i. 17). *As I shall answer to God at the day of judgment* (which is the form of Oath in Scotland); *So help me God*, which is the usual form in England: or more completely, *So help me God and his Holy Gospels*; or, *So help you God, and his Holy Gospels*.

The meaning of these last expressions has already been considered. See (613) and the note.

BOOK IV.



JUS.

OF RIGHTS AND OBLIGATIONS.

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OF RIGHTS AND OBLIGATIONS.

CHAPTER I.

RIGHTS IN GENERAL.

648 LAWS made by societies of men acting in their capacity of States (94, 375), require the Moralists's consideration in two points of view: first, as supplying the materials of human action; and secondly, as cases to which moral principles are to be applied. Laws supply the materials of human action; for they define property, marriage contract, and the other elements of human life, with regard to which men may act rightly or wrongly. Again: Laws are cases to which moral principles are to be applied; for the Laws ought to be just, and to promote justice, veracity, purity, humanity, and other virtues, among men. In the first point of view, Morality takes Law for granted, and so far, depends upon Law. In the second point of view, Law depends upon Morality, and must conform to Morality.

We cannot reject either of these views. If men's Rights are not fixed by Law, or by custom equivalent to Law, there is no field for moral action. To act morally, a man must abstain from theft, adultery, breach of contract, violent aggression on other persons, and the like. But if there be no received definition of property, there can be no theft; if no definition of marriage, no adultery; if no definition of contract, no breach of contract; if no definition of

personal rights, no violation of personal rights. Our Morality becomes a mere formula of unmeaning words, if, having asserted the Duty of honesty, purity, veracity, humanity, we allow each person to decide for himself what is honesty, what is purity, what is veracity, what is humanity, without any recognition of the common rules by which property, marriage, promises, personal security, are regulated. A person who asserts Morality to be independent of Law to the extent of rejecting legal definitions of Rights as of no moral value, is led to a Morality by which any conduct whatever, however dishonest, false, impure, violent, according to common rules, may still be asserted to be moral. So far therefore, Morality depends upon Law.

But on the other hand, as we have seen in the preceding Book, Law must conform to Morality. Justice requires (393) that inequalities, those produced by Law, as well as others, should be constantly corrected: and in like manner, that Laws which authorize or occasion inhumanity, falsehood, impurity, and other immoral habits, should be reformed. And thus Law depends upon Morality.

We have already seen (398, 399) how this apparent inconsistency is reconciled. Law must tend towards Justice, constantly, though it may be slowly. Law must be considered *in the first place*, as positively and peremptorily fixed: it judges everything according to its own Rules and Definitions. But these Rules and Definitions may change *from time to time*: and in the course of the moral cultivation and education of man, of which we have spoken (104), do change. Men change their Rules with a view of making them more conformable to the Supreme Rule of human action. They endeavour to determine Rights more rightly; to make the Laws more just. And thus, for the moment, at any time, Morality depends upon Law; but in the long run, Law must be regulated by Morality. The Morality of the individual depends on his not violating the Law of his nation; but the National Law must be framed according to the National view of Morality. The moral offense of coveting my neighbour's goods, as well as the crime of stealing, extends to everything which the Law determines to be his goods. But the Law which gives him everything, and leaves me to starve, may be an unjust Law; and if so, may be altered by the progress of time, and by the improved Morality of the legislative body.

649 We shall in this and the succeeding Book, consider Laws under the two aspects which we have mentioned. In this

Book, Law is considered as fixed and given. But even under this aspect, Law is considered as the expression of Justice. The Law gives to each person his Rights, but the Law also aims at giving to each person what it is right he should have. That which is legally fixed is intended also to be morally right. *Jus*, the Doctrine of actual Rights and Obligations (90), has for its object to conform to *Justice*.

In all cases of human action, considered with reference to Morality, there is (390) an Idea and a Fact. The Fact is the actual Law and other given external circumstances of action: the Idea is Justice, or some other Moral Idea derived from the Supreme Rule of Human Action, that is, from the Moral Nature of man. The Fact is an historical element. It is what it is, in virtue of the previous course of events, which have successively produced or occasioned one another up to the present time. The Idea is the purely Moral element of our judgment. The Law, as part of the Fact, is historical. It is what it is in virtue of the national history (384). The Laws of acquisition of property, of inheritance, contract, marriage, and the like, have been produced in each country by a series of historical events. If the previous condition and history of the nation had been different, the present Laws would have been different. But yet, as we have said, at each step, Legislators and Jurists have endeavoured to make the Law the expression of Justice under the conditions of the case. Good Jurists have interpreted the Law according to Principles of Equity (401, &c.) And this is involved in the notion of *Jus*. Wise Legislators have endeavoured to make Laws accordant with the Principle of Morality in its largest sense, as applied to the action of States. The mode of doing this we may treat of as *Polity*. And *Jus* and *Polity* will be the subjects of this and the succeeding Book. *Jus* treats of what Law is, and *Polity* of what it ought to be, both of these regarding Law as the instrument of Morality.

650 In order to treat of *Jus*, we must take Law as it is. But Law, wherever it is, has an historical origin. We must therefore take as our case some community with its Laws as they are given by the History of the Society.

Of the Systems of Law actually established in the world, two especially deserve our notice, and may throw light upon our subject, if we follow them into some detail; namely, the System finally established in the ancient world, and the System actually established in our own country. The former Body of Law was

that which prevailed when the whole civilized world was one single State; the latter is that which prevails in the State in which we live. I speak of the Roman Law, and the English Law. These two Systems of Law are those in which we are most interested, as past and present realities. They are the Laws of two nations, both of them eminent for the clearness of their jural perceptions, and their vigorous habits of jural action. We may also take some examples of Laws from the Laws of the Jews; for these are of importance, in consequence of their antiquity, their authority, and their influence upon Christians. And for the reason just mentioned, we shall take into our review some of the Comments of Jurists, as well as the Decrees of Legislators.

651 In the notices which we shall give of Roman and of English Law, we do not pretend to give a complete account of each System, nor even of the principal parts of each System; but mainly, to exemplify the manner in which the historical element of a national System of Laws shows itself. The *Jus* of the Romans, the *Common Law* of England, may be conceived as collections of traditionary principles which do not derive their authority from legislation at a given epoch, but from the national idea of Rights and of Justice: and these ideas are defined and developed, not constituted, by their application to particular cases and by the *dicta* of Judges and Jurists. With regard to this element, new Laws are made rather to declare and interpret, than to change the existing Law.

But besides this traditional *Jus*, we may have Legislation, the object of which is to reform and improve the Law. Statute Law may remedy the errors as well as the obscurity or uncertainty of the Common Law. And such Legislative Reforms and Improvements must be regulated by the Moral Ideas (Justice, Equity, Humanity, and the like), of which we have already spoken in the Second Book. But these Moral Ideas, when applied to the purposes of such Legislation, assume a political aspect. They belong to Polity, and under that head will be treated of in the next Book. They direct us to the consideration of the Duties of the State, and give rise to Principles of Political Morality.

652 In order conveniently to survey the legal Definitions of Rights, we must divide Rights into their kinds, and arrange them in order. The Division and Arrangement of Right, in different Codes, and different Jurists, have been various. We shall have before us the Division and Arrangement which are most suited to our purpose, if we take those Classes of Rights to which we have

been led by our survey of the Springs of Human Action. Of these Classes, the principal are, as we have said (80), *the Rights of Personal Security, the Rights of Property, the Rights of Contract, the Rights of Marriage, and the Rights of Government.* To these we might add, as has been said, other asserted Rights, arising from less simple and universal springs of action, as the Right to Freedom of Opinion, and the Right to Reputation. But these are less important: and we shall for the most part confine our attention to the *Five Principal Classes* of Rights which we have mentioned.

In the Roman and in the English Law, all the five Classes of Rights are, for the most part, clearly and fully established; and the same is the case in all communities, in which Law has made any considerable advance. In rude and turbulent conditions of Society, it may happen that some of these Rights are very imperfectly defined, and very precariously held; or it may be, that, from a portion of the community, some of them are withheld altogether. Thus, in countries where Slavery exists, the Slave has not the Rights of Personal Security. The constraint which Slavery implies, is of itself an entire violation of the Rights of Security. And the Slave is further liable to blows and wounds in a great measure at the will of his master. He has commonly no legal remedy for such inflictions, which would be Wrongs, if any Rights of the Person existed for him. And with the loss of this class of Rights he loses all. He can have no Property; for he can have nothing which his master may not take from him, using violence if other courses fail. He cannot contract to do anything; for what he is to do, must depend on the Will of his master. He cannot even have the Rights of Marriage; for his master may at any time separate him from the sharer of his bed.

653 Thus, in such cases, we have an absence of all the Classes of Rights. Such cases are recognized in the Roman Law; for Slavery was one of the elements of Roman Society. One of the distinctions laid down as the basis of the Roman Code is, that all men are *Freemen* or *Slaves*. “*Summa divisio de jure personarum hæc est, quod omnes homines aut liberi sunt aut servi*.” But this state of things was afterwards altered, by the improved condition of the national morality. The steps of transition in the abolition of slavery are gradual. In many countries, there exist classes which, without being Slaves destitute of Rights, have Rights inferior in kind to the Classes above them. In many cases these inferior

Classes are the successors of a vanquished race: for in ancient times, by the custom of nations, the conquered in war became the slaves or servants of the conquerors. The stages by which, from this condition, men pass to an equality of Rights, are generally connected with the Right of Property, and especially with the tenure of property in land. Thus, in many countries, in which the land is cultivated by *Serfs*, who are allowed to raise their own subsistence from the soil, but compelled also to labour for the Master to whom the land belongs, men are often *ascripti glebæ*; bought, sold, and inherited with the land: yet they are not Slaves. They have a right to their own share of the produce; and, under favourable circumstances, pass by various gradations into the condition of Freemen; a change which is taking place extensively at present, in the state of the cultivators of Europe. Property in land is a Right which exists in all States; yet in some States the Right of Property of individuals has been much limited. In some of the ancient Republics, as for instance Sparta, the land belonged in common to all the citizens. And in another form of Society, which prevailed in India, the Ryots or Cultivators generally occupied the land in common, and were collected in villages under officers who distributed to the cultivators and tradesmen their respective shares of the produce*. Out of the earlier forms of tenure of land emerged the more complete Rights of Property of modern times; bearing traces however, in many respects, of their historical origin.

The Rights of Marriage are justly considered as essential to settled Society: and those who look back to the origins of things, speak of those men as the founders of Society, whose office it was to establish this institution—*concubitu prohibere vago*. Yet the female slave has generally been at the mercy of her master, wherever slavery has existed: and polygamy has been a practice extensively prevalent, and has only gradually given way to more perfect forms of the Rights of Marriage.

654 It may be asked whether the Five Principal Classes of Rights, which we have mentioned, are entirely distinct; whether one Class does not run into another. Especially, it may be asked whether Contracts do not necessarily imply Property; for we contract to buy and sell our property; and whether Property be not merely a general tacit Contract that each shall have his share. To this we reply, that Contract is really distinct from Property: we contract for services, for bodily labour, for mental labour, for know-

* Jones On Rent, p. 116.

ledge and intelligence, as in hiring a teacher, or combining in a literary work. It may perhaps be said, that a man's limbs, his knowledge, his intelligence, his mind, are his Property; so that, in these cases also, Contract implies Property. But to speak thus, is to introduce a lax and fanciful use of words, which renders all exact expression and rigorous reasoning impossible. Such a use of words annihilates the fundamental distinction of Persons and Things; and is inconsistent with our previous reasonings, in which we established the existence of Rights. For the Right of Property was shown to be necessary, by considering that man cannot act without some command of the external world, the world of material objects. By the nature of our arguments, we spoke of Property as something external, visible, tangible; or at furthest, we included, (as we shall see,) only the inseparable appendages of such material Property. We cannot consider *knowledge* and *mind* as Property, without making *Property* cease to have any definite meaning at all. Hence Contract may exist where Property does not; the two Conceptions, and the corresponding Classes of Rights, are independent of each other*.

Again: we reply, that Property cannot be said to depend upon tacit Contract, if we are to classify rights at all. For contract, as we now consider it, is the result of a special Act; or at least of an Understanding founded on some distinct analogy. A Contract implies Language, or something equivalent to Language: Property does not imply the use of Language, or any substitute for it. A tacit Contract, not understood from any special act, but, without any special ground, assumed as a universal fact among men, is not a Contract in that sense in which we have used the term in our previous reasonings. Moreover, if we suppose the prevalent respect for the Right of Property to be founded upon

* The distinction of the rights of property and the rights of contract agrees with the antithesis established by Roman Jurists, between *Jus in re* and *Jus ad rem*: the former being a property in the thing; and the latter being a right of contract relating to the *res*, but only good against the other party to the contract. The primary notion of property is that it consists in things, or the adjuncts of things (as a right of way:) and in this sense, no property can exist, without some corporeal thing for it to inhere in. But the Law has created various rights in particular persons, which may in a wider sense be called *property*: as an exclusive right to the use of an invention given by

a *patent* to the inventor: an exclusive right to publish a certain book, given by a law of *copyright* to the author. Such rights, however reasonable and just, are rather of the nature of Privileges or Monopolies than of Property. *Literary property*, for instance, as the copyright of authors is termed, is not a property in the author's manuscript merely, nor is it a property in all the printed books which follow the manuscript; it is the exclusive privilege of publishing and selling such books. Such incorporeal property agrees with other property in this respect, that it may be transferred by contract: but this can only be done in virtue of special laws regulating such property.

a tacit general Contract, we must, for the like reasons, suppose the prevalent respect for the Rights of the Person, and for the Rights of Marriage, to be founded upon tacit general Contracts: and thus, all Rights would be identified with Rights of Contract. But such a use of terms would make all classification of Rights impossible. We must, therefore, make Contract a special and definite kind of Right: and if we do this, Property will be independent of Contract, and the corresponding Classes of Rights will be distinct from each other*.

The Five Classes of Rights of which we have spoken do not occur, in that form, in the Roman Law. But we see in that Law indications which readily direct us to those Rights. The leading distinction of heads, in the Institutes of the Roman Law, is of Persons, Things, and Actions. *Omne jus quo utimur vel ad Personas pertinet, vel ad Res, vel ad Actiones*†. Here *Actiones* means legal proceedings; but we may take the term as representing peculiarly the Class of Rights of Contract; for these derive their reality especially from the support of the judicial authority. The Second Book of Justinian's Institutes is mainly concerning Property, *De Rebus*; and the Third, concerning Contracts. Family Rights also are distinguished in the Institutes from the other Rights of Persons. Thus, in the First Book, the ninth and tenth titles are, *De Patria Potestate* and *De Nuptiis*.

655 In both the Roman Law and the English Law, there is a distinction of Wrongs, into Private, and Public Wrongs. For the Social Order being established, in which respect for the Rights of all is commanded, those who transgress this respect, offend, not only against the particular persons whom they injure, but also against the State, the general protector of Rights. If one man violently beats or wounds another, he not only wrongs him, but violates the general order of Society. On the other hand, if one man holds, and claims to hold rightfully, a field or a house or a horse to which another also asserts a claim; the first may be doing a wrong to the second, but the possession being held under the show of law and justice, the question between the two

* Other ambiguities or variations occur in the arrangement of Rights. Thus, in the Prussian Law, Rights of domestic Servants are not arranged as we should arrange them, with Rights of Contract; (Hiring;) but with Rights of Persons. This is an approximation to the distinction of Persons into Free, and Slaves, assumed by the Roman Law.

† *Inst.* 1. 2. "The whole body of Jurid Doctrines refers either to Persons, or Things, or Actions." The Rights of Persons include the Rights of Family, as well as individual Personal Rights; the Rights of Government are implied in the actual enforcement of all Rights; but in a fuller treatment of the subject, require to be made a distinct class.

claimants is, which of the two really has the right which both assert. The former is a Crime; a Public Wrong; and a Crime belongs to *Criminal Law*, and must be tried by Criminal Courts. The latter is a question of Private Rights, belonging to *Civil Law*, and to be decided by an Action or Suit, *Actio*. In England, the office of the State, as the guardian of Order, and of the Rights of all, is embodied in the person of the Sovereign. A person who commits violence, breaks *the King's Peace**.

Taking the Classes of Rights as we have stated them, we shall now notice some of the jural expressions and distinctions by which these Rights, and the corresponding Classes of Wrongs, have been practically carried into effect in particular circumstances.

CHAPTER II.

THE RIGHTS OF THE PERSON.

656 THE Rights of the Person are the Rights to Safety, Security, and Free Agency, which, as we have said (79), are requisite for the peace of Society, and for the human and moral character of man's actions. These Rights are protected by the Laws, which prohibit deeds of force and violence in general. But from the extreme of violence, the infliction of death, there is a gradation to slighter acts, which also are Wrongs or Injuries. The division of these *Wrongs against the Person* is very similar in the laws of most countries.

In the Laws given to the Jewish people, the primary Law upon this subject was the Command, *Thou shalt not kill*: and this Law was followed out by various Rules concerning *Smiting*: which are given in the Book of Exodus, chap. xxi. verse 12, and the following verses.

In the English Law, proceeding from *Homicide*, which is the

* In some cases the distinction in the English Law between criminal and civil proceedings depends upon whether the public peace is broken or not, not upon whether the injury be a violation of the rights of the person or of property. A *false* (that is, wrongful) *imprisonment*, though an injury to the person, would not be the subject of indictment (that is, of a criminal process). A *forcible entry* into

a house is the subject of criminal proceedings.

The same act may be both a crime and a private wrong. *e.g.* In English Law an assault and battery, which, as a misdemeanour, may be the subject of an indictment, may also be concurrently the subject of an action for damages.

In Roman Law, crimes are included in the body of the *Jus Civile*.

highest crime against the safety of the Person, the following offenses are treated of: *Maiming*; (anciently *Mayhem**) which is an injury depriving a man of the use of some bodily member: *Wounding*; which consists in giving a man some hurt with a weapon which breaks the skin; *Battery*; which is any, the least, Hurt or Violence unlawfully and wilfully done: *Assault*; which is an attempt to do such violence. † *Threats* and Menaces, by which a man is put in bodily fear, are generally not punishable; but they may be the ground of compelling the person who uses them to give sureties, that he will keep the peace.

The least touching of another person wilfully or in anger is Battery: for the Law, as the Commentators upon it remark, cannot draw the lines between different lower degrees of violence, and therefore totally prohibits the lowest degree. In like manner among the Romans, the Cornelian Law, *De injuriis*, prohibited *Pulsatio*, as well as *Verberatio*: distinguishing Verberation, which was accompanied with pain, from Pulsation, which was not.

657 Without attempting to enumerate all the wrongs of this class, we may notice other Wrongs against the person, consisting in Violations of the Right of Personal Liberty. These come under the head of *False imprisonment*; so called in opposition to *true Imprisonment*, which is constraint put upon the person by the authority of the law.

To these offenses may be added *Kidnapping*, the forcible abduction or stealing away of a man, a woman, or child, from their own country and sending them into another. This offense was noticed also in the Jewish Law ‡: "He that stealeth a man, and selleth him, or if he be found in his hand, he shall surely be put to death." So likewise in the Roman Law, *Plagium*, the offense of buying, selling, taking or keeping as a slave, a freeman, was severely punished. The *Plagiarius* was generally condemned to the mines.

658 The English Law also takes cognizance of injuries affecting a man's health, arising, not from Malice, but from neglect. Thus a remedy is given when a person is injured by selling him unwholesome provisions or wine; or by a neighbour's exercise of a noisome trade which infects the air. There is also a legal

* *Mayhem* is, in strictness, confined to a deprivation of some member by which a man is rendered less able to defend himself; as a leg or an arm, but not a nose or an ear.

† Threats (with certain exceptions) to

do bodily harm, as also challenges to fight, are only regarded in their tendency to provoke a breach of the peace, and in these cases are not the ground of punishment, but of Sureties. Blackstone, IV. 255.

‡ Exodus xvi. 16.

remedy given to a man for the neglect or unskilful management of his physician, surgeon, or apothecary, which is called *mala praxis*. The same is the course of the Roman Law*: *Imperitia culpa adnumeratur: veluti si medicus curationem deliquerit, male quamquam secuerit, aut perperam ei medicamentum dederit.* The Injuries which are under our consideration, in this part of our work, are, for the most part, accompanied with Malice; but the physician's Indifference to his patient's health, and Disregard of the Trust reposed in him, are held by the Legislator to give to such damage, so inflicted, the character of Wrong, as well as Damage.

Malicious Intention, or a carelessness of mischievous consequences equivalent to malicious Intention, is requisite to the notion of the Wrongs or Crimes here spoken of. But in the cases which have just been mentioned, such Malicious Intention or carelessness is inferred from the act itself. In all cases of personal damage inflicted, the law infers malicious intention, unless there be some circumstances to excuse, mitigate, or justify the act.

659 Homicide is *excusable* when it is committed without intention; in the Law phrase, *by Misadventure, per infortunium*; as in the case mentioned in the Jewish Law†: *When a man goeth into the wood with his neighbour to hew wood, and his hand fetcheth a stroke with the axe to cut down the tree, and the head slippeth from the helve, and lighteth upon his neighbour that he die.* But though this is termed Excusable Homicide, the Jewish Law did not protect the slayer till he had reached one of the Cities of Refuge; and the English Law levied a fine upon the delinquent; also the thing which was the instrument of death was forfeited under the name of a *Deodand*. The fine has been remitted at the suit of the person concerned as far back as our legal records reach; but the law of Deodand is still in force‡. These enactments seem to be intended to express the high value which the law sets upon human life; so that it always supposes some degree of blame in the conduct of him who takes away life, except by express permission of the Law itself.

660 In the same spirit, the Law does not generally allow Games which may end in blood, to be received in justifications of homicide; as Tilting, Sword-playing, Boxing. And in general, if

* *Inst.* iv. 3. "Want of skill is accounted a blamable neglect; as in a case in which the physician leaves off his attendance on the patient while the cure is incomplete, or performs a surgical operation wrongly, or gives pernicious medi-

cines." A similar maxim is found in Old English Lawyers: "Like law is for want of skill as for want of care."

† *Deut.* xix. 5.

‡ Deodands are now abolished.

death ensue in consequence of idle, dangerous, and unlawful acts, as shooting, or casting stones in a town, the slayer is guilty of Manslaughter, and not of Misadventure only. But to show how much such distinctions depend upon the actual law, we may observe, that by the English Law, if the king command or permit such diversions, and death ensue, it is only Misadventure. In like manner, by the Laws both of Athens and Rome, he who killed another in the Pancratium or Public Games, authorized or permitted by the State, was not held guilty of Homicide*. *Si quis colluctatione, vel in pancratio, vel pugilis, dum inter se exercentur, alius alium occiderit, cessat Aquilia (Lex), quia gloriæ causâ et virtutis, non injuriæ gratiâ, videtur damnum datum.*

661 Homicide in Self-defense, *se defendendo*, upon a sudden affray, is excusable, rather than justifiable, by the English Law. When a man protects himself from assault in an unpremeditated quarrel, and kills him who assaults him, it is termed by the Law *chance-medley*; (or, as some choose to write it, *chaud medley*;) which signifies a *casual affray* (or else an affray in the heat of blood, *chaude meslée*). This term is rightly applied, when the slayer engages in no struggle, except what is necessary for self-defense.

662 When Homicide results from sudden heat of passion, arising naturally from provocation, without an intention previously formed, it is in English Law termed *Manslaughter*; as when one person kills another in a sudden quarrel. For the law pays, say the Commentators†, such regard to human frailty, as not to put hasty acts, and deliberate acts, on the same footing with regard to guilt. But in cases where homicide is committed upon provocation, if there be a sufficient cooling time for passion to subside, and reason to interpose; and if the person so provoked afterwards kill the other, this is deliberate revenge, and not heat of blood, and amounts to Murder.

663 *Murder* is Homicide committed with previous intention, which is termed *Malice prepense*, or *Malice afore-thought*. This is the most atrocious of Crimes.

664 Homicide is *justifiable* by the Law of England when it is committed for the prevention of any forcible and atrocious crime. If a person attempts robbery or murder, or endeavours to break open a house in the night-time, and is killed in such attempt, the slayer is acquitted‡. The Jewish Law had the like

* Plato, *Leg. Lib. vii.*; *Dig. ix. 2. 7.*
† Blackstone, *iv. 191.*

‡ By the more modern decisions of law, the distinction of night and day is no

rules*: *If a thief be found breaking up, and be smitten that he die, there shall no blood be shed for him.* So also in the Roman Law: the Law of the Twelve Tables was, *Si nox (noctu) furtum faxit, sim (si eum) aliquis occisit (occiderit) jure cæsus esto.* But there was, in this case, to be no attempt at secrecy on the part of the slayer; but, on the contrary, a loud appeal to any one within hearing †; *Lex XII. Tabularum furem noctu deprehensum occidere permittit, ut tamen id ipsum clamore testificatur.* In the day-time, the person attacked by a robber is allowed to put him to death if he cannot otherwise defend himself: but we are not, by the English Law, allowed to kill any one in order to prevent a crime, if the crime be unaccompanied by violence. In this case, the Law requires us to cause the offender to be legally apprehended and tried. So also the Jewish Law, in the place already quoted ‡: *If the sun be risen upon him, there shall be blood shed for him; for he should make full restitution.* And the Roman Law is similar §: *Interdiu deprehensum ita (lex) permittit occidere, si is se telo defendat, ut tamen æque cum clamore testificetur.* And again; *Sed et si quemcunque alium ferro se petentem quis occiderit, non videbitur injuriã occidisse; et si metu quis mortis furem occiderit. Sin autem cum possit adprehendere maluit occidere, magis est ut injuriã fecisse videatur.*

665 The Laws of Solon ||, and the proposed Laws of Plato ¶, agree with those already mentioned, in making a wide distinction between the modes of resistance permitted against the nocturnal and the diurnal thief. It has been discussed among Jurists **, what is the ground of this difference. The reason which they assign is this: that the Law does not allow a man to be put to death by a private hand, on account of an expected loss for which the Law can give redress: but only on account of danger to the person, which may be beyond redress; that therefore by day, when the person attacked can see the extent of his danger, he is justified only to the extent of his danger, and so far as the wrongs

longer noticed. The owner is now understood to be entitled to resist the robber to the last extremity; subject to the condition of showing that *that* extremity was requisite for the defense.

* Exod. xxii. 2.

† *Dig. IX. 2. 4.* The Law of the Twelve Tables makes slaying a thief detected in the night to be allowable, provided the slayer call aloud on the occasion of the act.

‡ Exod. xxii. 3.

§ *Dig. IX. 2. 3.* A thief detected by day may be slain if he defend himself with a weapon, and if, as before, the slayer call aloud. And if a man slay him who assaults him with a weapon, it is justifiable: and if a man slay a robber, being in fear of his life. But if he was able to apprehend him, and chose rather to slay him, it is not justifiable.

|| Demosth. *adv. Timocrat.*

¶ *Legg. Lib. IX.*

** Grot. *B. et P. II. i. 12.*

are of an irremediable kind; but that by night, when the unknown extent of the danger may lead him to believe it extreme, and when aid and testimony are difficult to obtain, he is justified to the extent of his fear. The Law is willing to accept such justification, because it cannot afford him redress in any other way.

666 When a person commits acts of violence against another, having received extreme *Provocation*, but not being in danger, by the Law of England, the provocation *mitigates*, but does not justify the offense. The Mitigation is not available, if there have intervened time sufficient for the passions to cool: for if that be the case, the Law itself is ready to redress the injury. Hence, when two persons in cold blood meet and fight, any mischief done by one to the other cannot be excused by alleging previous Provocation. And thus, in the case of a Duel, in which the combatants take measures tending to destroy each other's lives, the Law has fixed the crime of Murder on them.

667 A person committing an act of violence may have others who assist or *abet* him, without their taking the same share in the act which he does himself. He is the *Principal*, they are the *Accessories*. And these are distinguished into Accessories before the Fact, as those who urge a man to commit murder, and provide him with arms*; and Accessories after the Fact, as those who harbour the murderer, knowing the crime to have been committed. Some distinctions are made in the assignment of punishment to Principals and Accessories: but absence when the crime is committed is requisite to make a man an Accessory. Thus the Seconds in a Duel are guilty of murder as Principals in the Second Degree.

668 As we have said, the English Law does not allow Provocation to excuse acts of violence, except when there has been no time for passion to cool; and therefore does not acquit either of the combatants in a Duel on the ground of any provocation which he may have received. Yet the administration of the Law has often been so conducted, that it has seemed to recognize the Challenge as an excuse for the attempted Homicide. This inconsistency, between the letter and the practice of the Law, has, perhaps, in some measure, arisen out of the customs which prevailed in Europe some centuries ago, when Duels were permitted openly by Christian States; and the person who did not seek

* In general, even a privity to the intention to murder makes a man an accessory before the fact.

redress, by such means, against any expression of contempt or menace uttered against him, incurred general blame and contempt as a coward.

669 Among the justifiable acts of violence, we may notice those which the Law not only permits, but authorizes and commands; as the Imprisonment of criminals, and their Punishment by stripes, wounds, maiming, exile, or death. But in such cases, nothing is allowable which the Law does not require. To kill the greatest of malefactors extra-judicially, that is, not according to the prescribed course of the administration of the Law, is Murder. Hence, if the judge who condemns be not lawfully authorized to do so, he is guilty of murder. And the judgment must be executed by the proper Officer, for no one else is authorized by law to do it. The Judge may condemn, but must leave it to the Sheriff or his deputy to execute the sentence. Even if the Officer alters the manner of execution, as if he beheads one adjudged to be hanged, it is murder.

670 Other cases in which Homicide is justifiable, because committed for the furtherance of the law, are these: when an officer, in the execution of his office, kills a person who resists him:—when prisoners assault the gaoler or officer, trying to escape, and he kills them:—when an assembly of persons (that is twelve, or more) become riotous, and being required to disperse by the proper magistrates, refuse to do so. But it is added, by the expositors of these laws, that there must be in such cases an apparent necessity on the officer's side in order to justify him. It must appear that the culprit could not be apprehended, the prisoner could not be kept in hold, the riot could not be suppressed, in any other way.

671 There is another class of actions which may assume the aspect of infringements of the Rights of the Person, but which are justified in virtue of the Authority which the Law recognizes as residing in the persons who commit the acts. According to the English Law, the Father has an authority over his Children which entitles him to strike or constrain them, under certain conditions. A Master has a like authority over his Apprentice, and a School-master over his Scholar. In these cases, it is justifiable to beat or confine the pupil in a moderate degree, in the way of *Chastisement* or *Correction*. In cases of voluntary service, the Employer is allowed to exercise constraint over the hired Servant or hired Labourer, in whose services he for the time obtains a Right. Thus, I prohibit my Servants from going out of my house except at

stated times, and when I do not require their services. I have a Right to continued and active labour from the workmen whom I have hired.

672 In some countries, the Master has a legal Right to inflict stripes or other violence upon his Servant, the Landlord upon his Tenant, or one Class of the inhabitants upon another. In these cases the Class thus subjected possess in an imperfect degree the Rights of the Person. Such classes have been called by various names, in various ages and countries, according to their history and circumstances: as *Helots*, *Vassals*, *Serfs*; and when entirely divested of Rights, *Slaves*. We do not here inquire how far it is really consistent with justice and humanity that men should be thus partially or entirely deprived of Rights. But even when such Classes legally exist, the Law limits the power of the Master over the Dependent. Some such Dependents can be sold with the land, but cannot be separated from it: they are *prædial Slaves*, *Serfs*, *Ascripti Glebæ*. Other Slaves may be sold off the land, and disposed of at the Will of the Master. These may be kept in the house for menial services, as *domestic Slaves*; or employed in various labours for the Master's benefit and at his pleasure. Thus the ancient Greeks and Romans employed Slaves as their Artisans.

The relations between Master and Servant, are thus connected with the relations between Landlord and Tenant; and thus point out to us a close connexion between the Rights of the Person and the Rights of Property.

CHAPTER III.

THE RIGHTS OF PROPERTY.

673 AS we have already said, the existence of the Right of Property is requisite as a condition of the Free Agency of man, and the Peace and Order of Society (79). Accordingly, in all Countries such Rights do exist. In every form of Society, there are circumstances under which the necessaries and comforts of life,—food, clothing, tools, arms—are held to belong to a man, so as to be *his Property*. The Rights of Property being established, the Sentiment of Rights and the Sentiment of Wrongs (98, 99) give great force and stability to the institution. We cling with

strong and tenacious affection to what is our *own*. We earnestly approve the rule which makes it ours, and which consequently makes yours what is yours. A regard for the distinction of *meum* and *tuum* prevails. A reverence for Property is felt. The necessity of its existence, as a condition of human society, is generally perceived, and this perception gives force to the Rules by which Property is defined.

These Rules are, in each particular case, supplied by the Law of the Land. The Law determines what shall belong to one man, and what to another.

674 With regard to some Kinds of Property, when they are thus assigned, the Right of the *Proprietor* or *Owner* shows itself in a distinct, visible form. The objects are taken hold of, carried about, used, consumed; as for instance, clothing, food, tools, arms. Things of this kind are *moveable Property*. Moreover, such Property may be retained by the Proprietor, or given by him to another person, at his pleasure. It may be given either absolutely, or on condition of receiving a return; that is, given in Barter or Exchange. Thus, Property leads to Exchange; and Exchange again leads to the establishment of some general Instrument and Measure of Exchangeable Value; that is, to the use of *Money*. The natural Measure of the Exchangeable Value of any objects is the labour of producing, or the difficulty of procuring the objects. Gold and silver have been most commonly used as Money, because they are procured with a tolerably uniform degree of labour; because they perish very slowly when kept; and because they are easily divisible into definite portions.

675 When mankind have settled employments, and settled habits of intercourse, the natural Value in Exchange, either of these, or of any other objects, can never long differ from the Standard, or Measure, of which we have spoken; the labour of producing and difficulty of procuring them. For if the Exchangeable Value of any class of things were less, proportionally, than the Labour of producing them, men would turn themselves from this kind of Labour, to other employments, in which an equal Exchangeable Value might be obtained with less labour; and thus, the number of persons employed in producing this class of things being diminished, the difficulty of other persons procuring them from the producers would be increased, and the Exchangeable Value would rise. And in like manner, if the Exchangeable Value of any class of things were greater, proportionally, than the Labour of producing them, other persons would turn themselves to

this kind of Labour, and the value of the class of things would fall. Thus if the exchangeable value of gold and silver were greater than that of other objects, obtained with equal labour, men would turn their exertions to the collecting gold and silver, as the easiest way of obtaining the other objects of their desires. And though the intercourse of men, and their power of changing their employments, may not be so unfettered as to produce this result immediately; yet, in the long run, the Measure of Value in Exchange will be the amount of Labour employed in producing the objects.

676 But, besides Moveable Property, consisting of objects which the Proprietor can hold, remove, consume, or transfer in a manifest manner, there is Property of another kind, which cannot be removed or destroyed, or possessed in a visible manner; and which yet must be, and by the Laws of every Country is, vested in Proprietors. We speak now of *Property in Land*. It is requisite that such Property should be established; for in every Country man subsists on the fruits of the Earth, or on animals which are supported by the Earth; and in order to live, he must have, on the face of the earth, his dwelling-place, and the source of his food and clothing; he must have his house and his field. In most countries, the earth does not supply man with what he needs, except by cultivation; and the *Cultivator* must be stimulated to perform his task, by having his portion of the fruits of his labour assigned to him as his Property. But whatever amount of Cultivation be necessary, the produce of the earth, and the soil itself, are, in every country, assigned to some class of *Landlords* as Property, or are assumed as Property by the State itself.

677 The assignation of Landed Property to its owners, as of all other Property, is defined and determined by the Law of the Land. But in Landed Property, the acts of Ownership are less obvious, natural and effective, than they are in other kinds of property; and therefore Property in Land is more peculiarly and manifestly determined and directed by the Law, than Property in Moveables.

The ancient Law of England treats Land as that *Thing* which is eminently and peculiarly the subject of Laws concerning Property, while all other Things are considered as only appendages to *Persons*. Hence, Land is termed *Real Property*; everything else is *Personal Property*.

678 In most countries, the Cultivators are a different class from the Proprietor of the Land; whether the Proprietor be an-

other Class, or the State itself. The Rights of the Cultivator and of the Proprietor are determined by Law, or by Custom equivalent to Law, and are various in various countries. The share given by the Cultivator to the Proprietor is *Rent*. He who holds the land is the *Tenant*, in contradistinction to the Landlord, who owns it.

679 In the greater part of Asia*, the Sovereign is the sole Proprietor; and as such, receives a fixed portion (commonly one-fifth) of the produce from the Cultivator; who is, in India, called a *Ryot*. In Russia, and a great part of Germany, the Cultivator supports himself on a part of the Land; and pays a *Rent* to the Landlord in his *Labour*; being obliged, during a fixed portion of his time, (as for instance, during three days in the week,) to work in the cultivation of the Landlord's exclusive share: such Cultivators are *Serfs*. But these Labour-Rents sometimes became unlimited, and the Serf approached in condition to a Slave. In other parts of Europe, as in Greece, Italy, and France, in ancient and in modern times, the Cultivator has been supplied by the Landlord with the means of cultivation, and has paid to him a fixed portion of the produce; generally one half. Hence such Cultivators are called *Coloni Partiarii*, *Coloni Medietarii*, *Métayers*. In a few spots on the Earth, of which England is an example, there are, between the Landlord and the labouring Cultivator, an intermediate class, the *Farmers*; who pay a *Money-Rent* to the Landlord, *Wages* to the Labourer, and have for themselves the whole produce obtained from the Land. The Farmer must be able to subsist the Labourer, while he is toiling so as to raise a future crop of produce: therefore he must possess a *Stock*, or *Capital*, already accumulated. The amount of the produce which the Farmer has, after paying Rent, Wages, and other expenses, is the *Profits* of his Stock.

680 These various forms of the distribution of the wealth produced by the soil of each Country affect very greatly other Rights, as well as the Rights of Property (672). The Serf generally possesses in a very imperfect degree the Rights of the Person against his Lord; but against other persons, his Lord is supposed to afford him protection. In modern Europe, there prevailed, for several centuries, a System of Tenure of Land with such mutual Rights and Obligations; namely, *the Feudal System*. According to this system, Land was held on the conditions of Protection from the Superior, and Service from the Inferior; and according to these

* Jones On Rent.

conditions, a series of Persons, each subordinate to the one above him, had a modified Property in the Land. Each such person was the *Vassal* of the one above him, his *Superior Lord* or *Seignior*. Each Lord had a Right to certain Payments or Dues from his Vassals; and the Vassal, being marshalled as a Soldier under his Lord, was enabled to protect himself and others. The Land thus granted by a superior to an inferior was called a *Feud* or *Fee*. None of these Feuds or Fees was an absolute Property; all were held of the Sovereign, at least in England. He was the only *Landlord*; and the highest Title of Ownership under the Feudal System was *Tenant in Fee Simple*. Besides Tenants of various kinds, there were mere Labourers who held no Fees, and were called *Villeins*. At first, this Cultivator in England was precisely in the situation of the Russian Serf*. In the three centuries beginning from about A. D. 1300, the unlimited Labour-Rents paid by the English Villeins for the lands allotted them were gradually commuted for definite services, still payable to the Lord. Out of this grew a legal Right of some of the cultivators to the occupation of their Lands, which were registered in a list kept by the Lord. Hence these were called *Copyhold Tenures*, in distinction to the usual possession of the Soil by a freeman, which was a *Freehold Tenure*.

681 The relations which the Tenure of Landed Property establishes among different classes continue to influence the Laws, and still more the Forms of Law, in each country, long after their original force has been lost. Two hundred years have barely elapsed since the personal bondage of the Villein ceased to exist among us. Copyhold Tenures are still familiar. The Lord of the Manor, the representative of the Feudal Seignior, has still various Rights, due to him from Copyhold Tenants: as Heriots, payable on the death of the Tenant; Fines, payable when the Land is alienated by the Tenant to another person; the Rights of pursuing Game, which are reserved to the Lord of the Manor, even in Freeholds. And the phrases used in transferring Landed Property still have many traces of the Feudal System.

682 In like manner, in the Roman Law the conditions of Property and the modes of transferring it retained to a late period traces of the earlier modes of Tenure. In the earliest known stage of the Roman Law, Lands, with the Slaves and Cattle requisite for their cultivation, were transferred by a ceremonious form called *Mancipatio*; and the Quirites, or original Roman citizens, could

* Jones *On Rent*, p. 40.

not transfer the ownership of these things in any other way. Hence arose a division of *Res Mancipi*, things which must be thus transferred, and *Res nec Mancipi*, things which need not*. But though a man could not acquire Quiritarian ownership or *Dominium* of a *Res Mancipi*, without this process, he might have possession and use of such a thing without such ownership; and the later jurists recognized this kind of Right†. They say‡, There is among foreigners only one kind of ownership (*dominium*), so that a man is either the owner of a thing, or he is not. And this was formerly the case among the Roman people: for a man was either the owner *ex jure Quiritium*, or he was not. But afterwards the ownership was split; so that now one man may be the Owner of a thing *ex jure Quiritium*, and yet another person may have it in his possession (*in bonis*). For instance, if in the case of a thing which is *res Mancipi*, I do not transfer it to you by *mancipatio*, but merely deliver it to you, the thing indeed becomes your possession (*in bonis tuis*), but it will remain mine *ex jure Quiritium*, until by continued possession you make it yours (*donec tu eam possidendo usucapias*). When that is complete, it is yours absolutely (*pleno jure*).

683 Upon the conditions of tenure of land, depend the *Title* or evidence of ownership; the modes of *Conveyance* or Transfer by Contract; the modes of *Succession* on the death of the Proprietor, whether by his *Testament*, or *ab intestato*: the judicial *Remedies* for Wrongs: and the like. A person's landed property so much determines his condition, that we commonly speak of his land as his *Estate*. The possession of a house, or habitation, is important to man in his social condition, not only as a means of shelter and bodily comfort, but also as giving him a fixed local position in the Community. By such possession, he is a *Householder*; and for many important purposes the State or City is considered as consisting of Householders. The place, neighbourhood, city, or country in which a person has his habitation, is his *Domicile* (*Domicilium*). A person's Domicile, for the most part, places him under the Laws of the State in which it is situated.

684. As Property in Land, and in the fruits produced by the cultivation of the Land, is established and realized by the Laws and Customs of each country; in like manner is established Pro-

* There was however, besides *Mancipatio*, a formal legal process, called *Cessio in jure*, by which *res Mancipi* might be transferred.

† Hence *mancipium* is used for full

property, as in the line,

Vitaque mancipio nulli datur omnibus usu. *Lucret.*

‡ Gaius, II. 40, who lived in time of the Antonines.

perty in other objects, which can be distributed and assigned to special persons; for instance, in flocks and herds, and their produce; in the produce of the interior of the earth, as mines; in all that we fabricate by fashioning into a new form the materials thus produced,—wood, stone, metal, and the parts of plants and of animals. With regard to all these, and other forms of material or corporeal Property, the Law in every Country recognizes certain modes of acquiring, possessing, and transferring them, as conferring Rights.

685 The Wrongs, or Injuries by which the Rights of Property are violated, are distinguished and classed by the Law according to their circumstances. The Command, *Thou shalt not steal*, is the basis of all Laws on this subject. The definition of *Stealing*, or *Larceny* (*Latrocinium*), in the English Law*, is “the felonious taking and carrying away the goods of another.” The definition of the Roman Law† was nearly the same: “Furtum est contrectatio fraudulosa, lucri faciendi causâ, vel ipsius rei, vel etiam ejus usus possessionisve.” The English Law further distinguishes *privately Stealing*, as for instance, picking the pocket; and open and violent Larceny, which is *Robbery*; this the Roman Law‡ calls *Bona vi raptâ*. Another crime against property is *Burglary* (*Burgi Latrocinium*), or nocturnal Housebreaking; for the Law considers the crime if committed by night as much more heinous than the like act committed by day; as we have already seen that it makes a difference in the Right of self-defense in the two cases.

686 The crime of Theft, as above defined, includes only the cases in which the Thief furtively or violently takes the material object: but besides these, a person may be despoiled of his property by *Fraud*; as for instance, when an Order to deliver goods is fabricated or forged by some one who has no Right to give such Order. This is *Forgery*. In the Roman Law§ it was *Crimen Falsi*. “Lex Cornelia de falsis pœnam irrogat ei qui testamentum aliudve instrumentum falsum scripserit, signaverit, recitaverit, sub-

* Blackstone, IV. 229. The definition, by some modern lawyers, of Theft is, A taking or removing of some Thing; being the Property of some other Person and of some value; without due Consent (to be separately defined); with intent to despoil the owner, and fraudulently appropriate the thing.

† Inst. IV. 1.

‡ Dig. XLVII. 8.

§ Inst. IV. 18. 7. “The Law of Forgery appoints a punishment for a man, if knowingly, and with fraudulent intent, he has written, sealed, recited, substituted, or procured to be executed a false testament or other instrument: or if he has, with like knowledge and intent, forged the signet of another person, by carving, moulding, or impressing.”

jecerit; vel signum adulterinum fecerit, sculpsit, expresserit, sciens, dolo malo." We need not here attempt to enumerate the various forms of fraud and deception by which a person may be deprived of his property. • They are all included in the term *Cheating*.

687 According to the English Law, Larceny applies only to moveable Property; for landed Property, by its nature, cannot be taken and carried away. And even of things that adhere to the Land, as Corn, Grass, Trees, and the like, no Larceny can be committed by the Common Law of England. The Severance of these from their roots is an Injury against the real Estate, which is termed a *Trespass*. But this state of the English Law has in several instances been altered in modern times*.

688 There are some further distinctions with regard to Property, which it may be useful to notice. According to the Roman Lawyers, the power of individuals over their property, which they termed *Dominium Vulgare*, was subject to the power which the State, or the Sovereign had, to prescribe the conditions on which they were to hold and enjoy their possessions: this power was *Dominium Eminens*. The State, which defines and establishes the Rights of the Owner, always limits those Rights; either by national maxims, as in Asiatic Empires, where the Sovereign is the Proprietor of the Soil; and in Feudal Kingdoms, where the King is the Sovereign Lord of every Fee†; or by cases of public necessity and convenience; as when a man is compelled by the State to part with his house, that the street may be improved.

689 Again: besides Private Property, *Res Singulorum*, the Roman Lawyers reckoned various kinds of Public Property; thus, among *Res Publicæ* are highways, streets, bridges, the walls and gates of a city; public gardens, grounds, fields and estates; markets, courts of justice; prisons; docks and harbours; fleets and their furniture, and the artillery, arms, and carriages of public armies; also the wealth of the public Treasury; and many other kinds of property, according to the various institutions and modes of administration of different states.

690 There are other things, which are common in their use,

* The ultimate conclusion at which English Lawyers have arrived on this subject is, that it would be desirable to abolish the distinctions of the Law of Theft with regard to things severed and not severed from the realty. See *Act of Crimes and Punishments*, Chap. XVIII. Sect.

† Art. 6.

† In England, since the time of William the Conqueror, the king has been the sovereign lord of every fee; but in some other feudal countries there appear to have been *allodial* lands which the proprietor did not hold of the king.

hence called *Res Communes*; but incapable of being appropriated, hence also called *Res Nullius*; as air, running water, the sea, the shore. These can be used by each person without any hurt or loss to other persons, and are hence said to be things *quorum innoxia est utilitas*. Yet these are not, in all cases, reckoned *Res Nullius*. States claim a property in their navigable rivers, and even in the sea near their shores. And by the English Law, although a person can have no property in running water, he may possess as property a lake or river, under the designation of "so many acres of ground covered with water." He may also have a property in the use of running water: but this belongs to property of another kind, which we must now notice.

691 Private property is *corporeal* or *incorporeal*. Corporeal property is such as we have mentioned, both moveable and immoveable: the immoveable being lands, houses, mines, and the like. But besides these kinds of property, a man may have a property in the Use of land or its adjuncts. This is the case, for instance, when a man has a Right of way over another's lands; or has a water-mill, of which the water flows through another's estate: for he has a Right to the flow of the water; and the owner of the other estate is not allowed to stop or turn aside the stream which drives the mill. Such Limitations of the Proprietor's Right, by the Right of another to some use of the property, arising from neighbourhood (*vicinage*), or other relations, are called in the Roman Law, *Servitudes*, Servitudes or Services; and are treated with great detail and distinctness by the Roman Lawyers. Such Property is termed by English Lawyers *incorporeal* Property. Servitudes of a Property for the convenience of a neighbouring property are called in English Law, *Easements*.

692 Before the statute of the twelfth year of Charles the Second (the *first* year after the Restoration, the years of the Commonwealth not being reckoned) the tenures of land in England, as derived from the Feudal System, were *free* or *not free*. The principal free tenures were *knight service* and *common socage*; the principal tenure that was not free was *copyhold*. The free tenures were charged with several services, as homage, ward, marriage, relief, and military service: but this latter, the service of following the lord to the wars, was usually commuted for an *uncertain* or varying pecuniary payment (*escuage*). In *socage* the payment was *certain*. The statute of Charles II. converted knight service into socage, and abolished the burdensome incidents which had accompanied knight service. Socage lands are now commonly

called *freehold*, to distinguish them from *copyhold*. Yet even freehold Proprietors still owe certain Services to the *Lord of the Manor*, who now stands in the place of the Feudal Lord. Services, due from land, and other kinds of Incorporeal Property, are capable of being inherited, and are termed in English Law, *Incorporeal Hereditaments*. Such incorporeal property must necessarily be an adjunct to corporeal property: it must have a corporeal subject, land, or something else, in which it inheres. For Property is of the nature of a Thing (45).

693 There are some things, with regard to which the Definitions of Law, as to whether they are private property or common things, are very various. Tame animals, *animalia domestice naturæ*, as horses, cattle, and sheep, are the subjects of direct Property. But wild animals, *animalia feræ naturæ*, as fish, and several kinds of birds which are not housed or domesticated, are not my property by the Roman Law, except I exercise upon them some act of appropriation. Wild birds and wild beasts, when they quit my land, are not my property; and even while they continue there, are mine only by the Right which I have of pursuing them. The Roman Law gives me a Right to such creatures, when taken even in another man's land*: "Occupanti conceditur: nec interest, quod ad feras bestias et volucres attinet, utrum in suo fundo aliquis capiat an in alieno." The Jurists appear to have given such Rules, from a wish to exemplify their doctrine, that there are things which become property by the act of taking them. Such a Rule would be very inconvenient in a well-cultivated country. Accordingly, later commentators (as Heineccius) add † "modo non prohibeamur ingressu fundi a domino." By the ancient law of England, the Game, so long as it is on the land, belongs to the owner of the land *ratione soli*. But this state of the Right was interfered with by royal and other privileges. A *licence* from the State was required to kill game; and at one period, none were allowed to do so without the *qualification* of possessing certain property. The Right of taking the game still remains, in many instances, not a Property commonly transferred with the land, but a Service under the control of the Lord of the Manor; and in our Game Laws, we have a laborious system of Enactments for the purpose of protecting this Right.

* "It is made the property of him who takes possession of it; and, as regards wild beasts and birds, it makes no difference whether a person take them on

his own land, or on another's."

† "Provided we are not forbidden to come upon the land by the landlord."

694 The property of things which have no apparent owner, ἀδέσποτα, has been variously assigned by the Laws of various Countries: such things, for instance, as hidden Treasure found by accident, which is called in the English Law *Treasure Trove*, and is given to the King, or the Person to whom he grants it. Another instance is, land left dry by some alteration in the course of a river. The Roman lawyers laid down various Rules, according to which they assigned this land to the Proprietors of the adjacent banks. More modern writers give it to the State*.

695 In like manner, the Law determines what length of time of undisturbed possession or enjoyment of things is to be considered as conferring the Right of Property. In the early Roman Law, this mode of acquiring the Right of Property is termed *Usucapio*. Gaius† says, “*Usucapio mobilium quidem rerum anno completur; fundi vero et ædium biennio; et ita Cap. XII. tabularum cautum est.*” And he gives the reason for this‡: “*Quod ideo receptum videtur ne rerum dominia diutius in incerto essent: cum sufficerit domino ad inquirendam rem suam anni aut biennii spatium.*” But this refers to the formalities of the Roman Law in its early stages. The more general term for this mode of acquiring a Right by lapse of time was *Præscriptio*, or *Temporis Præscriptio*. This is regulated by various laws; for instance§: “*Præscriptione bona fide possidentes adversus præsentis annorum decem, absentes autem viginti muniuntur.*” In the English Law, Prescription is made a valid source of Right by the Statutes of Limitation, that is, Acts of Parliament which limit the time within which actions for Wrongs may be brought. The period of unquestioned possession which establishes a Right is in different cases, sixty, fifty, thirty and twenty years||: and the Commentators state that the reason of these Statutes of Limitations is to preserve the peace of the kingdom, and to prevent the frauds which might ensue; if a man were allowed to bring an action for any injury committed at any distance of time. To this effect,

* Grot. *B. et P.* II. 8. 8.

† Gaius, II. 42.

‡ Id. II. 44. “Prescription in moveables is established by a year’s possession; in land and house by two years. Which seems to have been made the rule in order that the ownership of property might not be longer uncertain. For one or two years was time sufficient for the owner to ascertain his property.” There are impor-

tant points of difference between *Usucapio* in Roman, and *Statutes of Limitation* in English Law.

§ Cod. VII. 35. 7.

|| Blackstone, III. 307. The last Statute of Limitations assigns twenty years as the period for land; and various periods from six years downwards are fixed as to personal actions.

they quote the maxim of the Jurists* : "Interest reipublicæ ut sit finis litium."

696 Besides the ownership of a thing, by which a person is entitled to use it, there are cases in which a person is recognized as the owner by law, and yet bound to give to another the advantage of the use of a property. Property so committed to a person is called in Latin, *fidei commissum*, in English, a *Trust*: the person to whom it is committed is *fiduciarius*, a *Trustee*. A Trustee possesses and administers property for the benefit of others; generally, on certain conditions and according to certain rules.

697 The Right to Moveables generally† implies a *Right of Alienation*; that is, of transferring them to another by Gift, Sale, or Barter. The Right to Immoveables does not so universally imply a Right of Alienation; for the *Dominium Eminens* (144) of the State or the Sovereign may come in, and may prohibit or limit such a transfer. So also a Feudal Tenant could not alienate his Fee to another Person. The Fee must be granted by the Lord only.

698 Again; the State regulates, by special Laws and Customs, the *Succession to Property*; that is, the disposal of a man's property after his death, whether moveable or immoveable. It determines whether he shall have the power of disposing of the whole, or of part, by his *Will* and *Testament*. And if the man die *intestate*, the Law determines in what manner his property shall be assigned to the members of his family, or to other persons. In some States, as in ancient Rome, the property was equally divided among the children; in others, as commonly in England, there is a *Law of Primogeniture*, by which a larger portion, or the whole, (so far as landed property is concerned,) is given to the eldest son. Such differences depend upon the different views of the relations of Families, and their Property, to the State, which prevail in different times and Countries. See (735) &c.

699 To give, or alienate Property, some external act is requisite; for we are now speaking of Laws which deal with external acts. The Law must define what *Act* (including words in the term *Acts*) shall constitute giving or alienating. It must deter-

* "It is for the public good that there be an end to lawsuits."

† The beneficial interest both in moveables and immoveables, is often completely severed from the right of alienation. This severance between the right of alienation

and the right of enjoyment has, in the English system of jurisprudence, been carried to a great extent, and given rise, in the hands of our equity lawyers, to a peculiar body of doctrine. The whole doctrine of *trusts* and *powers* rests upon it.

mine, for instance, whether *Words of Transfer* be sufficient for this purpose; and if so, with what publicity they must be uttered, in order to be valid; or whether some *Act of Delivery* be also requisite. The latter was the case in the Roman and in the English Law; at least in the most formal kinds of transfer.

Also an *Act of Acceptance* on the other part is requisite; for it would be intolerable that a person should, without my consent, have the power of giving me what might be in the highest degree burdensome or troublesome; as if he were to give me a wild beast*. And the act of acceptance must also be defined by Law.

700 Questions have been discussed among Jurists as to the Rule which is to be followed when the Right of Property comes in conflict with the Needs of Personal Safety. For instance; When, in a ship, the common stock of provisions fails, is it allowable for the Passengers to use that which belongs to one of them in spite of his will? When a fire is raging in a town, is it allowable, in order to stop it, to pull down a house without consent of the owner? When a ship runs foul of the cables of other ships, is it allowable for the captain to cut these cables, if his ship cannot otherwise be extricated?

In such cases, it has been decided by the Roman Law, and its Commentators, that the Right of Property must give way. Necessity, they say†, overrules all Laws. But this is to be required only in extreme cases, and when all other courses fail. To which is added, by most Jurists, that when it is possible, restitution is to be made for the damage committed. A like Rule is recognized in the English Law‡.

It has been held, by some English Lawyers, that a starving man may justifiably take food; but others deny that such necessity gives a right; inasmuch as the poor are otherwise provided for by Law§.

* Perhaps the reason why an act of acceptance is necessary might be given in a more juristical form by referring to the general principle that my condition or *Status* can never be affected except by my own act or that of the State. The act of another individual or of other individuals

(*res inter alios acta*) cannot make my condition jurally better or worse. I can receive no right, nor lose any, without my own consent, express or implied.

† Grot. II. 2. 6. 4.

‡ Kent's *Commentaries*, II. 338.

§ Bl. IV. 32.

CHAPTER IV.

THE RIGHTS OF 'CONTRACT.

701 WE have already (50) spoken of the necessity of mutual understanding and mutual dependence among men ; and the consequent necessity of the fulfilment of Promises, as one of the principal bonds of Society. The necessity of depending upon assurances made by other men, gives birth to a Right in the person to whom the assurances are made. A person has, under due conditions, a Right to the fulfilment of a Promise. The Law realizes this Right, and must therefore define the conditions. The mutual assurances, which the Law undertakes to enforce, are called *Contracts**.

702 The Law, which enforces Contracts, must determine what Promises are valid Contracts. To show the necessity of recurring to actual Law on this subject, we may remark how vague, arbitrary, and inconvenient are the maxims on this point, which Jurists have attempted to draw from the nature of the case. Thus it has been asserted†, that of the three ways of speaking of the future: *I intend to give you: I shall give you: I promise you:* the two former do not give a Right to the person addressed ; but the third does. It is evident that this distinction is as arbitrary as any merely legal one can be : and if such rules are arbitrary, they must be established as a matter of fact, not of reasoning : that is, they must be established by actual Laws.

703 But according to the Roman Law, even the last formula, *I promise you*, did not necessarily convey a Right. The Roman jurists distinguished Contracts, which were universally binding, from Pacts, which were not binding except when clothed with special circumstances. A bare Promise was a *Nudum Pactum*, and did not establish a legal obligation.

In thus refusing to recognize a bare Promise as creating a Right, the Law proceeds with a due regard to the gravity of Rights. Relations so important must be brought into being only

* A Contract gives rise to an Obligation, namely, the Obligation to fulfil the Contract. This the Roman Law calls an *Obligatio ex contractu*, and it gives the following definition of obligation: "*Obligatio est juris vinculum quo necessitate adstringimur alicujus solvendæ rei secun-*

dum nostræ civitatis jura." *Inst. III. De Obligationibus.* "An Obligation is the jural Bond which makes it necessary for us to discharge something according to the laws of the state of which we are citizens."

† Grot. *B. et P.* II. II. 2.

by acts of a calm and deliberate kind. If a verbal promise, however hasty, informal, and destitute of reasonable motive, were to be sanctioned as creating a Right, the Law must carry into effect the most extravagant proposals of gamblers; as for instance, when a man stakes the whole of his fortune on the turn of a die: for the meaning of such an act is, "I promise to give you so much, if the cast is so." But the Law, whose purpose is to produce and maintain a moral and social condition of man, in which human actions are deliberate, rational and coherent, refuses its sanction and aid to such rash, irrational, and incoherent proceedings*.

In the Roman Law, one ground for withholding legal force to certain promises or agreements, was the absence of a *Cause* or *Consideration*†: "Cum nulla subest causa propter conventionem, hic constat constitere‡ non posse obligationem. Igitur nuda pactio obligationem non facit." And the same is the case in the English Law: in which a Contract is defined§, "An agreement of two or more persons, upon sufficient *Consideration*, to do or not to do a particular thing:" and the Consideration is necessary to the validity of the Contract,

704 The Law, though it requires a Consideration on each

* This view of the grounds for not giving legal validity to Nude Pacts is held by eminent jurists and moralists; (for instance, Leibnitz;) but by the English common Law, a wager is a good contract, and, *exceptis excipiendis*, money won on a wager may be recovered in a court of justice. Excepted cases are, wagers on games, wagers tending to disturb the public peace or to encourage immorality, or which hurt the feelings or character of persons not parties to the wager. But it is obvious that a wager not coming under any of these heads may be as inconsiderate and unwise a transaction as a wager on the turn of a die.

† *Dig. II. 14. 7.* "When there is no consideration for the agreement, there can be no obligation. Hence a nude pact does not establish an obligation."

‡ It would seem that "constitere" or "constitui" must be the true reading.

§ *Bl. II. 445.* But it appears to be erroneous to state the presence or absence of a consideration as the general distinction between Contracts and Pacts. According to Walter (*Geschichte des Römischen Rechts*, B. III. c. XIII.) the leading distinction of Pacts from Innominate Contracts was that they were one-sided in their beneficial effect, and hence required especial formalities to give them legal

validity. Such formalities were *Stipulation* and *Literal Obligation*. These were *clothed Pacts*. As opposed to these, were the informal *nude Pacts*, which, generally speaking, afforded no ground for an action.

But though nude Pacts did not convey a right of action, they might give a defense to an action. "Nuda pactio Obligationem non parit, sed parit exceptionem," says Ulpius, *Dig. II. 14. 7.* When a person says "I promise you not to sue for my money which you owe me;" this is a mere pact: no action can arise out of it; but if I sue you, the pact "parit exceptionem" leads the judge to find for you. With regard to such Pacts, the Judge says, "Pacta Conventa, quæ neque dolo malo, neque adversus leges, plebiscita, Senatus consulta, edicta Principum, neque quo fraus cui rerum fiat, facta erunt, servabo." *Dig. II. 14. 17.* "I will enforce Pacts which are made in conformity with the Laws, the Decrees of the People and of the Senate, the Edicts of the Emperor, in good faith, and with no fraudulent design." *Pactum conventum* is the full legal phrase for *Pacta*. Contracts are binding *jure civili*. Pacts are not. The Prætor here declares his intention of giving effect, under certain conditions, to the latter.

side as a Contract, does not undertake to provide an equality of advantage to both; but is contented with any degree of reciprocity, leaving the force of the Consideration to be weighed by the contracting parties. Thus money paid is a valuable consideration: but a good consideration also is that of blood, or of natural love and affection*. And, according to English Lawyers, as a Consideration is made necessary by the Law, in order to avoid the inconvenience of giving legal force to mere verbal promises, the Contract may be made in so solemn a manner that the Law will, for some purposes suppose a Consideration, though it be not expressed. This is the case for certain purposes in the English Law, when a man executes a bond under his seal †.

On the other hand (as restraining the efficacy of a Consideration) the Law will not recognize a Contract which binds either of the parties to perform an illegal act ‡: “*Quod turpi ex causâ promissum est, veluti si quis homicidium vel sacrilegium se facturum promittat, non valet.*” And the like is said of Pacts §: “*Pacta quæ causam turpem habent non sunt servanda.*” And the English Law || recognizes a number of cases of this kind, as annulling Contracts.

705 *Contracts* are *void* also when made under violence and constraint. In such cases the person so constrained and compelled is, in the language of the Law, in *Duress* (*Durities*). The Law also recognizes *Durities per minas*, *Fear* arising from threats, as a circumstance which invalidates a contract made under its influence. But this fear must be of a serious kind; fear of loss of life, or of limb; and this upon sufficient reason; or, as an ancient English Law-writer expresses it ¶, “*Non suspicio cujuslibet vani et meticulosi hominis, sed talis quæ possit cadere in hominem constantem.*” A fear of being beaten, though ever so well grounded, is no duress; neither is the fear of having one’s house burned, or one’s goods taken away or destroyed; because, in these cases, a man may obtain redress; but no sufficient compensation can be made for loss of life or limb.

* Bl. II. 297.

† On a promissory note or bill of exchange, want of consideration cannot be pleaded against the *maker* of the note by the *indorsee* (see Sect. 713), who gave full value for it, nor yet by the *acceptor* if the indorsee bring his action against him. But between the original parties to the note or bill it may. See Hovenden’s *Blackstone*, II. p. 445.

‡ *Inst.* III. De Inutil. Stipulat. 24.
“What is promised for a criminal cause

is not valid; as for instance, if any one promise that he will commit homicide or sacrilege.”

§ *Dig.* II. 14. 17. “Pacts for a shameful consideration are not to be enforced.”

|| *Kent’s Com.* II. 466.

¶ Bracton, quoted Blackst. II. 131. “Not the suspicion of a light-minded and timorous person, but such as may fall upon a man of firm mind.” This is taken from the *Digest.* IV. 2. 6.

706 Contracts are also void, from the want of that free agency which the law requires, when the deficiency arises, not from violence or threats, but from the condition of the party as to age or understanding. Persons under the legal full age, called *Minors* or *Infants* by the Law, cannot make a valid Contract. By the English Common Law the *Wife* also is incapable of binding herself by Contract; her interests being supposed to be so inseparably bound up with those of her Husband, that she cannot act independently of him. A Contract made by a person not having the use of Reason, *non compos mentis*, is void. The Contracts of *Lunatics* are void from the time when the Lunacy commences. It has also been settled by the English Law*, that a Contract made by a man in a state of intoxication, if his state be such that he do not know the Consequences of his conduct, is void. Imbecility of Mind is not sufficient to set aside a Contract, when there is not an essential privation of Reason, or an incapacity of understanding and acting in the common affairs of life.

707 Contracts may be rendered void by *Deception* or *Fraud* practised on one side; but it is a matter of no small difficulty to lay down consistent Rules on this subject. The Roman law does not enforce Contracts which are made *dolo malo*. And this is further explained †: “*Dolus malus fit calliditate et fallaciâ. Dolo malo pactum fit quoties circumscribendi alterius causâ aliud agitur et aliud agi simulatur.*” But it is easier to lay down Rules on this subject when Contracts have been distinguished into different kinds.

708 The Roman Jurists have divided Contracts into Kinds, according to the Consideration and the mode of expressing it. Some are called *nominate* Contracts—*Contractus nominati*—in which there are familiar names for the acts on each side; *Buying and Selling; Letting and Hiring; Partnership; Commission*:—*Emtio Venditio; Locatio Conductio; Societas; Mandatum*. Others are called *innominate* Contracts—*Contractus innominati*: such as are expressed by the four Formulæ‡ *Do ut des; Facio ut facias; Facio ut des; Do ut facias*. The *Nominate* Contracts comprehended the most common transactions of men, and hence they had assigned to them at an early period settled forms of action which bore the name of the contract: and these agreements were specially called *Contractus*, others being *Pacta*‡.

* Kent, II. 151.

† *Dig. II. 14. 17.* “*Fraud is the use of trick and deception. A pact is fraudulent when, for the purpose of circum-*

venting some person, one thing is done and another simulated to be done.”

‡ Heinec. *Elem. Jur. Civ.* §774. 779. But see the note to (703) for Walter's view.

709 By the Roman Law, some of the Nominated Contracts become valid merely by the expression of the mutual agreement, and are hence called *consensual**. Such are *buying and selling; letting and hiring; partnership; and commission (Mandatum)*: other Contracts, though nominate, do not take effect except there be a delivery of the thing agreed about: such are, *borrowing and lending, deposit, and pledge*:—*Mutuum, Commodatum, Depositum, Pignus*. These were called *real* Contracts, because they became valid by act, not by word. In these, *re integrá*, before delivery, the parties were allowed to retract. But in Sales, in order to remove any doubt which might arise, as to whether the Sale was completed, the practice was sometimes adopted of giving *Arrha, Earnest*, a portion of the price; which, however small, was evidence of the Contract. Among the Northern Nations, shaking the parties' hands together had this efficacy; and a sale thus made was called *handsale*; whence *handsel* was also used for the earnest of the price†. In the same manner a *symbolical delivery* of the goods was introduced: as for instance, the delivery of the key of the warehouse in which they were contained.

710 Borrowing and Lending is a Contract, in which the Romans distinguished two different cases, which we confound under one term. *Mutuum* was applied to the lending of those things which are reckoned by number, weight, and measure; as wine, oil, corn, coined money, of which the borrower receives a stated quantity which he may use, consume, or part with. *Commodatum* was that which was lent, to be restored identically the same; as a book, a harp, a horse. And the Law made a distinction in the responsibility of the borrower in these two cases. The person who had received a thing as *commodatum*, was bound indeed to keep it with as much care as if it were his own, or with more, if more were possible: yet if it were lost or destroyed by no fault of his, he was not bound to make compensation. But if he had received a thing as *mutuum*, it was to be repaid at any rate, in whatever way it had been consumed or lost‡. Paley§ calls things which may be the subject of *commodatum*, *inconsumable property*. The other kind, *consumable property*, is also termed

* *Ib.* § 895.

† Blackstone, II. 448.

‡ *Inst.* III. 15. The principle of the distinction by which *mutuum* and *commodatum* are opposed, as to liability of risk in the case of loss, is the principle of ownership: *Res perit domino*, in case of

innocent loss, is a general rule. In *mutuum* the property is transferred to the Borrower: in *commodatum* it remains with the Lender. Therefore the loss in the first case falls on the Borrower, in the second on the Lender.

§ *Moral Phil.* B. III. c. 3.

Res fungibiles by the Civilians ; for one portion can discharge the office of another. “ *Res ejus generis functionem recipere dicuntur ; id est, restitui posse per quod genere idem est**.”

711 Besides the Hiring of Labour, *Locatio Operis faciendi*, there is *Locatio Rei*, the Letting of a Thing to hire, as letting a house. In this case, also, the Hirer is bound to ordinary care and diligence, and is answerable for neglect : but the extent of his Obligations, as to Repairs and Expenses, must be settled by express Rules of Law or Custom.

712 When the Obligation of one party to pay Money to the other is established, and not yet performed, the money to be paid is a *Debt*, due from the Debtor to the *Creditor*. Hence Debt may arise out of any of the above kinds of Contract, as Sale, Hiring, and the like.

713 Among many forms of Debt, we may notice those recorded in writing: thus, when I write, *I promise to pay to A. B. one pound*, I acknowledge myself indebted to A. B. to the amount of one pound. This is a *Promissory Note*. When I write to M. N., *Pay to A. B. one pound*, I become contingently indebted to A. B. ; indebted namely on the contingency of the *drawee* M. N. refusing to *accept* or ultimately failing to *honour* my bill. This is a *Bill of Exchange*. The benefit of this contingent debt, and of M. N.'s obligation to pay, which commences when he accepts the bill, may be transferred from hand to hand, as may also the Debt acknowledged in a Promissory Note, by transfer of the Documents. This may be done by making them payable to A. B. *or Bearer* ; or by their being made payable to A. B. *or Order*, and then *indorsed* by A. B. when he transfers them to C. (the *indorsee*) ; by C. when he transfers them to another ; and so on. Bills and Notes thus transferable, and still unpaid, may answer the purpose of Money ; they may constitute a *Paper-Money*.

714 We need not dwell upon other kinds of express or implied Contract, which are enumerated in the Roman Law : as *Pignus*, a *Pledge* or *Pawn* for a Debt ; *Depositum*, a *Deposit* without Reward. Delivery of Goods from one person to another on trust is called by the English Lawyers *Bailment* †, and the Goods are said to be *bailed* to him who receives them.

715 With regard to Contracts of Sale, Questions occur, How far the Seller is obliged to make good the *Title* (683) to the thing

* *Grot. B. et P. II. 10. 13. Functio, or discharge, means payment by something of the like kind, and is distinguished from*

solutio, or money payment.

† Sir W. Jones, *On Bailment*, classes the scale of liabilities.

sold : How far he is responsible for its quality : How far, in making the bargain, he is bound to disclose all circumstances which may affect the price.

With regard to the Title, by the Roman Law* the Seller was responsible, "Sive tota res evincatur sive pars, habet regressum emptor in venditorem†." The same is held to be the case in the English Law : a fair price implies warranty of Title‡.

As to the Quality of the goods sold, the Seller is not responsible, when they can be judged by the Purchaser's own discretion§. The rule then is *Caveat emptor*. If goods ordered, be found not to correspond with the order, the Purchaser is required immediately to return them to the Vendor, or give him notice to take them back : otherwise he is presumed to acquiesce in the result.

716 The Obligation of disclosing the circumstances which affect the price of a thing sold, has been a matter of great discussion among Jurists and Moralists. Cicero|| states such a case. A merchant of Alexandria brings a supply of corn to Rhodes in a time of great scarcity and dearth. He knows that many other merchant-vessels laden with corn are also on their way to Rhodes, which the Rhodians do not know. Is he bound to disclose this circumstance? As a matter of legal obligation, which is the point now under consideration, it is agreed that the Seller is forbidden to misrepresent the intrinsic qualities of his wares. But it is pronounced that he is not obliged to disclose all extraneous circumstances which may affect their value¶. "Venditorem, quatenus jure civile constitutum est, dicere vitia oportere; cætera sine insidiis agere; at, quoniam vendat, velle quam optimè vendere. Adduxi, exposui, vendo meum; non pluris quam cæteri; fortasse etiam minoris, cum major est copia. Cui fit injuriâ?" In the same manner it has been decided by an English court**, that the Purchaser of an estate was not obliged to disclose to the Seller his knowledge of the existence of a mine on the Estate.

But it is further stated to be law††, that the Seller is liable, if

* *Dig.* XXI. 2. 1.

† "If it be proved that the Title is bad, either for the whole or part, the Buyer has his remedy against the Seller."

‡ *Kent, Com.* II. 478.

§ There is however a difference between the case of warranty and of simple sale. In the case of warranty the seller is liable for all defects; in simple sale, for those only of which he knows and uses some art to conceal. *Hovenden's Bl.* II. 451.

|| *Off.* III. 12.

¶ "So far as the rules of Civil Law go, the Seller must disclose the defects of his wares: as to the rest, he must act without deceit: but, being a seller, he must wish to get the best price. 'I bring my wares to market; I offer them for sale; I sell what is my own; not dearer than others; perhaps cheaper, as I have a larger stock. Whom do I wrong?'"

** *Kent, II.* 489.

†† *Ibid.* II. 487.

he fraudulently misrepresent the quality of the thing sold, in some particulars in which the Buyer had not equal means of knowledge: or if he do so, in such a manner as to induce the Buyer to forbear making the enquiries, which, for his own security and advantage, he would otherwise have made.

717 It has been attempted* to express all Rules on this subject by saying that the Rule of Contract is *Equality*: "Ut ex inæqualitate jus oriatur minus habentit." But this maxim must not be carried so far as to destroy the nature of a Contract: for by that, we do not agree, generally, to give and receive equal things; but we determine *what* we are to give and receive. The Rule is rather to be sought in the intentions and expectations of the parties contracting. Each is obliged to do that which he gives the other reason to expect, and knows that he does expect. This is expressed by saying, that the transaction, is *bonâ fide, in good faith*.

718 Yet in many cases, the estimate of the intentions and expectations of the parties must be vague and obscure; and instead of attempting to regulate the course of law by these, it may be more proper to apply strict rules of interpretation to the language of Contracts. Hence the Roman Law makes a distinction of actions *bonæ fidei*, and actions *stricti juris*.

Rules of *Interpretation* of the Language of Contracts have been laid down by Jurists; and are an important part of the doctrine of Contracts, in its applications. These Rules, for the most part, have for their object to combine good faith with exact Law. Such are these, for instance: that common words are to be understood in a common sense; Terms of Art in their technical sense: that when it is necessary, words are to be interpreted by the matter, effect, and accompaniments: and the like †.

719 The wrongs which violate the Rights of Contract are *Fraud*, of which some cases have been considered; and *Breach of Contract*, against which the Law provides Remedies, by actions of various kinds; but on these we need not further dwell.

* Grot. *B. et P.* II. 12.

† "So that he who receives the loss has a claim arising from the inequality."

‡ Grot. *B. et P.* II. 16.

CHAPTER V.

THE RIGHTS OF MARRIAGE.

720 WE have already pointed out (79) that one of the most powerful Springs of action in man is the Desire of Family Society, which grows out of his Appetites and Affections. The needs of man's condition so operate, that he cannot exist in a social and moral state, except there be, established in Society, Rights which sanction and protect the gratification of this Desire. Such Rights, with the corresponding mutual obligations, are given to the Husband and Wife, united in a legitimate Marriage; and the Rights thus vested in the Husband, and in the Wife, are the *Rights of Marriage*.

Marriage and Property are termed *Institutions*; inasmuch as they imply the establishment of General Rules, by which, not only the special parties are bound, (as in Contracts); but by which the whole Society also is governed. These two Institutions are the basis of Society. The Right of Personal Security is requisite, in order to preserve man from hour to hour, and from day to day; the Institution of Property is requisite, in order that man may subsist on the fruits of the earth from year to year; the Institution of Marriage is indispensable, in order to the continuance of the community from generation to generation.

721 The Desires and Affections, growing out of the Institution of Marriage, tend to balance the action of the elementary Desires and Affections, and to maintain man in a moral and social condition. The Elementary Desires and Affections, which lead to the Union of the Sexes, are refined and tranquillized by the marriage tie. The Mutual Confidence, and the identification of habits and interests between husband and wife, which marriage, in its most complete form, tends to generate, give a new charm and a new value to life. When such a conception of a happy married life is formed, it is universally approved of; and thus the Moral Sentiments confirm the Conjugal Affections. Each successive generation of young persons, catching the like sentiments, and susceptible of the like affections, looks with hope and desire to this image of a happy marriage, as an important part of the business and object of life. Thus there is produced a National Sentiment respecting Marriage, which makes the Institution still more efficacious

in its influence upon the moral and social condition of those among whom it prevails.

722 The Children which Marriage produces give rise to Affections which still further tend to bind together the Community by Moral and Social links. In the first period of their existence, Children are a common object of Affection to the parents, and draw closer the ties of their mutual Affection. Then comes the Education of the child; in which the parents have a common care, which further identifies their sympathies and objects. The Brothers and Sisters of the child, when they come, bring with them new bonds of affection, new sympathies, new common objects. The habits of a Family take the place of the wishes of an Individual, in determining the habitation, the mode of living, the meals, and the like; and thus, these circumstances are determined by influences, more social and more refined than mere bodily desire, *The Family* is one of the most important elements of the social life of every Community.

Familia is the word by which the Romans denoted the persons thus collected in the house, along with their parents: and also, along with the Servants of the House (*Famuli*). The head of the family was called *Paterfamilias*; his wife, in general, was *Materfamilias**.

723 The nature and extent of the Rights which Marriage gives, have been different in different ages and countries; and the national conception of the conjugal bond has often fallen short, in various degrees, of that complete and permanent union of one man with one woman, which we have pointed at. Polygamy, Concubinage, and arbitrary Divorce, have been tolerated in many States; but still, the notion of a complete Marriage appears always to have been, the union of one Husband and one wife for life. Although Polygamy existed in the earlier periods of the Jewish nation, we find, in the Scriptures, that, beginning with man, at his creation, a single woman was given to him as his helpmate. And though Solomon is related to have had many wives, as the custom of Asiatic Sovereigns has generally been, in the description of a good wife which is inserted in his Book of Proverbs†, she is represented as sole mistress of the household, and as the object of an entire trust and respect, inconsistent with her being one of several wives. And though Moses permitted to the Jews more than one wife, he

* "Genus enim est uxor: ejus duæ formæ; una matrum familias, earum quæ in manum convenerunt; altera earum quæ tantummodo uxoris habentur." Cicero,

Topica. The *in manum conventio* was a condition of the wife usually resulting from marriage in the early ages of Rome. Prov. xxxi.

prohibited many*; which “many” is believed by the Commentators to be more than four. This permission was rather a concession to an existing practice, than a law consistent with the general scheme of the Laws of Moses.† The practice of polygamy is said‡ to have ceased entirely among the Jews after the return from the Babylonish Captivity.

724 Polygamy was not a Grecian practice. The Heroes of Homer appear never to have had more than one wife; though they are sometimes represented as living in concubinage with *παλλακαί*. According to the views of Greek Legislators and Philosophers, Marriage was to be considered as having for its object the maintenance of the State, by the continuation of the race of citizens: and we see, in the Republic of Plato, and elsewhere, indications that they could tolerate extravagant deviations from the more complete domestic conception of marriage, if the political object was provided for.

725 The Roman Law, however, approached closely to the conception of a complete marriage, which has been noticed. The Definition given in the Institutes is this‡: “Nuptiæ, sive Matrimonium, est viri et mulieris conjunctio, individuum vitæ consuetudinem constituens.” In another place§ it is described as “Consortium omnis vitæ: divini et humani juris communicatio.”

726 The English Law goes further, and considers the Husband and Wife as one Person. As the Lawyers state it||, the very being or legal existence of the woman is suspended during the marriage, or at least is incorporated and consolidated in that of her husband: under whose wing, protection, and cover, she performs everything; and is therefore in our Law French a *feme-covert*, *fæmina viro coperta*; and her condition during marriage is called her *coverture*. Hence a man cannot grant anything to his wife by a legal act, or enter into covenant with her; for this would be to covenant with himself¶. The husband is bound by law to provide his wife with the necessaries of life; if she incur debts for such things, he is obliged to pay them. Even if the debts of the wife have been incurred

* Deut. xvii. 17.

† Michaelis, *Law of Moses*, II. 12.

‡ *Inst.* I. 9. “Marriage or Matrimony is the union of a man and a woman so as to constitute an inseparable habitual course of life.”

§ *Dig.* XXIII. 21. “A partnership for life, (or rather, as to all the interests and relations of life,) with a joint participation in all Rights human and divine.”

|| Blackst. I. 442. But perhaps it would be more just to say that the principle which limits the Rules of Law, as between Husband and Wife, is not that of the union of the two, but of the conjugal supremacy of the Husband.

¶ The husband can however grant to his wife, and often does, through the intervention of Trustees.

before marriage, the husband is bound to discharge them: for he has espoused her and her circumstances together. If she suffers an injury, she applies for redress in her husband's name as well as her own. If any one has a claim upon her, the suit must be directed against her husband also. In criminal prosecutions, indeed, the wife may be indicted and prosecuted separately; for the union is only a civil union. But even in such cases, husband and wife are not allowed to be Evidence for or against each other: partly, say the Lawyers, because it is impossible their testimony should be impartial; but principally, because of the union of Person. For being thus one Person, if they were admitted witnesses for each other, they would contradict one maxim of Law*; *Nemo in propria causâ testis esse debet*: and if against each other, they would contradict another Maxim: *Nemo tenetur se ipsum accusare*. In the Roman Law, in its later periods at least, the husband and Wife were considered as two distinct Persons, and might have separate Estates, Debts, Contracts, and Injuries. And hence, in the Ecclesiastical Courts of England, which derive their views and maxims from the Roman Law, a woman may sue and be sued, without her husband.

727 According to the System of Law which we have been describing, the husband is the Head of the Family, and the Wife is subordinate to him. He represents the Family in its legal relations; and in such matters she has no Rights against him. He has a Right to act for her; and even, in some cases, to coerce her. The Roman Law allowed the husband, for some misdemeanours†, “*Flagellis et fustibus acriter verberare uxorem*,” for others, only‡ “*Modicam castigationem adhibere*.” Something of the same kind was allowed by the old Law of England; for, say the Lawyers, since the husband is to answer for her misbehaviour, the Law thought it reasonable to entrust him with the power of restraining her. And the Right to obedience, from the Wife, is vested in the Husband, for the sake of preserving Order in the Family, and of protecting and benefiting all the Members of it.

728 The inequality between Men and Women, which thus appears in the ancient conceptions of Marriage, is shewn also in

* *No one can be a witness in his own case. No one is bound to accuse himself.* But perhaps it would be more just to say, that the principal reason is not that of the identity of person; but that community of interest, which prevents their being evidence for each other; while the public

policy of preventing domestic quarrels, prohibits their being evidence against each other.

† “To beat his wife severely with whip or stick.”

‡ “To apply moderate correction.”

the established notions of the Wrongs, by which the Rights of Marriage are violated. *Thou shalt not commit adultery*, is the fundamental Law on this subject; but this was commonly applied only to the offense committed by or with the wife. By the Jewish Law* the adulterer and the adulteress were to be put to death. By the Old Roman Law, the adulterer was at the mercy of the injured husband, and might be prosecuted by any person; but under the emperors, the Right of prosecution was limited to the husband, or the near relatives of the adulteress. The adulteress was to be repudiated and otherwise punished. In England, adultery, as a public crime, is under the jurisdiction of the Ecclesiastical Courts; but the Common Law also gives, to the Husband, Damages from the person who was guilty of Criminal Conversation with his wife.

729 The Right of the Parent to the obedience of the Child is a fundamental Rule in all the ancient Forms of Society. The Law of Moses, *Honour and obey thy Father and thy Mother*, is recognized in all nations. The ancient Roman notions carried this so far, that they gave the Father a Right over the life of the Son. Even in the latest times, the Son is contemplated as entirely *in the power* of the Father; and this expression implied that the Father was invested with the Right to act for the Children upon all legal occasions. The Institute says†: “Qui ex te et uxore tuâ nascitur, in tuâ potestate est: Item qui ex filio tuo et uxore ejus nascitur, id est nepos tuus et neptis, æque in tuâ sunt potestate; et pronepos et proneptis, et deinceps cæteri. Qui autem ex filiâ tuâ nascuntur, in potestate tuâ non sunt, sed in patris eorum.” And this went so far that the Son could have no Rights against his Father. All that he acquired became, not his, but his Father’s. Some Jurists refer this to a legal fiction of the unity of the Father and the Son; others, to a maxim that the condition of the Master of the Family might be made better by the acts of the other members of the Family, but could not legally be made worse.

730 The English Law does not go so far as the Roman in this respect; but still invests the Father with considerable Rights over his Son. He may correct him in a reasonable manner. He may delegate part of this parental authority to a Tutor or School-

* Levit. xx. 10.

† *Inst.* l. 9. “He who is born of you and your wife is in your power; also he who is born of your son and his wife, that is, your grandson and grand-daughter, are

likewise in your power; and so your great grand-son and great-grand-daughter; and in the same way, for the succeeding steps. But they who are born of your daughter are not in your power, but in their father’s.

master, who is *in loco parentis**. He has the benefit of his children's labour so long as they live with him. He has, however, no power over any property which the son has acquired, except as Trustee or Guardian.

The Rights with which the head of the Family was thus invested carried with them corresponding obligations. As we have already stated (726), the husband is bound to provide his wife with the necessaries of life, and also to pay her debts. Also, the Father is, by the English Law, bound to provide maintenance for his own offspring. By the Roman Law† this obligation was reciprocal. "Si quis a liberis ali desideret, vel si liberi ut a parente exhibeantur, judex de eâ re cognoscet." The Head of the Family was the Supporter, Protector, and Director of all the other members. The Education of Children, so that they may, in their turn, become good members of new Families, and good Citizens, is contemplated as an important object by most legislators; but is, in a great measure, left to the unforced care of parents. To neglect this office, is rather the omission of a Moral Duty, than the violation of a Legal Obligation.

731 The Family Affections, and the Moral Sentiments connected with them, make both men and women look with grief and indignation upon the violation of female chastity, in those who are under their care and protection. The woman who gives up her person to any other man than her husband, is conceived to be destitute of the proper affections and sentiments of a wife; and therefore, unfit for the proper destination of a woman. To seduce her to this condition, is to bring her to disgrace, and to make her marriage with another man almost hopeless. To force her person, brings upon her some portion of this disgrace and calamity, in addition to the injury which is involved in all violence. The laws of most countries recognize these Wrongs against Female Chastity, *Rape* and *Seduction*. Thus by the Jewish Law‡, the Man who forced a betrothed woman was to be put to death. If she was not betrothed, he was to make her his wife, without being allowed afterwards to put her away. The Roman Law justified homicide, when committed by the woman in defense of her chastity,* or by a

* Perhaps it would be more correct to say, that the Schoolmaster's authority is not delegated from the parent, but analogous to the parent's. It depends on some of the same reasons; and exists where there is not a parent to delegate, as well as where there is.

† *Dig. xxv. 3. 5.* "If any one re-

quires to be supported by his children, or if children require to be maintained by the parent, the judge will take cognizance of the matter."

By the English Law also, a son is bound to support his parents.

‡ *Deut. xxii. 25, &c.*

man, in defense of his relatives, when force of this kind was offered. The English Law, likewise, excuses a woman killing a man who attempts to ravish her; and the husband or father is justified in killing a man who attempts a Rape upon his wife or daughter. The Roman Law, in the time of Justinian refused to make any distinction in the guilt of the violator of chastity, whether the woman consented or not*: “Si enim ipsi raptores, metu vel atrocitate pœnæ, ab hujusmodi facinore se temperaverint, nulli mulieri, sive volenti sive non volenti, peccandi locus relinquetur: quia hoc ipsum *velle* mulierum ab insidiis nequissimi hominis qui meditatur rapinam, inducitur.”

732 The English Law punishes Rape with death†, but makes it a necessary ingredient in the crime that it be committed against the will of the woman. It is sometimes assigned as a reason for the capital punishment, that the offense is a destruction of the woman’s moral being. But the English Law has no direct punishment for the moral offense of Seduction, as we have seen that it has none for Adultery. These crimes are punished indirectly, as Loss inflicted, on the Parent and the Husband. In the latter case, the Husband may receive Damages from the Adulterer, for the Injury done him: in the case of Seduction, the Parent may recover Damages for the loss of his daughter’s Services during her pregnancy, by the act of the Seducer, *per quod servitium amisit*. The necessity of taking this course for the remedy of these wrongs, is explained, by considering that the Common Law of England has, for its main objects, the security of person and property; and therefore does not undertake to treat offenses according to their moral depravity, or the grief and indignation which they produce.

733 According to the ancient legal views of the Family, in most nations, as we have seen in the cases of the Roman and the English Law, the possession of property in land is an attribute of the Family, rather than of the individual; the right of the wife and children being merged in, or derived from, that of the Head of the Family. Following the same view, the Law directs that, on the death of the Father, the land shall descend to the children: for they then, in their turn, one or more of them, become Heads of Families, and take the place of the Father, as

* Cod. ix. 13. “If through fear, and in virtue of the severity of the punishment, seducers abstain from such offenses, no woman, willing or unwilling, will have an opportunity of transgressing. The will

of woman is itself forced by the arts of the ravisher.”

† This has not been the case since 1841.

members of the State. Accordingly, in the Roman Law, when the Father died, those of his descendants who were then under his power (*in patria potestate*), were his proper heirs (*sui hæredes*), and divided his possessions among them; all other heirs (except his slaves) were *hæredes extranei*. In England, on the establishment of the Feudal Constitution, by William the Conqueror, the law of primogeniture was established, by which Lands descended to the eldest son alone. In this view, the Property was considered as a Fief to be held by military Service; and the whole property was assumed to be a proper means of supporting the dignity of the holder. The younger sons were supposed to be provided for by the eldest, and by their own exertions in the various professions which were open to them, military, civil, ecclesiastical, and mercantile. It is consistent with the view which this Rule assumes, that the Rule was not extended to personal Property; for such property was not held as a Fief. In this, no primogeniture is allowed, all males and females of equal degree sharing equally.

If direct and proper heirs failed, the same view, of the transmission of Property in the Family, led to Rules of Law which determined the persons to whom it was to be given; but upon these Rules, and their differences in different states, we need not now dwell.

734 In most Systems of Law, though the Law has assigned a Rule for the disposal of a man's property after his death, the proprietor has been allowed to vary this disposal, partly or entirely, on declaring his intention before proper Witnesses. Hence, the Declaration so witnessed is called *Testamentum* in Latin, *Will* in English. The ground of this Right of the Testator is, that a man, previous to his death, may dispose of his property, and may exercise an authority over his children; and that the continuity and order of the Family were supposed to be preserved, by allowing this Right to operate through the time of his death, and therefore after that moment. Yet the Right of the Testator, like the other Rights of Property, is limited by Rules of Law. The Roman Law says*: "*Testamenti factio non privati sed publici juris est.*" In the early times of Rome the citizens made their Wills at the Public Assemblies (*Calata Comitia*), although afterwards, other modes of procedure were introduced.

735 The Right of disposing of property by Testament was

* *Dig. xxviii. l. 3.* "The Right of making a Testament is not a private Right, but a Right by public Law."

not unlimited*. From a comparatively early period a testator was obliged, in order that the provisions of his will might be carried into effect, either to *institute* or to disinherit by express words, his children *in potestate* † (see Sect. 733). Other restraints as to his heirs, and as to the distribution of his property between them and mere *legatees* (see Sect. 738), were gradually introduced, partly by express enactment, and partly by the Edict of the Prætor. When a son or other near relation who would without a Testament have inherited, being passed over in silence in the Testament, had a claim by Law, the Testament was called *inofficiosum Testamentum*, as being made *non ex officio pietatis*.

736 In England, the power of disposing by Will of a portion of a man's moveable property was recognized by Magna Charta ‡: but until modern times, a man could leave only one-third of his moveable property away from his wife and children. No Will of lands was permitted till the time of Henry the Eighth; and then, only of a certain portion §: nor was it till after the Restoration of Charles the Second, that the power of devising became so universal as it is at present. By the English Law, a man's Heirs were contemplated as interested in his property, as well as the man himself. Property, from this attribute of being inherited, was called *Hereditaments*. Hence it was held, by the Lawyers, that no estate of inheritance in land could be conveyed, without the use of the word *Heirs*. If Land be given to a man for ever, or to him and his Assigns for ever, this vests in him but an estate for life. This limitation was founded upon a view borrowed from the Feudal System, according to which the estate was given in consideration of the Tenant's personal qualities, to be held by personal service. The limitation was upheld by a maxim of the Roman Jurists: "*Donationes sunt stricti juris, ne quis plus donasse præsumatur quam expresserit.*"

737 Although at present the Proprietor in England has, in general, the Right of disposing of the Estate by Will, there is an exception to this, in the case of *entailed Estates*. This power of entailing was established by the Statute of Westminster, the Second (in the thirteenth year of Edward I.), which is commonly called the Statute *De Donis Conditionalibus*. This law gave the Proprietor a power of transmitting to his Heirs the enjoyment of

* By the Law of the Twelve Tables the right of disposing of property by will is said to have been absolute: "*Paterfamilias uti de re sua legassit ita jus esto.*"

† His will was besides liable to be

rendered void by the birth or *agnation* of a posthumous child.

‡ Bl. IV. 423.

§ Ib. II. 12.

the Property, without their having the Right of transmitting it to any one, except the Heirs who should come after them. Property, thus limited, was termed *Feudum talliatum*, a curtailed fief, *fee-tail*; from which expression the word *entailed* comes.

738 Besides the power of disposing of the whole Estate, both the Roman and the English Law allow the Proprietor the power of giving *Legacies* (*Legata*) to special persons. But all such Bequests are limited by the condition, that the Testator's Debts must first be paid.

739 There are other distributions of property, which, according to the laws of various countries, arise out of Marriage; as the *Dowry*, or *Dower* of the Bride* (*Dotarium, Douaire*), in the Roman Law, *Dos*: and the *Jointure* of the widow (*Junctura*, a joint possession). On these it is not necessary here to dwell.

740 As the Law, in the general case, directs that the heir should receive the benefit of his Father's property (*Patrimonium*) after his death, so it also directed that he should, if it were necessary, receive the benefit of his Father's guidance. In the Roman Law, the Father had power to appoint, by Testament, a person to exercise parental care and responsibility for his son or daughter after his death, so long as the child was of unripe age (*impubes*). This Guardian was called *Tutor*; the child was his *Pupillus*. Without the sanction of the Tutor, the Pupillus could do no act by which he diminished his property. But the care of the person of the child belonged, in a great degree, to the Mother, as the care of the property did to the Tutor. When the Father did not appoint a Tutor by his Will, the Law of the Twelve Tables gave the *Tutela* to the nearest relatives†; "*Legitimæ Tutelæ lege XII Tabularum agnatis delatæ sunt, et consanguineis; item patris: id est, his qui ad legitimam hæreditatem admitti possunt: hoc, summâ providentiâ, ut qui sperarent hanc successionem, iidem tuerentur bona, ne dilapidentur.*" The view of the ancient English Law was quite different. It also gave a Guardian to a minor; but the Guardianship devolved upon the next of kinf who could *not* inherit the Estate. The Law, it is said‡, judges it improper to trust the per-

* The English term *Dower*, technically used, does not represent *Dos*. It is the widow's right to one third of the real estate for life. The *Jointure* given by Settlement before Marriage and in lieu of *Dower* has in practice superseded it.

† *Dig. xxvi. 4. 1.* "Guardianship by (or at) Law is by the Twelve Tables given to the father's relations and to re-

lations by blood; that is, to those who may have a legal claim to the inheritance. And this was prudently done, that those who are allowed to look for the succession, may see that the estate is not dilapidated."

‡ *Bl. 1. 461.* But this relates only to socage tenures.

son of an infant (*Minor*) to a person who may by possibility become heir to him; that there may be no temptation, nor even suspicion of temptation, for him to abuse his trust.

741 An English Law of more modern times (the twelfth year of Charles II.) allows the Father to appoint a Guardian to his son, by Deed or Will, so long as he is a Minor, that is, under the full legal age. This age is in England twenty-one: Scotland agrees with England, both probably copying the old Saxon Rules which prevailed on the Continent. By the Roman Law, a youth could perform certain legal acts at the age of fourteen; but up to the age of twenty-five, he could not dispose of property, without the intervention of a *Curator* or Trustee*.

742 All that has been said of the Rights and Obligations of a Man with regard to his Wife and Children, apply only to such wife and children as the law recognizes: to his *lawful* wife, and his *legitimate* children, born of a lawful marriage. What a Lawful Marriage is, the Law must define.

Marriage is a Contract; and though it is, in most countries, a Contract of a special character, solemnized with peculiar ceremonies, it must be, in many respects, governed by the general Rules of Contracts. Thus, the persons marrying must be of sound mind; of the age which the Law considers as mature; and free from other legal impediments, such as an inconsistent previous Contract. They must also understand each other to intend that perpetual union which Marriage implies.

743 By the Roman Law, the essence of Marriage was Consent; the Consent "both of those who come together, and of those under whose power they are." This Consent was commonly manifested by some public act; for instance, Declaration before friends, and afterwards Continued Cohabitation for a year† (*Usus*). The effect of *usus* was to produce a *conventio in manum viri*, that is, by it the wife became a *sua hæres* to her husband, passed into his *gens*, and became *in loco filie*. But before the *usus* was accomplished (which by interruptions, called *usurpationes*, might be indefinitely deferred,) the woman was a wife no less than afterwards. *Confarreatio* was a solemn marriage ceremony, perhaps exclusively patrician in its origin. *Coemptio* was another mode of producing the *in manum conventio*.

744 By the old Law of England‡, a Contract made *per*

* Dig. iv. 4. 1.

† The effect of continued cohabitation for a year was to produce, in the early ages of Rome, a *conventio in manum viri*;

but in Gaius's time this doctrine of *usus* was in desuetude.

‡ Bl. i. 439. He says only, "valid to many purposes."

verba de præsenti, by words in the present tense, was a valid marriage: thus, *I take thee M. for my husband: I take thee N. for my wife*. The same is still the case by the Law of Scotland. Also, a promise of marriage *per verba de futuro*;—*I will marry thee*;—became a valid marriage by cohabitation; in the same way in which some contracts concerning goods became valid by the delivery of the goods. By later English Statutes, marriages in England were, for many purposes, not allowed to be valid, except such as were celebrated after due notice (*Banns*) or by *Licence*, in some parish-church or public chapel; and by a person in Sacred Orders. But this restriction has since been enlarged, so that the religious part of the ceremony is no longer necessary.

745 With reference to the grounds on which Marriage has very generally been accompanied with a religious sanction, we may remark, that the Conjugal Union is contemplated, not as a mere Contract for Cohabitation, but as an engagement binding the parties to mutual affection, and to a community of the scheme and ends of life. Hence a mere legal Contract, which must regard actions alone, cannot express its full import. The Sentiment of Duty must be brought into operation, and the appeal to this sentiment belongs to the province of Religion (450).

746 *Divorce* is the Separation of the Marriage Union. According to the Roman Law, as the Consent and Conjugal Affection of the parties was an essential part of a marriage, their acquiescence was necessary to its continuance. Either party might declare his or her intention to dissolve the connexion*; and no judicial decree or interference of public authority, was requisite in order to carry this purpose into effect. Yet such separations were generally made with some form. A Marriage by *Confarreatio* was originally dissolved by death only; and the *Diffarreatio* which dissolved it, involved fearful rites, and is thought to have been a kind of symbolical death†. For dissolving other marriages there was no definite form fixed before the *Lex Julia*. If either by *usus* or by coemption an *in manum conventio* had been produced, it was got rid of by *emancipatio*: but this related to an incident attendant on marriage, not to the marriage itself. *Repudium* denoted not only the dissolution of a completed marriage, but also the rejection of a Marriage promised by *Sponsalia* (*Betrothing*), but not completed. The practice of Divorce was afterwards checked by Law (the *Lex*

* Gibbon supposes Divorce to have been originally "the manly prerogative." *Decl. and F. c.* xliv.

† Walter, *Gesch. des R. R. B.* III. c. vii.

Papia Poppæa). Under the Christian Emperors it was punished in various ways; but still the power remained, subject to certain forms in its exercise.

747. There is no law of England which authorizes Divorce. Every particular case must be the effect of a Special Act of Parliament. Even the gravest violation of the Rights of Marriage, Adultery, is, by the English Law, only cause of separation *from bed and board*; it does not lead to a dissolution of the Marriage. The reason given for this by the Commentators is, that if Divorce were allowed to depend upon a matter within the power of either of the parties, they would probably be extremely frequent. The Ecclesiastical Courts, which have the whole direct jurisdiction concerning Marriages, in virtue of the religious character of the ordinance, can, upon due grounds, grant a separation, not only *a mensâ et thoro*, but a total Divorce *a vinculo matrimonii*. But this must be for causes of impediment existing before the marriage. When these are shown, the marriage is declared null, as having been unlawful *ab initio*, and the parties are separated *pro salute animarum*, that they may not endanger their Souls by living in a state of known sin. But still the Ecclesiastical Law, like the Common Law of England, grants no Divorce for any Supervenient Cause; according to Commentators*, it deems so highly, and with such mysterious reverence, of the nuptial tie, that it will not allow it to be unloosed for any cause whatever that arises after the Union is made. But it is mainly moved to take this view of marriage by the authority of religion.

748 As we have already seen, the only kind of Marriage which is recognized by the Roman Law as complete, is that of one husband with one wife. Climate does not necessarily occasion any exception to this Rule. Thus the Law of Justinian, promulgated by the Romans in the climate of modern Turkey, is express †: “*Duas uxores eodem tempore habere non licet.*”

Yet the Laws of several countries in various ways take note of other unions arising from the irregular operation of those Desires and Affections which lead to Family connexions. There are various provisions in the Laws of Rome respecting Concubines; and in our own Laws, with regard to Illegitimate Children, or Bastards ‡.

* Blackstone, I. 440. (This was written in 1841. The law has been altered since.)

† *Inst.* I. 10. 6. “It is not lawful to have two wives at the same time.”

‡ By the Roman Law, a true marriage could only take place between Roman citizens: “*Justas nuptias inter se cives Romani contrahunt qui secundum precepta legum coeunt.*” *Inst.* I. 10. 1.

It depends upon the law, and the general structure of each State, whom a citizen is allowed to marry. He may be prohibited from taking a wife beyond a certain circle. He may be forbidden to marry a stranger. He may be compelled to marry, not only within his own Nation, but within his own Tribe.

749 On the other hand, men and women are, in almost all countries, forbidden to marry *within* a certain circle of relationship. Marriages within these limits were forbidden by the Romans as *Nuptiæ incestiæ*; and the union of persons so related is *Incest*. Such unions were those of Parents and Children, Brothers and Sisters*. “*Nuptiæ consistere non possunt inter eas personas quæ in numero parentium liberorumve sunt, sive proximi sive ulterioris gradus sunt, usque ad infinitum.*” The degrees of kindred between which marriage is prohibited have been different in different times and places. But everywhere incestuous unions have been looked upon not only with condemnation, but with horror. It has been conceived that there is a Divine curse upon them.

The chastity of woman, which, as we have seen (731), is so highly prized, requires to be guarded and supported by the sympathy and reverence of her Family for this treasure. Her relatives, with whom she familiarly lives, especially her Father and her Brothers, are the natural Guardians of her purity. In the intercourse between men and women not withheld by any impediment, the thoughts often turn to the union of sexes. Men are prone to solicit, and women apt to yield, when the union is one on which the thoughts are allowed to dwell. The opportunity and authority which near relationships usually give, would add to this tendency, if the belief of a Divine curse upon transgression did not keep the thoughts and affections in harmony with the reverence for the woman's chastity. The Law supports this tone of the thoughts and affections, by its prohibition of incestuous marriages.

* “That is a true marriage which is contracted between Roman citizens who come together in the manner directed by the Law.” No other unions were complete marriages.

* “Marriage cannot take place between those persons who stand in the relation of parents and children, whether of a near or of a more remote degree, to any number of steps.”

CHAPTER VI.

THE RIGHTS OF GOVERNMENT, OR STATE RIGHTS.

750 WE have already stated (79), that among the most powerful Springs of Human Action is the Desire of Civil Society; and that man cannot exist as man except he exist in Civil Society, under the sway of Rules of Action really enforced by some of the Members of the Community. Those Members of the Community, whose office it thus is to enforce the Rules, through which the Community subsists, are, for this purpose, invested with Rights, which are here termed *Rights of Government*. The possessor of these Rights is spoken of as having *Authority* in the Community.

751 We have rights of this kind even in the Family; and especially in Families where the paternal Power is most ample. As we have seen (729), in some countries, the Father has exercised a power of Life and Death over the Son. We may, in such a case, conceive the Father laying down Rules for the conduct of the Family, and enforcing them by any penalties which he may appoint.

When the Children of such a Family grow up, and when they themselves marry and have children, we may still conceive the habit of obedience to the Head of the Family to remain. As the Family extends, it becomes a Family in a wider sense; a House, a Tribe, a Clan, a Nation; but it may still continue to recognize a Supreme Right to obedience in the common parent. Such is a *Patriarchal Government*. The Right of Government is here vested entirely in the Patriarch. The other members of the Community have only the Obligation of Obedience towards him.

752 The Patriarchal Government is naturally broken up by the death of the Patriarch. We may suppose a Patriarchal Government to be continued generation after generation, by some agreement in the Family, as to who is to inherit the Patriarchal Authority: but such a government, though it may exist as an Institution, is no longer the natural result of the Family habits of affection and obedience. To obey a brother, a nephew, or a remoter relative, is not a natural, necessary, and universal rule. The Patriarchal Form of Society being broken up, the mixtures of Families, their migrations and various fortunes, still further loosen and destroy the bonds of Patriarchal Government, and form men

into Nations, according to various conditions of race, dwelling-place, and history. The *National Government* then takes place of the Patriarchal.

753 The person or persons in whom the Supreme Authority in each nation resides, are determined in every case by the History of the nation (97). The whole past History of each nation has terminated in the Fact of its present Government. In the Course of History, the Governing Authorities of Nations have passed into various hands, have been variously distributed, and have assumed many various forms. Nations which were formerly separate, are now united under the same Supreme Authority: Nations which were formerly united as one, have now separate governments: the Lines of Succession of Governors, the modes of appointing them, the way of their exercising their authority in each nation, have changed. The Laws by which they govern have also changed. But in every Nation, so far as it is subjected to Rules of Action,—so far as its members really possess Rights and Obligations—there is some *Supreme Authority*, in which the Rights of Government are vested.

754 The Supreme Authority may reside in one Person, or in many. It may be exercised by one Person, under conditions depending upon the consent and co-operation of others. In almost all nations, there is a *Difference of Ranks*, connected with the conditions of the exercise of the Supreme Power. Besides the highest Governor, (King, Consul, President, or in whatever other name he governs,) there are Nobles, Senators, Lords, Citizens, Aliens, often Slaves. Some of these Ranks have Authority, which, like that of the highest Governor, is the result of the History of the Nation. They have Rights with reference to each other, determined by Laws and Customs, traditionally received, or historically instituted.

The structure of a Society considered with regard to this Difference of Ranks, is its *Political Structure*. The Laws and Customs which determine the Rights of different Ranks, and their share in the Supreme Authority, are the *Constitution* of the Nation.

In every Constitution, the Supreme Authority is termed also the *Sovereign Power*. As the Constitution places the Sovereign Power in the hands of One, or of a few men of high Rank, or of the General Body of the Citizens, the State is a *Monarchy*, an *Aristocracy*, or a *Democracy*. These are the *Simple Forms* of Government.

The Sovereign Power executes the existing Laws, and on all occasions, both in reference to the citizens within the State, and to persons and states without, acts for the State. These are the *Executive Functions* of the Government.

755 It is the existence of a Supreme Authority, or Government, which gives reality to the other Rights;—the Rights of the Person, of Property, of Contract, of Marriage. The Government acts as the *State* (94), and carries into effect the Laws by which Rights and Obligations are defined. The Government also, by means of its tribunals and Judges (94), decides disputed questions which arise among its citizens concerning their Rights and Obligations. These are the *Judicial Functions* of the Government.

But the Definitions of Rights and Obligations, though given by the Law of each nation, are not arbitrary and capricious (648). They are intended in all nations to be *right*; that is, conformable to the Supreme Rule of Human Action. They are intended to be *just*; that is, conformable to the Moral Idea of Justice, as well as to the actual Fact of Law. Such Moral Ideas, in their application to Laws, will be the subject of our consideration hereafter.

756 Offenses against the Rights of Government are *Rebellion*, when subjects openly and by force resist the Governors: *Treason*, when by combination and contrivance they seek to dispossess them: *Sedition*, when they attempt to transfer some of the functions of Government from the Governors to other hands. In many free states, where the citizens have a considerable share in the government, they are divided into *Parties*, which act upon opposite or different maxims in the administration of the State. When a party acts not for the good of the State, but for its own advantage as a Party, it is a *Faction*.

757 Since, in all Nations, the Definitions of Rights and Obligations are intended to be right and just, it is natural that there should be much that is common in the views and determinations of all nations on these subjects. The rules concerning Rights and Obligations which exist among men in general, so far as they are conceived to be the result of the nature of man, are termed *Jus Naturæ*; so far as they are conceived to be common to all nations, they are termed *Jus Gentium*. That which is peculiar in the Law of a particular State or City, is called *Jus Civile*, or *Jus Municipale*. We may distinguish these two kinds of Jus as *Natural Jus* and *National Jus*. *Jus Civile*, *Civil Law*, is often used to denote *Jus Civile Romanorum*, the *Roman Law*.

758 Nations or States are, for the most part, independent bodies, with no common authority to which they can refer. Each is a *Sovereign State*, acknowledging no Superior. Hence there is no Authority which can define or enforce their Rights which they claim against each other. But the general rules and analogies of Natural Jus (757) lead to determinations of the Rights and Obligations of Nations, which form a body of acknowledged Law. This body of Law is *Jus inter Gentes*, and may be termed *International Jus*.

759 Though the existing Government in each Nation is a Fact, the result of preceding historical Facts (753), it is not *merely* a Fact. Governments for the most part claim to exist by Justice, as well as by Power. They recognize the Rules of Natural Jus and International Jus of which we have spoken; and assert themselves to be Governments *de jure* as well as *de facto*. Moral Ideas, and the Sentiments combined with them, have great force among the springs of action (56); and thus the opinion, generally prevalent, that any person or body of persons does or does not possess the Government of a Nation *de jure*, will very materially affect the support and obedience which men will render to it, and will thus determine the historical fact of its standing or falling. The existing Government is a Fact; but it is a Fact determined by the previously operating Idea of Justice. Its power rests on the general opinion of its Authority. Might does not make Right; the opinion of Right makes Might: and the Might thus generated determines all subordinate questions of Right.

760 Although we at first, while treating of Jus, consider the Laws of each State as absolutely fixed and given (648), yet Laws are intended, as we have said (755), to be just. Hence the State has, for one of its offices, to remove out of the Laws all that is unjust, so as to make them more and more just. That part of the Governing Body which is by the Constitution (754) thus invested with Authority to make and alter Laws, is the *Legislative Body*, or *Legislature*. The Executive and Judicial branches of Government, of which we have already spoken (754, 755), and the Legislative Branch now spoken of, form the three great Members of every Constitution.

761 It will be our business hereafter to consider the Moral Idea of Justice as influencing Law, and its consequences; but we may already easily discern cases in which the general analogy of Natural Jus would lead to a modification of Laws. If, for instance, one Nation have made war upon another, invaded the Country,

and reduced the inhabitants to slavery; (as in ancient times was the Rule of International Jus;) when the conquered inhabitants have lived as slaves for many generations, it would be agreeable to Natural Jus to annul the Laws which keep the slaves in bondage (this being done, of course, by the proper legislative authority). For the ancient conquest, in which the condition of the slaves was founded, was a transitory and accidental event, and cannot properly be the basis of an eternal Law. Indeed, the progress of time not only obliterates the effect of such events, but overthrows even the Rules of International Jus, by which the events formerly produced such effects: for it is now no longer a Rule of International Law, that when one nation conquers another in war, it makes slaves of the inhabitants.

By following such changes, States may constantly aim at making their Laws continually more and more just. In doing so, they tend to bring together the *Idea* of Justice and the *Fact* of Law. The Laws are rendered just; and they are actually carried into effect because they are the measures of Justice.

762 The Idea and the Fact cannot be separated. We cannot have Justice without Law, that is, without actual historical Law. For Justice requires us to give to each man his own, and Law alone determines what is each man's own. If we draw inferences from the notion of Justice, without taking account of the traditions of Law and History, we shall be led to contradiction and confusion. Thus, if we say that Justice implies Equality, and if we thereupon attempt to make the Property of all citizens always equal, we destroy the conception of Property. If, on the like ground, we declare that no man shall lose by a Contract, we destroy the conception of a Contract. Justice implies Property, and Property implies permanent actual possession, historically established. Justice implies Contracts; and a Contract implies that a transaction which takes place at one time, determines arbitrarily what follows. If we do not take the historical definitions of Property, Contract, and the like, the things themselves disappear; and there is no longer any material for the Idea of Justice to act upon.

And on the other hand, we cannot be content with the mere Fact of Law, without the idea of Justice. Power without Authority, Might without Right, give Possession, but do not give Property. In order that Law may be looked upon as Law, it must be combined with Justice.

763 Actual and fixed Laws are requisite as means for the moral education of the members of the State. For the Moral

Ideas are educed in man by his being made to understand the Terms denoting Moral Conceptions; and these terms become intelligible by being applied under definite conditions. Moral Conceptions cannot be applied, without assuming the jural Conceptions of Property, Contract, Marriage, and the like. A child cannot learn that he ought not to take what is not his own, except he be made to understand what is, and what is not, his own. The Laws being, as in many States they are or have been, familiarly made known to young persons, form an important part of their education. And the Reasons commonly given for the Laws, involve the Idea of Justice, and serve to educe that Idea in the minds of the citizens.

764 Among the ancient Romans, the earliest Laws, and the Maxims and Formulæ of Laws, were thus inculcated in the earliest years of life. Their children were made familiar with these expressions, as our children are with Nursery Rhymes. Cicero says* to his brother: "A pueris enim didicimus *Si in jus vocat*, atque ejusmodi alias leges nominare." And again†: "Nostis quæ sequuntur; discebamus enim pueri XII (Tabulas) ut carmen necessarium." And it was the office of the higher class of Romans to expound the application and interpretation of the Law to their *Clients*. The familiarity with the Law, thus generated, joined with a belief that the Roman Law was the perfection of justice, constituted a Moral Education for the Romans.

In like manner, the habitual use of expressions implying moral qualities and moral sentiments, calls up moral notions and moral sentiments in those who thus learn the language of morality. But moral notions and moral sentiments can have no definiteness and fixity, except the Rules by which their objects are determined are definite and fixed; and these Rules are Law and Custom.

Each successive generation, deriving its education from the existing Laws and Customs of the Nation, and being imbued with a belief that these Laws, and the Maxims which they imply, are right and just, will transmit the same education to the next generation. And thus the stability and consistency of the State will be preserved.

765 Thus the Laws of each country must be in a great measure fixed and permanent, in order that the Moral Education

* *De Leg.* II. 4. "From the time of our boyhood we learnt, *If a man sues you at Law*, and other Laws of that kind, by rote."

† *Id.* II. 23. "You know what follows, for when we were boys we learnt the Twelve Tables like a familiar rhyme."

of the citizens may go forwards consistently, and in order that the Stability of the State may be preserved. But the Laws, if they are to be just, cannot be absolutely fixed; because if they were so, they would involve arbitrary elements, depending entirely upon the accidental events and Institutions of former times; and this mixture of an Arbitrary Element is inconsistent with the Idea of Justice.

The Idea of Justice, so far as it has operated in forming the Laws of any State, has operated in each generation upon the materials which the existing state of the Community supplied, and has thus more or less modified the Laws in each generation. It would not be the Idea of Justice, if it did not produce such modifications; for it is not just that there should be *arbitrary* inequalities among men. But *differences* among men and classes of men, arising from the events of former times, can never be removed; because the present condition of men is, in all cases, determined by their past condition; and among the features of this present condition, are their convictions as to their Rights and Obligations, which necessarily are derived from the past. For example, it is not just that there should be *arbitrary* differences in the distribution of Property. But there must be vast *inequalities* in the distribution of Property; for Property being a permanent thing, the inequalities of its distribution go on accumulating for ages; and this is not unjust. Yet still, these Rules of permanence in Property must not be regarded as absolutely fixed. Justice or humanity may require such fixed Rules to bend; as we have seen that fixed Rules of Law bend in cases of necessity, as self-defense and the like (664). And it may be just or humane, not merely to make an exception to the Law, but to alter the Law; and the Law itself may thus become more just and more humane.

766 Thus the Law, in so far as it is a given fixed Fact, is a means of Education, by giving shape and substance to our Ideas. But again, it is to be a means of *Moral* Education, and is to give shape and substance to our Ideas of Justice: and for this purpose it must be fixed only so far as Justice makes it fixed. The Law must perpetually and slowly tend towards the idea of Justice;—slowly, because it must always be fixed enough to afford a standing ground for our thoughts and a means of education;—perpetually, because there will never cease to remain some portion of the arbitrary historical element, on which it is its office still to operate.

Since we are thus brought to views in which the Idea of Justice comes under our consideration in its application to Laws, (and by the like reasonings we should be led to the like application of other Moral Ideas,) we shall now proceed to the part of our subject to which these Ideas so applied belong,—Polity.

767 Before we proceed, it will be proper to observe that there are other Classes of Rights, which we have not yet considered, because they are of a less extensive and fundamental kind than the Five Principal Classes. Of these we may briefly notice the Right of Reputation.

The Right of Reputation.

768 WE have noticed the Desire of Esteem, and the Fear of Condemnation and Infamy, as Springs of Human Action (59). Although the objects to which these Desires tend are notions which are not unfolded in our minds without the operation of reflection; they are, still, so universal, that the tranquillity of man in society cannot subsist, except the objects of these, as of other Desires, are established as Rights. Contumely, the expression of condemnation and scorn, naturally provoke acts of violence; and may often, on that account, be prohibited, as the first step in a violation of personal Rights. To take away a man's Good Name, or Good Repute, may prevent his neighbours trusting him, and may bring on him great loss. Hence the law forbids such acts*. "Si quis librum ad infamiam alicujus pertinentem scripserit, composuerit, ediderit, dolove malo fecerit, quo quod eorum fieret, etiamsi alterius nomine ediderit, vel sine nomine, uti de eâ re agere liceret." But the Commentator adds, that this is punishable only if the infamy be undeserved†: "Eum qui nocentem infamaverit, non est bonum æquum ob eam rem condemnari; peccata enim nocentium nota esse et oportere et expedire." But a man's good Reputation, when deserved, is protected as a personal right‡: "Est enim famæ, ut et vitæ, habenda ratio." In like manner, the English Law takes cognizance of injuries affecting a man's Reputation, committed by malicious, slanderous, and scandalous words, spoken, or

* *Dig. XLVII. 10. 5.* "If any one shall have written, composed, put forth, or by any trick caused to be written, composed, or put forth, any book tending to the defamation of another, even though it be put forth in the name of another person, or without a name, he may be proceeded against."

† *Dig. XLVII. 10. 18.* "For defaming a guilty man, it is not right and fit that a man be condemned: for the crimes of guilty men ought to be known."

‡ *Dig. XLVII. 10. 18.* "For reputation, as well as life, is to be protected by Law."

otherwise published, and tending to his damage and derogation. The Rule with regard to the words which the Law thus considers injurious, is, that they are such as may endanger a man by subjecting him to the penalties of the Law; may exclude him from Society; may impair his Trade, or may affect him as a Magistrate, or one in public Trust*. But it is added by the Lawyers, that mere Scurrility, or opprobrious words, which neither in themselves import, nor are in fact attended with any hurtful effects, are not punishable by the common Law. Scandals are however cognizable in the Ecclesiastical Courts; as for instance, to call a man an adulterer or a heretic. By the Common Law, words uttered in the heat of passion, as to call a man a Rogue or a Rascal, if productive of no ill consequences, are not punishable. Nor are words of advice or admonition punishable, in consequence of any ill spoken of the person admonished; for, say the Lawyers, they are not maliciously spoken. Moreover, if the person who has spoken ill of another, be able to prove the words to be true, he justifies himself, even though special damage have ensued; for then it is no slander or false tale; as we have seen is the provision also in the Roman Law.

* We speak here of *civil* liability. The English Law, in this case, makes a distinction between words *spoken* and words *written*. Besides this process, calumny

may be the subject of *criminal* indictment as tending to provoke a breach of the peace. In this case, truth is not generally a defense.

BOOK V.



POLITY.

THE DUTIES OF THE STATE.

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CHAPTER I.

THE RIGHTS OF THE STATE.

769 WE have already (369—379) spoken of *The State*, as a Conception applicable to every Community of Men, among whom Rights and Obligations really exist. The State is the Origin of the Law, and of the powers which execute the Law; and hence, is the Source of the reality of Rights. The State is Supreme, or Sovereign over all persons and authorities within it. The State is single and permanent, while its subjects are many and mutable. We have also seen that the State so conceived is a Moral Agent: it has Duties; and among these Duties, we have been led to notice especially the Duty of Educating the people (378). We have now to consider more fully the Duties of the State in general, and this Duty of Education in particular.

770 In the case of individuals, Duties are extensions of Obligations, and Obligations imply Rights. The same is true of States; and therefore we have to consider in the first place the Rights and Obligations of States.

We have already spoken of the Rights of Government, and the Obligation of Obedience on the part of the governed (750). These Rights are Rights of the State. It is from the State, that all persons placed in Magistracies and Offices of Command derive their Right to the obedience of subordinate persons. It is as repre-

senting or possessing the Authority of the State, that they are Persons *in Authority*. The Obedience which is rendered to the Magistrate, is rendered to the Law, and to the State, which is the Source of the Law. The State is the origin of Rights in general, as we have said; but it is the origin of other Rights, by having the Rights of Government. Other Rights, as Rights of Property, it assigns to its subjects; the Rights of Government it asserts to itself.

771 The relation between the Rights of individuals and the Rights of the State, has been variously presented by different Moralists. Some, as we have said (373), have considered the Rights of the State as formed by the addition of the Rights of Individuals. According to this doctrine, individuals constitute a State, by uniting themselves, and contributing to a common stock the Rights which they naturally possess; sharing this stock of Rights among themselves by common consent, and establishing Officers and Laws to carry their agreement into effect.

We have already (373) pointed out the untenable character of this Doctrine. Rights cannot exist without the State. Individual Rights cannot be supposed anterior to the State; and thus, State Rights cannot be hypothetically constructed out of Individual Rights. But further: there are some State Rights in particular, which are more evidently, from special considerations, not aggregates of individual Rights. These peculiar State Rights we shall proceed to describe.

772 The State has a *Right to the National Territory*. Individuals derive their Rights to their Special Property in Land from the State, according to the Law of the Land; but they could not derive those Special Rights from the State, except the State had a general Right to the whole. An Englishman has a Right to his landed Property in England, because the Law of England gives it him. A Frenchman has a Right to his landed Property in France, because the Law of France gives it him. But this assumes that the English State, which speaks its will in the English Law, has a Right to the Soil of England; and in like manner, the French State is assumed to have a Right to the Soil of France. An Englishman may possess land in France; but this is, still, by the Law of France; and implies the Right of the French State to the French Territory. There can be no property in Land, except what is derived from the State to which the Land belongs.

773 We may illustrate this further. Suppose any *County* in England were conceived as detached from the State; as no

longer owing obedience to the English State, or deriving Rights from it. What Right, on this supposition, have the inhabitants of the County to the land on which they live? It may be said, that they have the Right of Possession. But Present Possession can confer no Right, on such a supposition. Present Possession is a fact, which may be succeeded, at any moment, by the opposite fact of Dispossession; and then the Right is gone. Suppose the inhabitants of this County to be dispossessed violently by a body of new settlers from any place, at home or abroad; of what wrong can they complain? When dispossessed, they have no longer the Right of present Possession. If they urge the Right of past Possession, how is this a Right, and by what Laws regulated, when the Law of the Land is rejected? How have they themselves acknowledged the Right, either of present or past Possession? Their ancestors, Saxons, Danes, and Normans, seized the Land by violence, disregarding both present and past Possession. This historical event is a good foundation for the Right of Property, if we assume, as men in thinking of Rights always do assume, that a population, organized as a State, have a Right to the Territory which they occupy: for the imperfect and undecided organization of the English State, which, in the times of the struggles of the Saxons, Danes, and Normans, might leave questions of Right doubtful, has long since passed away. But if men reject this foundation of Rights, the ancient Wrongs, from which they derive their claims, will prevent them from consistently complaining of modern Wrongs, if in modern times acts of violence be done to their damage, like the ancient acts of violence of which they now enjoy the profit. The only good ground of the complaint of Wrong, when the Right of landed Property is violated, is the Right of the State to the Soil of the Country, and the Will of the State expressed by the Law of the Land.

774 The Principle just referred to—that the members of a Community, organized as a State, have a collective Right to possess Territory—and that Individuals cannot acquire Property in Land, except by derivation from a State; is often carried further; thus showing how entirely the Principle is accepted. It is maintained, for instance, that a Civilized State, on discovering a country of Savages, may take possession of it; and that the possession of the Savages must be regulated according to the Laws of the Civilized State. But these are questions of International Law, which we shall not here discuss.

775 Another Right of the State is *the Right of making War*

on other States. This Right is necessary to the existence of the State, as a distinct and independent agent, which is sovereign over all its subjects within it, and protects them against all harm from without. If its subjects be injured or its independence assailed by a foreign State, it has no resource but remonstrance; which may inevitably lead to War; since States have no common tribunal before which injury done by one to the other can be inquired into, and redress given.

776 This Right of making War is not a Right arising from the combination of the Rights of individuals. England has a Right to make war on France, on due grounds; but no one or more Englishmen have a Right to make war on any selected number of Frenchmen. In the case of a National War, individuals commit acts, which would be murder and robbery, if they were not committed under the Authority of the State. It is true, there have been rude times in Europe, (and there may still exist such in other countries,) when the Right of Private War subsisted. But even in these times, this Right did not exist as an original Right of individuals; but as a Right given by the Law, and limited by the Law; and if any one used violence out of the limits of the Law, he was treated as a malefactor. The Right of Private War was especially subordinate to, and limited by, the Right of National War. So far as sovereignty had its power, the Sovereign, when he made War upon another Sovereign, forbade Private Wars among his Subjects, and forbade Private Treaties of Peace with the Subjects of the enemy. Thus, even in the times of Private War, the Right of the State to make National War was the Fundamental and Paramount Right. But we must further add, that a State, which recognizes Private War, is very imperfectly organized. Under such a State, men possess in a very incomplete degree, the Rights, of Protection from Violence, Security in their Property, and the like. As the Nation more entirely assumes the genuine attributes of a State, the Right of Private War declines, till it is extinct. But the Right of National War, during this progress of improvement, undergoes no diminution. The most completely organized State possesses this Right at least as fully as the Sovereign of a body of Feudal Lords ever did. And thus, this Right belongs to the State, as a State; and not in virtue of any mode of composition, by which the State may be supposed to have assumed its existence.

777 We may remark further, that the Right of the State to the National Territory, of which we have already spoken, necessa-

rily carries with it the Right of making War, when the National Territory is infringed, if no redress or defense can be had in any other Way. The Right of each man to his Property, is realized and enforced by the power of the State; but the Right of each State to its Territory, if contest arise, can be realized and enforced only by Treaty; or if that fail, by the power of the Sword. And thus, a State has, as one of its characteristic attributes, the Right of making War on other States, on due occasions.

778 Another Right peculiarly a State Right, not derivable from any supposable Rights of individuals, is the Right of inflicting Bodily Punishment, and especially *the Right of Capital Punishment*. In exercising the Right of War, the State necessarily assumes a Right to put in peril, and to expose to destruction, the lives of its subjects, who serve it as soldiers. But in that case, it is not that the State inflicts the blow, but that it cannot avert it, under the circumstances. In the Case of Capital Punishment, the State itself takes away the life of its subject, inflicting a sudden and violent death. The Right of doing this is universally assumed in States. And it is assumed necessarily. Without the exercise of this Right, the State could not discharge its office. Its business is, to give reality to the Rights of men in Society. But Rights cannot have reality, except they be as real as the other Springs of human action. In order that Rights may be real for me, the rights of another man must be as real in my eyes as the Objects of Desire. To each man, his Obligations towards other men must be realities, as well as his own Appetite, Anger, Avarice, or Ambition: the former must influence his hopes and fears in the same manner, stimulate and restrain him in the same manner, as the latter. But the highest and most real of the objects of men's hopes and fears are Life and Death, accompanied with Honour and Shame. A violent and ignominious Death fills the full measure of the object of man's fear. The force of Desire, Appetite, Anger, and the like, is fully expressed, when a man loves objects as his life, and dreads them as such a death; but it is not fully expressed by anything short of this. Hence, Rights and Obligations will not be real in Society, to the same extent as other objects of action are real, if they be not sanctioned by the prospect of Life and Death, as depending upon the observance or violation of Obligations. If the sanctions of Rights stop short of this, there will be some region of human action, in which the lawless springs of action are not balanced—some province of human nature, in which the extreme

forms of passion, appetite, anger, and the like are not governed by any efficient authority.

779 The necessity of the Right of Capital Punishment being vested in the State, will also appear from the following considerations. If the State do not assume this Right, such a Right may nevertheless be assumed by another body of persons, who by that very assumption become more powerful than the State, and may seize all the powers of the State. If there were no Capital Punishment for Treason, and the like crimes; an association of men might arm themselves, and, making death the punishment for opposing them, might compel the citizens to obey them, and to disobey the legal authorities. For what would other inferior punishments avail, to avert such a result? Who will be found ready, unarmed, to inflict imprisonment or exile on a body of armed and resolute men? It is plain, therefore, that in extreme cases at least, Capital Punishments are necessary to the existence of the State: and therefore, the Right of inflicting such Punishments must belong to the State.

780 The Right of Capital Punishment is a special and original State Right, and does not arise from any combination of individual Rights. This Right cannot be conceived to be a Right arising from a common consent, and given to the State by an understood compact between it and individuals; each person conveying to the State a Right over his own life, in case of his committing a capital crime. For, in the first place, the assumption that man, as an individual, has such a Right, is contrary to common Morality. If a man have a Right over his own life, he may cast off life when he pleases, and Suicide is no sin. And even if it were allowed that a man has a Right over his own life; the further assumption, that he has transferred this Right to the State, by a transaction of which he was unconscious, and in which he had no choice, is so extravagant, that it cannot afford a satisfactory basis for Rights. Thus, we reject the notion of this Right arising from consent or compact, and consider it as a special and original State Right.

781 Again, there is another Right which is exercised by all States; *the Right of imposing Oaths*, for instance, Oaths of Testimony, and Oaths of Office. This Right, also, is necessarily exercised by States. Such Oaths identify the Citizen's Obligations with his Duties. As a Witness, to give true testimony, as a Judge, to administer justice, are always Duties. By means of Oaths, these Duties become legal Obligations imposed by a distinct Contract,

and accepted by a solemn Engagement. And if there be not this identity of Duty and legal Obligation in general, the State cannot subsist. For the State consists of men, who are moral beings; and who cannot, without an intolerable violation of their nature, go on continually discharging legal Obligations, which have no connexion with their Duties. The essential part of the business of the State must be regarded with the solemnity which belongs to moral acts; otherwise, the State itself cannot be a permanent reality in the minds of moral men. And, as we have already said (610), the natural way of acknowledging and marking this moral solemnity, among religious men, is by acting, and declaring that we will act, as in the presence of God; that is, by taking an Oath to act rightly. The thoughtlessness of men, and the excuses which, in common life, they make for falsehood, deceit, injustice, partiality, inconsistency, passion, and the like, are such, that it is requisite, for the essential business of a State, to demand of them another frame of mind than that which is usual in their common intercourse. If the Witness were to give his Evidence, the Jury their Verdict, the Judge his Sentence, with the carelessness and perversion of truth and right, which men often allow themselves in common conversation; the administration of justice would be impossible. If the Witness told his tale, and the Judge gave his opinion, with the levity which prevails at a convivial meeting, how could a moral citizen bear a part in a court of Justice? On such occasions, then, men must be grave, must be thoughtful, and must engage to be so. The occasion and the acts must be marked as solemn; and this, as we have said, is necessarily done, among religious men, by the Witness narrating, and the Judge deciding, as in the presence of God. And the occasion is marked as solemn, by each person declaring that he does this; that is, by the Oaths of the Witness, and of the Jurymen, taken at the time of the trial; and by the Oath of Office, which the Judge has previously taken.

782 The necessity of Right of administering Oaths being vested in the State, will also appear from the following considerations. If the State do not exercise this Right, a body of the Citizens, bound together by their common belief in God and in his Judgments, may administer, to each other, Oaths to co-operate in their common purposes; and may thus, when their purposes become inconsistent with, or hostile to, the existing Government, overthrow the Government, and take the Authority of the State into their own hands. For a State, not claiming a moral reality

for its acts, by means of religious solemnities, could not stand against a great body of citizens bound together by religion. If such citizens be brought before the tribunals for hostility to the government; the witnesses, the jury, the judge, may be of the religious party; and, not being bound to their official act by religion, they will act so as not to be the effective agents of laws which they deem unjust and cruel. And if the laws be still enforced, by the agency of citizens acting without any acknowledged tie of religion, the laws must soon cease to be regarded as just: for morality cannot long subsist in men's minds without religion. When this has taken place, and the laws are no longer supported by an opinion of their general justice, the empire of the law becomes the empire of mere force, which the moral nature of man will not allow to continue long among men.

Thus the ground of the necessity of Oaths in a State is, that Morality cannot long subsist in men's minds without Religion; that for the efficacy of Religion, a recognition of it by the State is requisite; and that this recognition is especially requisite on certain solemn occasions, such as judicial proceedings, the assumption of important State offices, and the like.

783 If it be said that Religion may be efficacious in making men true and just on solemn occasions, without being publicly recognized and referred to; we reply, that though this may be so with some persons, the State can never know which persons are, and which are not, of this number, without the use of some Formula referring to Religion: nor can it be known, without the use of some such Formula, whether any particular person considers the occasion a solemn one or not.

784 The State, therefore, necessarily has the Right of administering Oaths of Testimony, of Office, and the like. And this State Right, like the others, is a special and original Right of the State, not derived from any Combination of individual Rights. For though men, in a Contract or other transaction, may be willing to accept Oaths from one another; no one man can be conceived as having any Right to impose an Oath upon another man. If there be any difficulty in ascribing to the State a Right to question or limit a man's actions on account of his religious belief or religious sentiments, there must be a much greater difficulty in ascribing such a Right to any individual. And as no individual could have any portion of such a Right, no collection of Individuals could have the Right: and the State Right to impose Oaths cannot arise from the

combination of the Rights of the Individuals, of whom the State consists.

785 It may perhaps be said, that an assemblage of religious individuals, associating themselves, for their mutual advantage, might exclude from their body, all who would not, upon due occasions, make certain religious declarations. And this might be so; but we cannot conceive this as the origin of the Right of the State to impose Oaths. For to imagine this, would be to suppose the State to be, not only a voluntary association of individuals; but of individuals in whose minds religious belief and religious sentiments were already established, and who were drawn together by their religious sympathies. But this is an impossible supposition: for we cannot conceive Religion without Morality, or, generally speaking, Morality without Society already established. We know that the State does not derive its religious belief from the spontaneous religious sympathies of individuals; but that individuals derive their religious sentiments, in a great measure, from the Society in which they are born and live. Men bind themselves by Oaths, under the direction of the State, not as if it were part of a social contract that they should do so; but looking upon the State as a Divine appointment, and a channel through which the forms of the most solemn engagements must necessarily be derived.

786 We are thus led to reckon, as Rights of States, besides the general Rights of Government, these four: the Right to the National Territory; the Right of War and Peace; the Right of Capital Punishment; and the Right of imposing Oaths. These Rights are all necessary to the continued existence of States; and, as we have seen, they are not derivative or cumulative attributes, but original and peculiar. We have called them *State Rights*, in order to distinguish them from *Individual Rights**.

To Individual Rights correspond Obligations; and it may be asked whether the State has any Obligations corresponding to its Rights. The answer to this Question will occupy the next Chapter.

* The State Rights are sometimes termed *Rights of Majesty*, as being vested in the Sovereign authority in each State.

CHAPTER II.

THE OBLIGATIONS OF THE STATE.

787 THE State is, as we have said, the Source of Law and of Authority, and the Realizer of individual Rights. The State Rights exist, in order that the State may discharge this its office. And hence, the Obligation corresponding to the State Rights is, that the State shall *be* the State; that it shall deliver and administer Laws, and thus realize Rights. And this it must do, not for a short time merely; not for one generation only; but permanently, and with a prospect of permanence. Hence, to provide for this permanence is an Obligation of the State. This we may describe as *the Obligation of Self-preservation*.

788 We more frequently hear the *Duty* of Self-preservation ascribed to the State: but we shall, in general, use the term *Obligation* in speaking of this subject: not only because Obligation is the term corresponding to Right; but also, because this Obligation is enforced by a real Sanction, as individual Obligations are: for if the State do not fulfil this Obligation of Self-preservation, it will not be preserved, but will be dissolved, and will cease to be a State. If, however, we wish to retain the term *Duty* in this case, we may speak of the Duty of Self-preservation as the *Lower Duty* of a State, in comparison with other Duties, such as the Duty of rendering its subjects moral and intelligent, which are its *Higher Duties*.

789 This State Obligation of Self-preservation divides itself into several branches; related in some measure to the different State Rights of which we have spoken. Those Rights are assigned to the State for certain purposes; and the State is under Obligations to employ them for those purposes.

The Right of making War is a necessary appendage to the Right to the National Territory; and is to be used, when necessary, for the purpose of defending the Nation from every intrusion of an enemy upon its soil; and also, for the purpose of protecting the citizens from all other violence and injustice, inflicted by strangers. The State is obliged to take measures which may have such an effect; and this is *the Obligation of National Defense*. All individual Rights stand within the fence of the National Right; and the State is bound to keep this fence entire and substantial. For this purpose, the State is bound to provide an Army, or the

means of raising an Army, when the need arises; and to provide the means also of supplying its Army with Officers, and with Munitions of War. The State is bound, also, to keep a watchful eye upon the movements of other States; and if it sees them preparing any evil for itself, to avert the danger by timely precautions. For this purpose, Negotiations with other States may be requisite; and hence, Embassies, Treaties, and the like. Such Negotiations, in the discussions to which they lead, necessarily assume the existence of Rights and Obligations between Nations; and thus, we are referred to an *International Jus*, of which we shall hereafter have to speak. The Obligation of National Defense is the first Obligation of a Nation, for it is necessary to the existence of a Nation. Without the fulfilment of this Obligation, a State cannot exist, even in the most imperfect form. A State which used no means of defending itself, would soon be blotted out of the Map, by the pressure of surrounding States.

790 The next branch of the State's Obligation of Self-preservation is *the Obligation of upholding Law*. The last-mentioned Obligation regarded foes without the nation; this regards citizens within it. In the former case, we spoke of maintaining the external fence which protects the National Existence; we now speak of keeping up the internal barriers of Individual Rights. These Rights are to be realized by the Law; and except they are made real by the enforcement of the Law, they cease to exist, and the citizens cease to be citizens. In this case, the State is destroyed by the dissolution of its internal organization, as completely as if it were obliterated by external violence.

791 There are, however, various degrees of such Disorganization, according as the Laws are enforced with more or less vigour and steadiness. Looking merely to the Self-preservation of the State, if the Rights of the more powerful Class of the citizens be upheld for them, the State may long subsist, although there are other Classes whose Rights are neglected, or gradually encroached upon. That to do this is a violation of the Duty of a State, we shall hereafter see. But that the long-continued existence of a State is not inconsistent with the continued prevalence of illegal oppression of some classes of the community, the history of many nations abundantly shows. Still, so far as such practices prevail, the organization of a State is imperfect; its functions do not proceed in a healthy manner. The imperfect or unequal administration of the laws may not be the immediate Death of the State, but it is a grievous Disease, however long it

may be protracted. A State, in order to preserve its full vitality, must make the laws to be respected; and respected alike by all classes, high and low, rich and poor. So far as power and wealth can shield their possessors from the hand of the law, such men are placed above the law; and the State has a tendency to fall to pieces, and to cease to be a living State.

792 Another branch of the Obligation of Self-preservation belonging to States is *the Obligation of repressing Sedition*. By Sedition, is meant any course of action separating the citizens from the State, and transferring to a Rival Body the obedience due to the State. When this Rival Body places its strength in external force, it is an *Armed Sedition*; when it rests its pretensions upon defects in the Right of the Governor, it is a *Political Sedition*. Of whatever kind the Sedition be, it tends, so far as it attains its object, to a destruction of the State. The establishment of a Rival Body whose officers and whose Law are obeyed, rather than those of the State, necessarily interferes with and disturbs, and in its natural result, puts a stop to, the functions of government. In this case, as in the others just mentioned, the Life of the State, the body politic, is destroyed; and as its destruction from defect of national defense, may be represented as death by External Violence, and its destruction from defective administration of the laws, as death by Internal Disease; so the destruction of the State by sedition may be compared to the fatal effect of an Excrecence which grows in the body, and draws to itself the nutriment which should supply the vital powers.

793 It is a part of the Obligation of Self-preservation belonging to a State, to suppress Sedition, so as to avert this tendency. And this Obligation has always been acknowledged and acted on by all States. The highest form of sedition is *Treason*. This, in the English Monarchy, is defined to be an offense committed against the security of the king or kingdom; as to compass the death of the king, or to levy war against him, or to adhere to his enemies, or give them aid, within the realm or without. In all monarchies, such crimes have been visited with the severest punishments. But in other forms of government, no less than in monarchies, attempts to overthrow the existing Government have universally been treated as Crimes of the highest order. In free States, attempts to crush the Freedom of the People have been commonly considered as no less atrocious crimes, than attacks upon the Sovereign Authorities: and where the usual course of law has been insufficient to resist and punish such attempts, extraordinary

acts, on the part of some members of the State, have been often and generally looked upon as necessary results of the State's obligation to preserve its free condition; such acts were *Tyrannicide*, and the putting to Death, or sending into exile ambitious men in ancient times; such acts have been the *Impeachment* of statesmen in England for attempting to render the royal power absolute.

794 The word Treason (*trahison, proditio*) implies, not only hostile intentions, but fraud and breach of trust: and generally, *treachery*, a word of the same origin. These notions are, in this general manner, combined with the notion of hostility to the State or the Sovereign; because Fidelity to the State, and to the Sovereign, are reckoned among the duties of all citizens. A man who joins with strangers, in harming his own Country, is considered as breaking those bands of national duty and affection, which in their hold upon good men, come next after the ties of family duty and affection: and hence, is looked upon with the same kind of sentiments with which we look upon a man who joins with strangers in harming his father or his mother. A man who is hostile to his country may, it would seem, be treated as a public enemy; he deserves not to receive the benefit of his country's laws, or to be protected in his property or other rights. And hence, the existing Government, which, in order to justify and protect its own existence, must identify itself with the Country, treats its own enemies as the enemies of their country, and punishes them as traitors.

This view shows itself in the distinction made between domestic and foreign enemies: for foreigners coming into the country in a hostile manner are to be dealt with as enemies; and if taken, executed by martial law. A foreigner cannot be executed for Treason, say the English Lawyers, for he owes no allegiance to the King.

795 Sedition aims at its objects by *Conspiracy*, the mutual understanding established as to a *Plot*, or Plan of proceeding; and by *Rebellion*, the open use of armed force against the Government. If a Government do not put down Conspirators and Rebels, it must soon cease to be a Government; the State, as represented by the Government, must perish. And thus, as we have said, the repression of Armed Sedition is an Obligation incumbent upon the Government, as essential to its Self-preservation.

796 The repression of *Political Sedition* is, in some of its forms, generally acknowledged as a part of the State's Obligation

of Self-preservation. For instance, if, in a monarchy, a man declare and maintain that the king is an usurper, and has no title to the crown, such discourse must be conceived to have a tendency to incite the king's subjects to rebellion, and is criminal. The English law makes it a grave misdemeanour to print or publish *Seditious Libels* against the King or his Government. But the genius of free governments, which tolerates a considerable difference of opinions with regard to the justice and wisdom of the acts of the Government, and the Institutions of the Country, will not allow everything said against the Government and its acts to be treated as Seditious. Accordingly, the English Law permits a man to discuss the measures adopted by the King and his Ministers; but requires this discussion to be conducted fairly, temperately, and with decency, without attributing corrupt motives.

797 It must not be forgotten, however, that proceedings which are Sedition in the eye of the State may often arise from defects in the State itself. If the Laws, or the administration of the Laws, be contrary to Justice, Liberty or Humanity; and if all applications made in constitutional ways for the reform of such defects and abuses, be obstinately resisted by the Government, those who still persevere in the attempt to produce this reform, are naturally led to modes of action which go beyond the limits marked by the constitution, and come within the legal description of Sedition. And though the repression of seditious proceedings is an Obligation and a Duty of a State at all times, being a part of the Obligation or Duty of Self-preservation; yet the Governors of the State, who have to perform this Duty, should ever bear in mind this possibility;—that the prevalence of a tendency to Sedition among the citizens may be occasioned by a really existing need of the reforms which are demanded, and may be best averted or remedied by introducing such reforms. This consideration is recommended to the Governors, even by their *lower* Duty, the Duty of Self-preservation; for a sedition which can truly assert that its object is only a demand for Justice, Liberty and Humanity, must be really dangerous to the State in which it exists. And it is further to be considered that the *higher* Duty of the State is to make the Laws just, liberal and humane; both that they may be a means of good Government, and also that they may be the means of morally educating and morally elevating the citizens. And as it is the Duty of a man, so it is the Duty of a State, to carry on a constant and interminable progress in Justice,

Liberty, Humanity, and other virtues; so that the State can never hope to arrive at a point in which no improvement is possible, and no reform necessary: and therefore this Duty of averting the most dangerous kind of Sedition by timely reforms of Laws and improvements in the State itself, can never cease to have a claim upon those who administer the affairs of the State.

798 The most complete moral culture of individuals must be that which is connected with their religious culture. For this religious culture of the citizens the State may offer facilities and helps; but since religious culture consists in what passes in a man's own soul, it must necessarily be in a great measure removed from all which the State can do; and in order that such a culture may go on largely, men must, as to the prosecution of their religious culture, be left free from constraint on the part of the State. But the fact universally is, that each person does not pursue his own religious culture, and his own religious exercises, individually and separately, as a matter between God and himself alone. By their religious feelings and opinions men are drawn into bodies. They have a Common Worship, and in most cases, a Religious Organization;—they have ministers, and ecclesiastical governors, to whom authority is assigned in spiritual matters. And the influence of religious sentiments and of religious ministers and governors is, in the course of human events, almost inevitably extended from spiritual to temporal concerns. Religious views, and still more Religious Institutions, can hardly fail to be much concerned in questions as to what is just, liberal, humane, and the like. In this manner those who demand reforms in the State and improvements in the Laws may be persons who are bound together by their religious sympathies: and opinions respecting religion and ecclesiastical matters may be connected with discordances among the citizens, even when they go to the length of Sedition: for instance, if there be a Party who teach, on religious grounds, obedience to a Supreme human Power, the rival of the Sovereign Power in the State; or if there be a Party which teaches, on religious grounds, resistance to the Laws. If there be a Spiritual Supremacy asserted which interferes with and overpowers the temporal Sovereignty, the State is in danger of utter dissolution. We have spoken of a Sedition in general, as an Excrescence, which diseases the body politic by drawing to it the nutriment which should support the bodily life. Retaining the same image, we may say that a Seditious Religious Party in the Social Body, is a Spiritual Excrescence; which, though not immediately visible in a material

form, may destroy the health; as a vehement and ungoverned train of thought may affect the texture of the brain, and produce the most fatal disease.

799 It may be urged that the State has not a Right to take measures against a Religious Party, on the ground of its being also a Seditious Party, since this would be contrary to what has been said (798), that men must, in matters of Religion, be left free from the constraint of the State. But it is evident that such an argument makes the Rights of individuals supreme, while it tends to the destruction of the State, which is, as we have seen, the only authority by which the Rights of individuals are realized and upheld. The State may rightly make its maintenance of the Rights of its subjects dependent upon any conditions which its own preservation requires. If a citizen refuse to acknowledge the sovereignty of the State, he has no injustice done him if the sovereignty be not exerted in his behalf. If he will not give his Allegiance, he cannot justly complain that he does not receive Protection. The absence of state-constraint, which men need for their religious culture, does not involve permission to use seditious means for the overthrow of state-authority.

800 The absence of Religion in a large portion of the citizens, as well as the prevalence of religious views hostile to the Government, may be dangerous to the State; since, as we have seen (782), a respect for the national laws cannot long subsist without a national religious sympathy. If Religion be opposed to Law in men's minds, the Law cannot long keep that hold on men's minds which the healthful existence of the State requires. This consideration makes it a Duty of the State, even with reference to its own preservation, to give to its citizens a religious teaching which may establish a perception of the consistency of Religion with obedience to the Law. The Duty of the State to promote the religious education of its citizens on higher grounds, will come under consideration hereafter.

801 One form of Error respecting Religion has been made punishable by most States, on the ground of its being an opinion dangerous to all government: namely, *Atheism*; the Denial of the truth of all Religion, and therefore of all religious Sanctions of Morality. We have already shown (782) that all States have claimed, and must claim, the Right of exacting from men declarations in the most solemn form in which they can be given; and the form employed has always contained a reference to the existence and providence of God. A man who denies, and teaches

men to deny, the existence of God, may be considered, so far as he is successful, as setting up a Sedition which makes all continued Government impossible. But whether this Sedition is so dangerous as to require the Laws to make such opinions criminal; or whether their prevalence and danger may not better be prevented by Religious Teaching, of which we have spoken, as a Duty of the State, will be better examined hereafter.

CHAPTER III.

THE MORAL CHARACTER OF THE STATE.

802 WE have spoken of the State, as having Obligations, or lower Duties; and we have also referred to its higher Duties (788). The questions naturally occur; since the Actions and Thoughts of States are necessarily compounded of the Actions and Thoughts of individual Persons, upon *what Persons* these Obligations and Duties fall, and in *what manner*? We may make a few remarks on this subject.

803 The Governors of the State act for the State; and upon them the Obligations of the State fall; they fall upon the Sovereign ultimately; but, in the first instance, upon the Officers and Magistrates of the State, who receive their authority from the Sovereign, and are held by him to the discharge of their Official Duties. The Obligations of National Defense, of upholding the Laws, and of suppressing Sedition, all belong, in a general form, to the Executive Department of the Government (754). But the first of these Obligations, in its details, is devolved upon the Army and its Commanders; the second, upon the Magistrates and Judges; as is also the third; and in some measure, so far as the prevention of Religious Sedition is concerned, upon the Religious Teachers of the Nation. The State Obligations fall upon the persons who occupy these offices respectively, as Obligations, and therefore as Duties. It is the Duty of the Sovereign to provide for the defense of the country; it is the Duty of his Ministers, and of the Estates of the Realm, to advise and aid him in this purpose. It is the Duty of the Commander of the Forces to use, for this purpose, with his best ability, all the means which are placed in his hands: it is the Duty of every military Officer and

Soldier, according to his condition, to exert zeal, skill, and courage, in this cause. And the like may be said of the other departments of the State. It is the Duty of all Persons in Judicial positions, according to their position, to join in administering the Laws; and of all Magistrates and their Officers, to do their part in carrying judicial decisions into effect, and by other appropriate means preserving the Order of the Community. We have already said (171) that each man has the Duties of his Station; and among the most distinct of such Duties, are those which fall upon each man, as his share in the fulfilment of the Obligations of the State.

804 The State has Duties, as well as Obligations (378). Thus all States have Duties of Truthfulness and Honesty; they ought to observe their Treaties and pay their Debts. They have Duties of Justice and Humanity: they ought not to oppress or enslave the unoffending inhabitants of other countries. They have Duties of Self-culture: they ought to learn and to adopt true Moral and Political Doctrines. Some of these Duties will be acknowledged by all Moralists as Duties of States; and thus, the moral character of the State as an agent capable of Duties, cannot be denied. States may act rightly or wrongly; and hence their actions are subject to the Supreme Rule of Action, the distinction of right and wrong.

The Question then occurs, as we have said, Upon whom do the Duties of the State fall, and in what manner?

805 It is evident that they must fall upon the Governors and Administrators of the State, for these act for the State. They fall upon these persons as Duties. It is the Duty of the Governors of the State to be truthful, honest, just, humane, rational, on the part of the State. But it must be observed, that this is something different from the Duty of being truthful, honest, just, humane, rational, as individuals. The actions, by which these qualities are exerted, on the part of the State, must be the acts of the State, and not merely of the individual. The Governor of a State, in order that, on the part of the State, he may be faithful to the Treaties which the State has made, must be able to direct its armies and navies to shape its commercial and fiscal regulations, as the terms of the Treaties stipulate. In order to be honest on the part of the State, he must be able to obtain, from the citizens, money to pay the State debts. In order to be able to put an end to acts of violence or oppression on the part of the State, he must be able to persuade, or to force, those citizens

to desist, who are concerned in such acts. In order that he may on the part of the State, learn and adopt true Doctrines, he must be able to induce the other Members of the Government, or other Representatives of the Will and Thought of the State, (if there be such Representatives,) to join with him in the adoption of such Doctrines. The individual dispositions, intentions, and convictions, of any man or set of men, whatever be their position in the State, are not necessarily those of the State itself. There is and must be a difference between what Statesmen feel and think, in their private capacity, and their sentiments and opinions as Statesmen. Their designs, as virtuous Statesmen, may be very different from their wishes, as virtuous individuals. For as virtuous Statesmen, they can design only such things as the State can perform with safety, consistency, and a due regard to the claims of its own subjects. A man who is truthful, honest, just, humane, and reasonable as an individual, will endeavour, if he be a Statesman, to be also truthful, honest, just, humane, and reasonable on the part of the State. But he will often find many impediments, which will prevent his directing the acts of the State, in such a manner as to conform to the Duties of Truth, Justice, and Benevolence, and to the dictates of Reason. He has to overcome rooted habits, vested interests, ancient prejudices, and natural diversities of opinion, among those whose consent is necessary to action. He has to guide himself by a due regard to the past actions of the State, and the nature of its moral agency, as distinct from that of individuals. These are difficulties, not arising merely from accident, or from something wrong, but necessarily belonging to the nature of the case. For instance, if the humane Statesman finds that the citizens of his State hold in cruel captivity a population of predial slaves; he will wish and endeavour to abolish this slavery. But however absolute his power, he cannot do this by a word of his mouth, or a stroke of his pen; by a command, or a law. He must provide, for the owners of the slaves, compensation for the loss which they suffer by their emancipation. He must prepare the slaves for the safe exercise of their liberty. If he do not do this, he obeys the impulse of his humanity at the expense of justice, and in neglect of that prudence which is requisite for the right direction of his humanity. For to emancipate slaves, on grounds of humanity, by a law which should throw all the loss upon the owners, would be unjust: since the inhumanity of the previous law, which protected such property, was the sin of the State, and not of

the owners. Moreover, slavery, as we have already seen (424), has existed, pure or modified, in many countries; and the perception of the inhumanity of the practice has been very slowly unfolded in men's minds. Where slavery exists, it is, by a large part of the community, regarded with favour, or with indifference. And this prejudice the Statesman has to overcome, so as to carry with him, in his views, the Representatives of the State, if the constitution of the Country require that he should have their co-operation in his acts. And thus, the humanity of the Statesman, acting for the State, may often take a very different course, and especially, must often work in a more slow and gradual manner, than the humanity which belongs to him as an individual; and the same must be the case with other moral qualities.

806 And as this is the case with those acts of a State which indicate a Moral Progress; so is it, also, the case with those acts which mark an Intellectual Progress. In these also, though the Statesman thinks, and reasons, and discovers, and adopts truths, for the State, he will often be compelled to adopt truths, on the part of the State, much more slowly, and much more imperfectly, than he himself acquires and possesses them in his own mind. He may, in his own thoughts, see the truth clearly, and follow it rapidly; but the State, although in a great degree represented by him, will seem to lag behind him in the intellectual race; and cannot, in its public acts, display the intellectual clearness and quickness which may be shown by an individual. The State, from its nature, cannot do this; for the acts of the State are those in which the Members of the State, according to their respective positions, share, at least, by assent and sympathy, if not by joint action. And a number of persons can rarely, or never, participate in the clearness of mental vision, and agility of mental action, by which one man may pass on to new truths. However certain, and however demonstrable may be the new truths, they must require some time for their communication to the minds of many men. Repeated explanation, discussion, proof, may convey to the minds of many, that conviction, which was at first confined to one, or a few; but it can only be by degrees, that the conviction can take such hold of the members of the community, that it can be properly expressed by any act of the State, as *its* conviction.

807 Thus the judgment of the State as to what doctrines are true, may differ very widely from the judgment of those who are, for the time, its Governors; and yet the Governors will rightly

make their conviction of truth (so far as it concerns matters of State) become the judgment of the State, as soon as they can make it take this form by constitutional means. A Statesman, who has obtained a clear view of new and important truths, deeply affecting the morality and wisdom of public acts, cannot fail to wish to make these truths take their place as grounds of the State's acts; he can hardly fail to introduce, into the acts which he has to perform on the part of the State, an assertion of or reference to these truths: and if he acts in conjunction with colleagues, he will endeavour to convince them of these truths. But he knows that new Truths cannot, in one instant, become the principles of action of a Nation, nor even of a Body of men; and therefore, he is content to introduce the new Truths by degrees, into the conduct of public affairs. He is content that the State should act, in a great degree, upon principles which it has long recognized and assumed. He knows that the existence of a State is continuous; and that its Moral Character is, in like manner, continuous. Its acts must have a coherence. Its life is its History; and in its present acts it must have a regard to its past history; so as not to interrupt the vital connexion of one period with another. The State may reform its conduct, and improve its views; and it may do this rapidly, and even suddenly; but it must preserve some identity through the change; else the State's Moral agency vanishes in the supposed reformation. If each person, who successively occupied the place of Governor, might at once proclaim his own views, as the doctrines of the State; the act would be of little or no value; since the proclamation of to-day might be superseded by a contrary one to-morrow.

Thus there is, for States, as there is for individuals, a Duty both of Moral Progress, and of Intellectual Progress: and these Duties, belonging to the State, fall upon the persons who administer the Government, as Duties belonging to them. But they do not fall upon them in such a manner that the Moral Progress and the Intellectual Progress of the State are to be identified with those of the individual. The Governors are to aim at a Virtue and a Wisdom on the part of the State which are not merely their own personal Virtue and Wisdom; which are shown in the Acts and Declarations of the State; which belong to *its* agency, not merely to theirs; which are parts of a national life, regulated by Moral Principles, directed to Moral Objects, begun before they had any share in State acts, and to be continued, on the same Principles, when they have ceased to live.

808 The Moral Character of the State has been generally recognized by Moralists, and has been expressed in various forms of language. In one of these forms, the State is described as having not only a Moral Character, but a *Conscience**. On this phrase we may take the liberty to remark, that the phrase is not at all necessary in order to express any moral Truths belonging to Polity. We can speak intelligibly and fully of all the Duties of the State, including the Duty of adopting and maintaining moral and religious Truths, without speaking of the Conscience of the State. And this expression is, in some respects, unsatisfactory; for it appears to imply a false relation between the Duties of the State, and those of the individual on whom they fall. The individual takes his share of the Duties of the State, as we have seen, knowing historically what the State has done, and trying to make the State for the present act morally, so far as the coherency of its being will allow. And all the individuals who share in the acts of the State, have to act thus, with historical knowledge and moral intention. But there is nothing in this process which can with propriety be called the Conscience of the State. Statesmen are not *conscious* of the past history of their country, however they may be cognizant of it. The English Statesmen of to-day are not *conscious* of the purposes and convictions of the State at the time of the Revolution. Men, contemporaries or successors of each other, may add together their knowledge, and may correct it by their discussions; they may combine their intentions, and may thus carry out a common plan: but they cannot properly be said to add together their Consciences, and thus make a Common Conscience. We have indeed (271) spoken of the Common Conscience of Mankind; namely, the Supreme Law of Man's Being, which each man contemplates in his own Conscience: but we have also said (273), that we may more properly render the moral reasons for actions by referring them to the moral Ideas of Benevolence, Justice, Truth, Purity, and Order, than by speaking of Conscience. The Conscience of a Nation, if it be spoken of at all, must be conceived to be, like the Conscience of an Individual, the stage at which it has arrived in its advance towards a full possession of the Fundamental Moral Ideas. But the stages at which different individuals have arrived, in such an advance, must be very various; and it does not appear that we gain any thing by calling the result the National Conscience.

But in whatever way we express it, the State undoubtedly pos-

* Vattel, *Law of Nations*. Prelim. § 21.

sesses a Moral Character; and has Duties, as we have intimated, of the same description as those of individuals:—Duties of Humanity, Justice, Truth, Purity, Order; the Duties of Moral and Intellectual Progress. These latter Duties, in the case of individuals, include, as we have seen (586), the Duty of Religious Belief. We shall have to consider, hereafter, whether the same be true, with regard to the State. But we must first consider some of the other Duties of the State.

CHAPTER IV.

THE SOCIAL CONTRACT.

809 WE have spoken of the manner in which the Nature of the State imposes Duties upon the Governors; we must now speak of the manner in which it imposes Duties upon the Governed. Of some of the Duties of the Governed, we also formerly spoke (236); namely, willing obedience to the Laws, an affection for the country, a love of its institutions and of its constitution; a loyalty to its Sovereign. That men shall possess such feelings as these towards the Government of their country, is a general Moral Rule, of great extent and great importance. But we have already stated (367), that in the course of the intellectual progress of mankind, Moral Rules require to be improved by a fuller development and elucidation of the import of the terms which they contain. We have already endeavoured (369, 380, 415) to unfold, for this reason, the conceptions of the State, Justice and Humanity: we must now do the same for the conception of *Government*; and for this purpose, must explain some of the views which have been successively taken by writers, of the Moral Nature of Government, and the grounds of men's Duties towards it.

The view which we have already given of the foundation on which Government rests is this (94): that Government is a necessary condition of man's Moral Nature; for Government is necessary to the existence of Rights; and Rights are requisite to the existence of Duties and Virtues. Or as we have otherwise expressed it, that our Idea of Moral Perfection involves an Idea of Order (162): and that this Idea of Order cannot be realized, without fixed permanent external Laws, or Rules for human Actions. The Rules which the Idea of Order thus implies, are Facts external

to the human Agent; but they are Facts requisite in order to mould his acts into a definite moral form.

810 But though the external Facts which embody the Idea of *Order* are thus requisite, in order that man's actions may have a moral form; there is something also requisite, in order that they may be Moral Actions: namely, an internal Principle of activity, *Freedom to act* (438). Without the Combination of these two elements, Order and Freedom, Moral Action cannot take place. And Government, which has it for its office to supply the element, Order, in this combination, must do so in such a manner as not to expel or destroy the element, Freedom. The external fact must not annihilate the internal act. The internal act must modify the external fact. Public Order and Individual Freedom must subsist together.

Thus Government, in order to be what it essentially is, a necessary Condition of man's moral agency, must include a Principle of Order, and also a Principle of Freedom. These two Principles are in some respects opposed to each other, and have been so considered, in the course of man's intellectual progress. We shall first observe some of the consequences of this opposition, before we attempt to trace especially the development of the Ideas themselves.

These abstract Ideas, Order and Freedom, have been the Objects of sentiments in men which are described as the Love of Order and the Love of Freedom. Under the influence of these Sentiments, the affairs of various nations have been variously conducted; and the Conception of Government itself has been presented under various points of view. We must consider how these are related to each other.

811 Since Government, as we have seen, includes an external Fact independent of man's Will, and an internal Will modifying the external Fact, it may be regarded mainly in the one or the other of these two lights: and thus have arisen two different, and in some respects opposite views, of the nature of Government, and of the Duties which relate to it.

One view represents civil Government as an *External Fact*, which men must take as they find it, and conform their actions to it, without having anything else to do with it. We are under a Government; we are to obey it; this is our Duty, and this is the whole of our business as subjects. The claims of Government upon our Obedience are universal and irresistible.

812 This view borrows one of its main illustrations from a

kind of Government which is undoubtedly an External Fact independent of our Will: which all men find, and must take as they find it; which is a universal condition of human nature, and claims obedience with irresistible power; namely, the Paternal Government. The child is placed by nature in the power of the parent. He obeys him, and must obey him, at least for some portion of life; and no one questions that he ought to obey him. The obedience, thus begun, is naturally continued through life, and extended to successive generations, as we know was the case in the early periods of society; and thus was produced a Patriarchal Government. This, the natural and original form of Government, presents to us the true nature of Government: and other kinds of Government are to be explained and justified by their derivation from the *Patriarchal System*.

813 This view, or one nearly resembling it, is sometimes expressed in a different manner. Government, being an External Fact which we find universally annexed to our condition, by no agency of our own, is to be accepted as a part of the scheme of Providence, which we must not think of altering. It is a portion of the Divine Order of things, to which men must conform. Men's Duty of Obedience to their Civil Governors is their Duty of Obedience to the Will of God; and hence, Governors have a *Divine Right*.

814 The opposite view to this looks not to the External Fact, but to the *Internal Fact*, the Will; as that which must determine man's condition. His moral position must depend upon himself. He makes Government what it is; and obeys it because he Wills to do so.

815 This view, again, borrows one of its main illustrations from a class of transactions in which a man does determine the circumstances of his condition by the acts of his Will; and in which the External Facts which regulate his actions, do so because he chooses, and as far as he chooses, that they should do so; namely, Contracts. A man may, by a Contract with other men, unite with them and bind himself to obey certain Rules mutually agreed upon; and so long as the Contract stands, the Rules are binding. It is held that Government may be likened to such a Contract, and that the Laws which Government upholds, are binding in virtue of this likeness. Government is a special kind of Contract, the *Social Contract*; and it is a duty of men to conform to the Rules of this Social Contract, because it is a Duty to fulfil the Covenants of all Contracts.

816 This view looks to the *Rights of Man* as Man ; it recognizes the Rights of Government, not as anything Divine, or in any way different from any other Rights ; but simply as a necessary condition for the establishment of other kinds of Rights.

817 The adherents of these opposite views of Government—the Patriarchal System and the Social Contract—have attempted to apply their respective Theories to existing forms of Government. But both the one Theory and the other require to be much modified, before they can be made to agree with the circumstances of most of the States which history exhibits to us.

818 In scarcely any age or nation, have men accepted their Government as an Existing Fact, with regard to which they had nothing to do but to obey. The most absolute Governments of ancient and modern times have, in some degree, approximated to such a condition ; but even in these cases, there occur, from time to time, attempts to improve the Laws, revolutions which overthrow the Governors, and other manifestations that men cannot be prevented from exerting their own judgment, and their own will, in shaping their own circumstances.

819 Indeed, the image which, as we have said, is the standard illustration of this view of the nature of Government, itself suggests that Obedience cannot be unlimited and interminable. For the child, when grown to manhood, though he may continue to treat with deference the commands of his parent, will yet have a will of his own ; and will claim a right of acting for himself, in a large portion of his actions. The Patriarchal view itself leads us to ask, when the children of the State arrive at the independence of manhood.

820 Again : if we attempt to derive National Government from a supposed Original Patriarchal Government, we fall upon other questions, which show how impossible it is to apply this Theory in its simple form. When the Patriarch dies, upon whom does his power devolve ? Upon the eldest son ? or all the sons alike ? or sons and daughters ? or according to which of numerous other obvious Rules ? The choice among these Rules cannot be determined by the Patriarchal Theory, in its simple form. Obedience to an elder brother, and that, continued through life, is not at all a part of the natural and necessary order of a family, as obedience to a parent is. Nor does any Rule on this subject naturally and necessarily flow from the Theory itself. If, on the other hand, we say that the Rule of Succession is determined

by tacit or express Agreement among the members of the Society, we thus admit, to a certain extent, the opposite Theory of the Social Contract.

821 Again: in the case of Usurpations and Revolutions, such as have happened in every country, when the family line of the Governors is broken through; are we to reject all the subsequent actual Government, as not rightly derived from the Patriarchal System, and therefore wrongful? Or are we to allow that long undisturbed Possession may obliterate the wrong of Usurpation? If we take the former side of the alternative, the Patriarchal Theory is not applicable to any existing case of Government: for in all countries there have been Usurpations and Revolutions. If we take the latter side, we acknowledge a new element in the Right of Government, namely long Possession, or Prescription; and we shall have to make this, in almost every case, the predominating element.

822 Thus, the Patriarchal Theory cannot be applied to actual Governments, without such modifications as render the Patriarchal Condition by no means the most important part of the Theory. And the same may be said of the Doctrine of the *Divine Right* of Government. For if we grant that the Rights of the Governors are Divine, as resting upon the Will of God; we may still ask *what* Rights are included in the Rights of Governors, and in *what persons* these Rights reside. These questions are in no degree answered, by calling these Rights, Divine Rights. To which we may add, that there appears to be the same reason for calling the Rights of the subjects, as those of the Governors, Divine.

823 But the opposite Theory, that of the Social Contract, offers no less difficulty, when we attempt to apply it to the greater part of actual Governments. For it is not true that, in any actual social condition, the circumstances of men, and the Rules which they obey, are those which have been determined by their own Will. In some of the cases in which men have freely combined to found a new and independent Colony, some approximation to this condition may have occurred; but even in those cases, the relations among the Colonists, and the Laws by which they are bound, are determined, in a considerable degree, by their position in the States of which they were previously subjects; and take their course independently of the Will of individuals in the Colony. And in the usual conduct of nations, it is not true that a man, by his own acts, determines all the circumstances of his social con-

dition. Man is really, as those assert who borrow their illustration from the Family, born, fostered, taught, and governed, with little or no regard to his own will. And even in respect to Civil Government, the greater part of the circumstances of a man's condition exist before him, and independently of him: for example, the institutions, the laws, the customs, the character of the nation, in which he must share, and by which his own habits and actions are mainly regulated. And his Relation to the Government being determined by these External Facts, and not by himself, it seems to be a groundless and inapplicable fiction, to speak of that Relation as founded upon a Contract, to which he is a party.

824 The Assertors of the Theory of a Social Contract have sometimes replied to this objection, by a further assertion; that a man, by continuing to live under a Government, after he arrives at manhood, gives his tacit consent to the Contract by which the Government is established; and is, therefore, bound by its Laws. But this answer leaves abundant room for other questions; as to whether such a tacit consent may reasonably be assumed; and if so, at what period, and under what conditions; and further and especially, what are the terms of the asserted Contract? And, upon the answers to these questions, will depend all the important Doctrines which concern the Rights of the Governors, and of the Governed; and, the theory of the Social Contract, if it be retained in discussing these questions, is little more than a form of expression which leads to no peculiar results.

825 The same may be said of the other forms of expression, which are used to convey the same views. Thus if it be said that the Rights of Government must be regulated by the *Natural Rights of Man*; the question still recurs, *What are the Natural Rights of Man?* We have already (412) stated, that all which have been called Natural Rights are so far limited and modified by the Laws of States, that they cannot be treated as universally Natural Rights. The Rights of Man, in each State, are determined by the Laws of the State; and although, as we have also attempted to show (418), Humanity requires that states and men should constantly endeavour to extend to all men the Cardinal or Primary Rights of Man, this Principle will, in a very small degree, aid us in determining the Duties of Subjects towards Governments.

826 Thus the Theory of the Patriarchal nature of Government is, both by the analogy of the Family itself, and by the universal course of human action, compelled to admit a Principle of

Freedom; and the Theory of the Social Contract must include family ties, established institutions, tradition, and assumed consent, as Principles of Order. Each of these Theories is drawn towards the other, in the attempt to make it correspond with the actual condition of nations.

827 But though the Doctrine of the Social Contract has no advantage over the rival Doctrine, as a Historical Theory, it may be a convenient form for the expression of Moral Truths. And this it may be, if we can answer satisfactorily the questions, which convey the objections to the Theory; namely, What are the terms of the Social Contract? under what conditions the consent of men to this Contract may be assumed? and the like.

828 We must, however, recollect, that though we may find convenient modes of stating and discussing Moral Truths, by speaking of the Social Contract, as the ground of the Rights of Government; yet that, in fact, Government has Rights which no Contract among the subjects could give. We have already (786) described these Rights as State Rights; and have shown that they cannot (in ordinary cases at least) be bestowed upon the Government by any agreement among the individuals of which the nation consists; namely, the Right to the National Territory; the Right of Making War; the Right of Capital Punishment; the Right of Imposing Oaths. These Rights are Articles in the Social Contract; but they are Articles such as no Contract among individuals under ordinary circumstances could contain. It is not because it is *A Contract*, but because it is **THE SOCIAL CONTRACT**, that the Foundation Deed of Human Societies contains these Covenants.

We may now proceed to consider the Questions above stated: What are the Terms of the Social Contract? and the like. We may observe that English Writers very generally speak of the Social *Compact* instead of Contract, but in exactly the same sense.

CHAPTER V.

THE SOCIAL CONTRACT IS THE CONSTITUTION.

829 BEFORE we attempt to determine what are the Terms of the Social Contract, since we are to use the expression for the purpose of expressing moral and political Doctrines, let us consider what Doctrines it has commonly served to express.

The most noted instance in which this Contract was referred to, was in the Vote of the Houses of Lords and Commons of England, which deposed James the Second, declaring that he had "broken the Original Contract between king and people." And this case exemplifies the purpose for which the phrase has generally been used in this Country; namely, to express that there are cases in which the subject's Duty of Obedience is annulled, and Resistance to the Governors becomes justifiable. When this is alleged to have happened in consequence of some violation of liberty or justice by the Governor, he is said to have "broken the Original Contract." And this phrase serves well to express, in a plain and forcible manner, the condemnation of the transgression, and the steps which it is held to justify.

830 For the breach of a Contract is an offense on which all men look with hatred and anger; and when a Contract is broken, in a fundamental manner, by one of the parties, the Obligation of the other party to perform his share of it ceases. Those who have to speak for the People, want to say, that the king's crimes have made Obedience cease to be a Duty of the People; and they cannot say this in any more intelligible or plausible way, than by saying, that the King has broken the Original Contract of King and People.

831 But this language, when used as a justification of Resistance to the Governors by their subjects, has this disadvantage; that while it refers to general Rules of Law, it makes one Party the Judge in their own case, which is against all Rules of Law. For if the People allege, against the King, a charge of Breach of Contract, they ought to bring the case before some Tribunal where justice may be done to both Parties. And if, before this is done, they resist the King's authority, he may, with at least equal plausibility, charge the offense of Breach of Contract upon them. They may charge him with Tyranny, and he may charge them with Rebellion; and these charges are not made more intelligible by calling them Breaches of the Original Contract.

832 It may be of use to recollect here what was formerly said (317) of Cases of Necessity; of which Rebellion, justified by Tyranny, is one. We cannot lay down beforehand any exact moral Rules for such cases, nor is it desirable to do so. We have already said (316), that we cannot define the circumstances of Cases of Necessity, because they must be those in which a good man does not violate the general Rule without great struggle and reluctance. For, (to repeat the arguments there used), if we were to define be-

forehand the conditions under which resistance to Governors, and Rebellion, are proper, and were to give Rules for such cases; those who accepted our Rules would, when the occasion arrived, take the course of Resistance and Rebellion without reluctance or compunction; and even before the time came, would be enquiring whether they had arrived at a point where they might cast off the Duty of Obedience and the Affection of Loyalty. And further, when these Cases of Necessity arrive, men are not calm and tranquil enough to apply Rules of action; and would, in practice, pervert any Rules which we would give. We cannot pretend to give a Formula for the justification of Rebellion; and the phrase of the "King having broken the Original Contract," so far as it is merely a Formula, cannot be a justification; although if there really be a justifying necessity, this phrase may serve to express it.

833 Since we are thus compelled to abstain from laying down Rules for Cases of Political Necessity which justify Resistance, it may be allowable to illustrate, by example, the manner in which such cases are to be regarded. I will take, as my example, the writings of a very able man who considered himself compelled, by the necessity of the case, to join in the Resistance to Charles the First, namely, Philip Hunton. He wrote a Book "On Monarchy in General; and the Monarchy of England in particular;" and in this, among other points, he treats of the question of Resistance to the Monarch rendered necessary by his transgressions. He does not employ the phraseology of the Original Contract Theory, which at that time had not become familiar. But he discusses the Question, which, in that or any other form, is one of extreme difficulty: Who is to be Judge when the Contract is broken? As he states the question, it is, "Who shall be Judge of the excesses of the Sovereign Lord in Monarchies of this composure?" that is, in Mixed and Limited Monarchies. In reply, he says, that this cannot be the Monarch himself, for then you destroy the frame of the State, and make it absolute: since to bind a Prince to a Law, and to make him the Judge of his deviation from that Law, is to absolve him from all Law. Nor can the Community and their Deputies be the Judges in such a case; for then we put the Supreme Power in that body, and destroy the essence of the Monarchy: for the Ruler is the immediate Minister of that Power to which he is accountable for his actions. "So that," he says, "I conceive, in a limited legal Monarchy, there can be no stated Judge of the Monarch's actions, if there grow a fundamental difference between him and the community. But you will say," he adds, "it is

all one way to absoluteness to assign him no Judge, as to make him his own Judge." Hunton answers, "I say not simply in this case there is no Judge : but that there can be no Judge legal and constituted within that frame of Government ; it is a transcendant case beyond the provision of the Government, and must have an extraordinary Judge."

834 He then proceeds to deliver his own Judgment on such a case ; which is this : "that if the transgression of the Sovereign be of lesser moment, it is to be borne by public patience, rather than endanger the being of the State by a contention between the Head and Body politic. But if it be mortal, and such as, suffered, dissolves the frame and life of the Government, and Public Liberty ; then the illegality and destructive nature is to be set open, and redress sought by Petition ;" which failing, the author pronounces that "prevention by Resistance ought to be." But yet he once more repeats his cautions and preliminaries : "First, that the case is such, must be made apparent : and if it be apparent, and an appeal be made, *ad conscientiam generis humani*, especially of those of that community, then the fundamental Laws of that Monarchy must judge and pronounce the Sentence in every man's Conscience ; and every man, as far as concerns him, must follow the evidence of truth in his own soul, to oppose or not to oppose." This power of judging in such a case, he adds, implies no civil superiority in those who judge ; being, not authoritative and civil, but moral ; belonging to us, not as citizens, but as reasonable creatures.

835 I have made these quotations from Hunton, because it is desirable to show how far the struggles of mind of a conscientious man, in a particular case in which resistance to the Government seemed to become necessary, are removed from the familiarity and positiveness with which Rules of such cases, in the general form, are sometimes laid down, by writers on Morals. Hunton's judgment, that under the English Constitution resistance to the Sovereign might become necessary, has the more weight, because it is combined with a strong admiration of the "Architecture" of the English Constitution ; "whereof," he says, "I must declare myself to be so great an admirer, that, whatever more than human wisdom had the contriving of it, whether done at once, or by degrees found out and perfected, I conceive it unparalleled for exactness of true policy in the world." His grief at the necessity of discussing such questions is strongly expressed. "O let no Son of this State," he says, "account it presumption in me, for putting in my judgment, and speaking that which I con-

ceive might, if not remove, yet mitigate this fatal distemperature of our common Mother: at another time perhaps it might be censurable, but in this exigence, laudable."

836 We conceive, then, that Cases of Resistance to Government are Cases of Necessity; and as such, Cases for which no Rule can be given. The use of the phrase "Original Contract" does not enable us to give any special Maxims on this subject. Still, as we have seen that the object of the Social Contract was to secure Order and Freedom, we may say that the Resistance may be used when it is necessary to preserve the Order and the Freedom which are guaranteed by the Social Contract.

This leads us again to inquire what the terms of the Social Contract are: but before we answer this question, we shall consider another purpose for which this, or equivalent phrases, are employed.

837 Such phrases have, in modern times, been used in the Preambles of various Codes of National Law; and especially in the Prefaces to the Constitutions of the States of North America. Thus the Constitution of New Jersey begins by declaring that "All the Constitutional Authority ever possessed by the kings of Great Britain over their dominions was by Compact derived from the people, and held of them for the common interest of the whole Society." The Constitution of Connecticut declares that "all men, when they form a Social Compact, are equal in Rights;" and the Constitutions of some of the other States have like expressions. Now here it is plain that the word "Compact" is employed in order to conciliate to the Law the regard of men fond of Freedom. The Lovers of Liberty can readily obey a Law which is a Compact among themselves; though they would resist with indignation a Law imposed by another. And accordingly, the Laws which are thus prefaced, are rigorously enforced, without exciting any discontent, among the freemen of North America.

838 Now if, in these instances, we inquire what are terms of the Compact which is thus spoken of, the answer will evidently be, that the Compact is the *Constitution* itself, of which we have quoted the introductory phrases. The written Constitutions of the respective United States, which thus begin by speaking of a Compact, by which Civil Society is held together, do themselves contain the Articles of this Compact. In these Cases, we have the Social Contract in a distinct, manifest, and compendious form.

839 Further: it is plain that in these cases, the Social Contract, is not merely, like the "Original Contract" referred to

in the Act which deposed James the Second, a Contract between the King and People. Nor is it a Contract between the Governors and Governed; for the Governors, in such Constitutions, cannot be looked upon as a separate party. The Contract is a Compact among the Citizens in general, expressing the political relations of each to each. It is a Contract between every man and all others within its compass. And accordingly, this is expressed in the Constitution of Massachusetts: "The body politic is formed by a voluntary association of individuals. It is a Social Compact by which the whole people covenants with each citizen, and each citizen with the whole people, that all shall be governed by certain Laws for the common good." The Social Compact, that is, the Constitution, determines the Rights and Obligations, not merely of the Governors, but of all persons and all Classes; at least so far as the Fundamental Rules and Maxims of Rights are concerned.

840 But since, in these States, the Terms of the Social Contract, concerning which we were inquiring, are to be found in the Constitution, we must, for the like reasons, look for the terms of the Social Contract of any other State in *its* Constitution, that is, in the Collection of the Fundamental Rules and Maxims of Rights, and especially of Political Rights (754). For that the Constitution of any Country has not been authoritatively promulgated in a compendious written form, but is to be gathered from various Sources, in various forms, does not alter the nature of its obligation. If the Social Compact of New England be its Constitution, the Social Compact of Old England must be *its* Constitution. The Constitution is, in each case, the Collection of Fundamental Rules and Maxims of Rights, and especially Political Rights; in each case, it is the Common Understanding by which the Laws of Order and Freedom are bound together.

841 Thus the Social Contract, being the Constitution of the Country, is different in different Countries, and in all, contains a great number of Articles and Clauses. The Social Contract is not merely some one or two Maxims, respecting Protection, or Property, or Personal Liberty, or the like. It is a wide and complex collection of Arrangements and Provisions for defining and securing to men their Rights. The security of the Rights is the *object* of the Contract; the Contract itself is the Collection of Arrangements and Provisions.

842 Moreover, if some one of these Articles or Clauses be violated by any party, the Contract is not thereby annulled. For

all the other parties, it is not even disturbed ; and the party who is guilty of the breach of Contract is not necessarily to be punished by declaring the Contract void for him ; but is to be judged by the rest of the community ; and visited with penalties provided by the Constitution itself, if such there are ; or else, if none are provided, is to be treated according to the exigence of the occasion.

843 And this is the manner in which the Social Contract has been understood in this country, even when it has been referred to in seasons of Resistance and Revolution. In the deposition of James the Second, though *he* was deposed as having "broken the Original Contract of King and People," still the Original Contract, which gave the Houses of Parliament, and the Magistrates of the Land their Authority, was looked upon as undisturbed : and all parties, except the King, retained and exercised the powers of their Stations. The English Constitution, like that of Massachusetts, of which we have quoted the description (839), was held to be a Compact by which each citizen covenants with the whole people, and the whole people with each citizen ; and those who had adhered to their Covenants were still entitled to all the benefit of the Compact.

844 This view of the Constitution of each Country, as a Compact among the citizens, by no means tends to diminish the reverence and affection towards it, which we have stated to be one of the Duties of a citizen (232). Even a common Contract is, to a moral man, an object of most careful fidelity and respect ; and to a religious man, an object of religious reverence ; it is *sacred*. But the Social Contract is *not* a common Contract. It is a Fundamental Contract, by which all the Rights of men are defined and secured, all the most important and dearest social relations protected. It is a Contract with the whole body of our Community, dictated by the universal voice, devised or assented to by all the wisest and best of our Countrymen. Whether it be the result of the wisdom of man, or of the wisdom of ages, that is, of the good guidance of Providence, it has made our Country, and all that we value in it, what they are. Whatever were its origin therefore, the Constitution of our Country is a worthy object of our fidelity, reverence, and affection.

845 This is also recognized in the States of North America. Thus the Constitution of Rhode Island says : " In the words of the Father of his Country (Washington), we declare that the basis of our political Systems is the Right of the People to make and alter their Constitutions of Government : but that the Constitution

which at any time exists, till changed by an explicit and authentic act of the whole People, is sacredly obligatory upon all." And in accordance with this feeling, the Members of the General Legislatures, and of the respective State Legislatures, and all Executive and Judicial Officers, swear to support the Constitution of the United States, and also the Constitution of their respective States. With what reverence and love the Constitution of England has been looked upon by Englishmen in general, it is not necessary to say.

846 Thus, the description of *the Constitution of the Country as its Social Contract*, serves to express the Doctrine that all Members of the State have mutual obligations which they may incur heavy penalties by violating. It expresses this in such a manner as to conciliate the good-will and assent, both of the Lovers of Order and of the Lovers of Freedom; and without any tendency to diminish the reverence and affection with which the Constitution is regarded.

Before we quit this subject, it may be proper to notice some of the objections which are sometimes urged against the Doctrine of the Social Contract.

CHAPTER VI.

OBJECTIONS CONSIDERED.

847 It is proper to consider the arguments which Paley has urged against the Doctrine of the Social Contract in his *Moral and Political Philosophy*, both on account of the currency and authority which that work possesses; and also, in order that we may thereby further explain the effect of the Doctrine; and may compare it with the Doctrine which he propounds as fit to supersede it, namely, the doctrine that the foundation of Government, and of the Duty of Obedience to it, is Expediency.

848 Paley's principal arguments against the Doctrine of an original Compact are: that such a Compact is not a Fact; and that if not a Fact, it is nothing: that if it were a Fact, yet that the Compact, as it affects the generations after the origin, can be of no force, because the subjects of States in our generation are not conscious of such a Compact, and have had no liberty of assent or refusal with regard to it.

849 To the first objection, we reply, that even if the Original Compact of Society be not a Fact, it by no means follows that the Conception of such a Compact, as the Result of Facts, and the Source of Duties, is of no value. There are several such conceptions which, though not historical facts, are appealed to by moral and political writers, as valuable moral realities. When we say that the Governors are *Trustees* for the benefit of the Governed, or that all Property is a *Trust* for the benefit of the Community, it might in like manner be objected, that no Deed of Trust was ever executed in such cases, and that Kings reigned, and Proprietors held their possessions, before any such views were taken of their tenure. But still, the doctrine that Sovereignty and Property are Trusts, is held by Moralists to be highly important; and is the source of Moral Maxims which cannot be so distinctly conceived, or so clearly expressed, in any other way. And in like manner, the Doctrine that men are held together in Society by a Compact, even if we cannot point to any event, recorded or conjectural, as the Original Transaction by which the Compact was made, may be a very important and necessary moral and political Reality. And it is so; since it expresses, in one phrase, the mutual relations of the Governors and the Governed, and of all classes one with another; the reciprocal Character of their Rights; the possibility of the obligations of one party ceasing, in consequence of some act done by another party; the Duty of fidelity and respect to the Constitution; and the condemnation of those who violate or disregard such Duties.

850 But we reply further: that the Original Compact is a Fact, if we accept, as the terms of the Compact, those Principles of Polity, those fundamental Political Laws and Maxims, which have been generally accepted and approved in all ages of the history of the Country; and which, though occasionally forgotten or transgressed, have constantly resumed their authority, when the influence of force or party interest was removed. The aggregate of such Laws and Maxims, in other words, the Constitution of the Country, is a Fact; and has always been so regarded; not by theoretical writers only, but by men accustomed to deal with Facts; by lawyers, statesmen, and Englishmen of all classes. Whatever doubts may exist, with regard to some of the Rules and Maxims so asserted, it is plain that such a set of Principles have, as a Fact, existed in the Collective Mind of the Country; as appears by the Constitution having grown out of them. And if it be urged, as an objection, that the maxims which make up

the Constitution have been adopted in succession, as the result of struggles between conflicting parties, and different Classes in the State; we reply, that this is so far from showing that there is no Social Contract, that it gives to the result still more the character of a Contract; for in other Contracts, also, it constantly happens, that each party to the Contract recedes from its original claims; and the conditions of the Contract are different from the pretensions put forwards on either side, in the course of negotiations.

The Social Contract therefore, which we assert as a moral Doctrine, is not to be rejected because it is not a Fact in the sense in which the objector requires it to be so, namely a single Historical Fact; and it is a Fact, so far as is requisite for the purpose of its being a true Moral Doctrine.

851 But it is further objected by Paley, that the Doctrine of a Contract is false and useless, because men in general have not actually given their consent to the fundamental Rules of the Government under which they live, and have had no opportunity of giving or refusing such consent.

852 In order to determine how far this objection is valid, we must consider what the analogy of Contracts in general teaches us, with regard to consent which may be supposed or implied, though not actually given. Now on this subject, we have not the smallest need to follow any other teaching than that of Paley himself, in order to assert an Original Contract. In speaking of the Administration of Justice, he says, "The law of nature, founded in the very constitution of human society, which is formed to endure through a series of perishing generations, requires that the just engagements a man enters into should continue in force beyond his own life; it follows that the private Rights of persons frequently depend upon what has been transacted in times remote from the present, by their ancestors or predecessors, or by those under whom they claim, or to whose obligations they have succeeded." But this, which he here asserts of *private* Rights, may, with exactly the same reason, be asserted of *public* Rights. Public Rights and Obligations, no less than private, may depend upon what was done by our predecessors, and upon their Rights and Obligations. And the examples which he offers, further show this. They are such as these: the questions which arise between Lords of the Manor and their Tenants; between the King and those who claim Royal Franchises; questions of Tithes; and the like; which, as he says, depend upon ancient Grants and Agreements.

“The appeal,” he adds, “to those grants and agreements is dictated by natural equity, as well as by the municipal law.” This is asserting, in the most decided and extensive manner, that the present generation are bound by Contracts, to which they have given no actual consent. But further: he asserts this, even of mere hypothetical Contracts. “Concerning the existence,” he says, “or the conditions of such Old Covenants, doubts will perpetually occur, which give employment to the Courts of Law*.” But having taken the case in which the present generation are required to allow themselves bound by ancient Contracts, of which the existence or the meaning are doubtful, does he declare the supposition of such Contracts to be absurd or useless? By no means. On the contrary, he assigns this as a reason (among others) why the general precepts of Morality are not sufficient guides for the business of life, without our having Courts of Justice besides. And for the like reasons, and in the same manner, we maintain that the general Principles of Political Morality, whether we state them as Order, Liberty, and Justice, and the like, or with Paley, as Expediency, are insufficient to point out the boundaries and the force of political Rights and Obligations, without referring to a Court of Natural Jurisprudence, which deals with these as the Conditions of an Ancient Covenant, to be made out by a calm estimate of the evidence which Law and History offer us.

853 We have stated it, as among the advantages of the Doctrine of a Social Contract, of which the terms are the Articles of the Constitution, that this Doctrine harmonizes well with the love and reverence for the Constitution which are among our Duties. And accordingly Paley, while he is rejecting the Doctrine, rejects also these Duties. He says, truly, that the original conditions of the Social Compact are understood to be the fundamental laws of the Constitution. He rejects the notion of such fundamental laws, as having any peculiar force; and speaks with slight of those who “ascribe a kind of transcendental authority or mysterious sanctity to the Constitution, as if it were founded in some higher original than that which gives force and obligation to the ordinary Statutes of the realm, or were inviolable on any other account than its intrinsic utility.” Now the persons who have ascribed an exalted authority to the English Constitution, have spoken of it with reverence, and have defended it as inviolable, are all the greatest statesmen, lawyers, and patriots, who have adorned

* Paley is, in this part of his work, speaking of the necessity of Courts of Law. Book VI. chap. 8.

this country; and in proportion to their ability, their legal knowledge, and their patriotism, they have been copious, earnest, and pointed, in appealing to the principles of the Constitution as something of paramount authority and value. They have ascribed to the Constitution, not so properly a "mysterious sanctity" which Paley speaks of, as a moral sacredness: and we have seen the Americans, in the midst of their most emphatic assertions of their liberty, have done the same thing. When a writer is thus led by his doctrines to speak contemptuously of the emotions of moral reverence and affection which have thus prevailed for generations, in the nation and the race, he cannot be, to them, a moral teacher; and as far as he gains their attention, he can only perplex them. If we are to accept a doctrine which tells us that no special reverence and authority belong to the Constitution, we must suppose all our public Jurists, from Fortescue and Coke to Blackstone and Burke, to have had confused and superstitious notions of the English Government. And if the study of English Law and History leaves so wide a space for practical error in its most diligent students, we can have little trust in the permanence of any new doctrine on such subjects.

854 There are two other objections urged by Paley against the Doctrine of an Original Compact;—That if such be the ground of Government, despotic Governments can never be changed or mitigated, because Despotism is in the Compact, and the Subject is bound by it; and thus in this Theory, recourse to arms for the sake of a better constitution cannot be justified:—and again, That since every violation of the Compact destroys it, this Theory offers ready arguments for refusing obedience to Government, and "has in fact always supplied the factious with a topic of seditious declamation."

855 To the first of these objections, we reply, that the Laws of no State allow the citizens to have recourse to arms for the sake of bettering the Constitution; that our Morality does not give Precepts for such armed attempts at improvements; and that a system of Morality which lays down, for the citizens of States in general, rules contradicting the Laws, cannot be fit for the general guidance of mankind. If an English Moralist might go into any State which he deems Despotic, and preach to the citizens the duty of bettering the Constitution by an armed insurrection, English morality would be rejected by the Moralists of all other countries, as inconsistent with Order and Humanity. Not that we allow that despotic governments are never to be improved; but

they are not, as a general Rule, to be improved by armed insurrections, but by improving the condition of the people; by promoting the moral and intellectual culture of the Governed and of the Governors; by strengthening all the elements of the Constitution which contains a germ of Liberty; (for almost all Governments, however despotic, have such elements). By such courses, despotic Governments, and all Governments, may be improved, without any contradiction of the Social Compact. For the Social Compact, according to all moderate interpretations of it, is not an unchangeable Rule; but is capable of modification from age to age, by constitutional proceedings; changes so produced being understood as changes in the terms of the Compact, made with the consent of the parties. In the progress of improvement, violence and resistance may occur; yet violence and resistance can never be justified as results of general Moral Rules, but only as the resource in a case of Necessity which forms an exception to general Rules.

856 As to the objection that the Doctrine of a Social Contract offers, and has supplied, ready arguments for Sedition, this is no more than inevitably belongs to every doctrine which recognizes Civil Liberty as an important object. If every obnoxious proceeding of the Governors of a State may be represented as a violation of the Social Contract, it may also be represented as a violation of Natural Justice; and in whatever manner the consequences of Natural Justice are described, the description may be used as a means of inflaming seditious dispositions.

857 It is by no means true, that the Doctrine of the Social Contract has been *especially* used for purposes of sedition or rebellion. When it was brought into prominence at the Revolution in 1688, it was used to justify resistance to the Sovereign in a case of necessity, and not as a general Rule. Those who, in modern times, have most freely urged the Right of Resistance to the Government, though they may have occasionally spoken of a Social Contract, have not really applied the Doctrine. They have not usually dwelt upon any special transgression of the Governor, as a violation of the Compact, dissolving its tie; but have commonly denied and derided the authority of those ancient Laws and Maxims in which *we* read the Contract.

858 How far the Doctrine of an Original Contract is from being "captious and unsafe," as Paley calls it, may be seen by the mode in which its adherents in this country have employed it since 1688. One of the most prominent of the occasions on which

this was done, was the prosecution of Dr Sacheverell for seditious doctrines in 1710, the prosecution being managed by the leaders of the House of Commons. These Managers all took occasion to speak of the Foundations of Government; and they all agreed in putting forward, in the most distinct and emphatic manner, the doctrine of an Original Contract. It may suffice to quote one of them. "The nature of our Constitution," said Mr Lechmere, "is that of a limited Monarchy, wherein the supreme power is communicated and divided between Queen, Lords, and Commons, though the executive power and administration be wholly in the Crown. The terms of such a Constitution do not only suppose but express, an Original Contract between the Crown and the People; by which that supreme power was, by mutual consent, and not by accident, limited and lodged in more hands than one. And the uniform preservation of such a Constitution for so many ages without any fundamental change, demonstrates the continuance of the same Contract. The consequences," it is added, "of such a form of Government are obvious. The Laws are the Rule for both; the common measure of the power of the Crown and the obedience of the Subject." It was added, that "if the Executive Part endeavours the subversion and total destruction of the Government, the Original Compact is broken, and the Right of Allegiance ceases: that part of the Government thus fundamentally injured hath a right to save or recover that Constitution in which it had an original interest." But such a breach of Contract is not contemplated as a general or ordinary case; but as an extreme case; a case of necessity; a case about which no rules can be laid down, and which can never be drawn into precedent, except in a case of the like necessity. The doctrine of the Original Compact, put forwards in this case by Lord Somers and all the most zealous lovers of liberty of the time, showed no traces of the seditious tendency which Paley ascribes to it.

859 Burke quoted these passages at a later period, in his "Appeal from the New to the Old Whigs," in order to show that the lovers of freedom in England had always asserted the cause of freedom in this measured and balanced manner, and thus to justify his own consistency in doing the same. And he himself, also, refers to the Social Contract as the Foundation of Government. Thus he describes the succession of the Crown as "derived from an authority emanating from the Common Agreement and Original Compact of the State, *communi sponsione reipublice*; and

as such, binding on the king and people too, so long as the terms are observed."

860 The absence of any tendency to foment sedition or rebellion, in the Doctrine of the Social Contract, will further appear if we compare it, as Burke did, with other Doctrines which prevailed at the time of the French Revolution; and which represented the People as the source of Political Power. To this representation, Burke replied, that if by "The People" be understood the mere assemblage of individuals without any social organization, laws, or magistrates, the term describes something so vague, obscure, and arbitrary, that no intelligible proposition can be asserted concerning it. "The People," so understood, has no means of collecting or delivering its convictions and intentions: it has no Rights, not even a Right to the soil on which the individuals happen to be living. An assumption is commonly made, by those who thus put forwards "The People," that the numerical majority of the People are to act for the whole: but the assumption that a numerical majority of an assemblage shall decide or choose any thing, is altogether arbitrary. The Rule of a majority governing a minority, is a creature of civil society, not the origin of it. The Rule is entirely artificial; is learnt only by early training; and when applied, is applied with arbitrary limitations; for instance, with the exclusion of women and children. A far more natural course of action, for a rude nation, is to follow their Natural Aristocracy;—those whom their character, and property, and history, and habits, and education, have made most fit to lead and have disposed others to follow them.

861 Thus the doctrine, that Political Power is bestowed by the People, cannot be realized without assuming some organization natural or arbitrary. In order to bestow power, the People must have some mode of assembling, debating, and voting; and this is, to have, to some extent, a Government, for the form of which we still have to find reasons. If we resolve the nation into its counties, or its parishes, we shall still have to give reasons for the boundaries which we thus draw, and for the officers whom we assume to exist: and our reasons will necessarily be drawn from history and usage, not from the choice and will of the existing individuals. And thus we are brought, in the partial elements of any possible national act, to conventions which must govern men, though not made by themselves, but transmitted from previous generations. And thus, if we reject a National Social Contract, such as we have spoken of, namely, an historical

Contract, into which we are born; we are driven to a Provincial or Parochial Contract of the same description. And if we were to reject these conceptions as artificial, we should resolve society into Families, in which men unavoidably exist under relations into which they are born, and which they have not selected by their will; and which yet imply both obligation and duty. And thus the Conception of "The People" as the Source of Government, in order that it may be in any degree distinct and applicable, must be moulded into form by means of the two Principles which we have stated as the grounds of Rights and Obligations; the Relations arising from circumstances of Birth, and Relations which are of the nature of Contract.

862 Having considered the objections commonly urged against the Doctrine of the Social Contract, I shall make a few Remarks on the assertion that the sole foundation of Government is Expediency, or Utility:—that Government is to be upheld solely on the ground of the Benefits and Advantages which it produces to men. In reference to the latter statement, we may assent to it, with this explanation, that if we are to support Civil Government on account of the Benefits it confers, the nature of our support must correspond with the nature of the Benefits: as the Benefits are moral Benefits, the support must include moral Affections. The Benefits which Civil Government confers upon men (if that expression is to be used) are, that it is the Source of Order, Freedom, Justice; the necessary condition of Rights, and therefore of Duties and Virtues. That anything is the source of *these* Benefits, is certainly abundant reason for supporting it; and so long as the nature of the Benefits which Civil Government produces is borne in mind, we may be content to say that it depends for its claims upon these. We have endeavoured to show that it produces these Benefits by being of the Nature of a Contract among men; but whether this be assented to or not, it may suffice for our moral reasoning, if Government be regarded as the necessary Condition of all Duty and all Virtues.

863 In this sense, we might also allow that the foundation of Government is its Expediency, or its Utility. But as we have already said (459), when men rest their approval of any general rule or principle on its Expediency, or its Utility, they commonly mean to put out of sight all differences in the value of the *objects* for which things are expedient or useful. When a man says that it is *expedient* to speak the truth, we suppose that he considers truth and lying to differ *only* in being more or less expedient.

Now this mode of speech cannot satisfy the purposes of Morality. We cannot be content to say that we support Civil Government for its Expediency, when we mean that we reverence it as the necessary condition of man's moral being. We cannot be satisfied to talk of the Utility which results from the existence of Government, when in our notion of Utility, we must include, Order, Freedom, and Justice.

864 The unsatisfactory effect of the language applied to this subject by Paley is, I think, generally felt. For instance, when he discusses the Question of the Right of Resistance to Government, he expresses himself in a mode which has startled most of his readers. On this question, his sentence is: "That the established government is to be obeyed so long as it cannot be resisted or changed without public inconvenience, and no longer." And he adds, that, to the question, "Who shall judge?" on this subject, "The answer is, Every man for himself."

865 This decision must be understood to reject, as mistaken feeling, all affection towards the existing Constitution of the Country. All loyalty to the Sovereign, and affection towards the other Governing Bodies, can only be impediments in the way of forming this judgment, which every one is called upon to form, whether the Government may not be resisted or changed without public inconvenience. The condemnation with which both law and common opinion regard Faction, Sedition, and Treason, can have no place in the bosom of a consistent Moralist of this school. Such a one would rather be led by his views to deny that there was any harm in Sedition and Treason; since these might be necessary means of attempting improvements. There may be always ground to hope advantage from change; and those forms of attempting it which the law calls Sedition and Treason, may be natural results of a wish to promote the public convenience; and therefore, even if errors, are no proper objects of indignation.

866 It is true, that Paley, and his followers do not really draw, from their doctrines, such conclusions as these. They assert Expediency as the sole basis of the Rights of the State, and of the Obligations of the Citizen; but then, they assume Expediency to be a sufficient ground of strong love for existing expedient things: and of strong condemnation of those who attempt to change them for things less expedient. Though professedly so open to proposals of change, they really cling with affection to the claims of usage. And though deriding the value set upon the Constitution by others,

Paley is often led to refer to it himself as an important subject of consideration.

867 Thus, he says, in speaking of his doctrine of Resistance to Government, "Not every invasion of the Subject's rights or liberty, or of the constitution; not every breach of promise or of oath; not every stretch of prerogative, abuse of power, or neglect of duty by the chief magistrate, or by the whole, or any branch of the legislative body, justifies resistance, unless these crimes draw after them public consequences of sufficient magnitude to outweigh the evils of civil disturbance." And again, as a reason for especially resenting and punishing violations of the Constitution, he urges that "a well-known and settled usage of governing affords the only security against the enormities of uncontrolled dominion." Here, the Constitution is become a valuable reality. In the same manner Paley, after he has said that "an act of parliament can never be unconstitutional, in the strict and proper acceptation of the term," as if startled by the hardihood of his own assertion, adds; "that in a lower sense it may; viz. when it militates with the spirit, contradicts the analogy, or defeats the provisions of the laws made to regulate this form of government." This spirit and this analogy form a large part of what has always been understood by the Constitution.

868 The same thing may be noticed in other passages. Thus Paley asks, "Why is a Frenchman bound, both in law and conscience, to submit to many things to which an Englishman is not obliged to submit?" He replies, "Because the same act is not the same grievance, where it is agreeable to the constitution, and where it infringes it." "And this," he adds, "is sufficiently intelligible without a Social Compact." But when he thus explains the case by reference to the Constitution, and to the wrong inflicted by its violation, he approaches very near to the meaning and the language of those who hold the Doctrine of a Social Compact expressed in the Constitution of the Country.

869 Indeed, we may remark in general, that in Paley's mode of treating moral questions, although Expediency is proclaimed as the basis of all Duties, Obligations, and Rights, yet that when these asserted results of Expediency have assumed the forms of Duty, Obligation, and Right, they are forthwith represented as the occasion of affections and sentiments which it would, by most persons, be reckoned absurd to found upon Expediency alone. The earnest love of what is right, and indignation at what

is wrong, are professed by the disciples of Paley, as feelings in which they, no less than any other men, have a share. Yet how strange does the description of these feelings sound, when translated into the proper phraseology of the school;—when they are called the “earnest love of what is expedient,” and the “indignation at what is inexpedient.” The insufficiency of the notion of Expediency, as a basis for moral affections and moral sentiments, proves that it is not the true basis of Morality. And this further appears, by the mode in which it is employed by its assertors. While we read Paley’s pages, we find, that when he comes to particulars, the things which he treats as Realities, and by reference to which he discusses special cases, are the things which he has rejected in his general discussions;—Constitution, Supposed Ancient Covenants, Established Usage, National Rights; while the Expediency, which is asserted in general as containing the essence of moral and political philosophy, is put out of sight as an element of discussion, and becomes merely an occasional form of expression.

CHAPTER VII.

NATURAL PROGRESS OF GOVERNMENT.

870 CIVIL Government exists as the necessary condition of man’s moral being. It combines the conditions of Order and Freedom; and corresponds to its Idea the more completely, in proportion as it more completely realizes those conditions. In the history of different nations, we may discern various successive steps towards these combined conditions of Order and Freedom; and some of these steps it will be proper here to notice.

In the earlier kinds of Government which prevailed in human Society, Order was the leading character, and was regarded as their main purpose. Man had to learn and practise Obedience to Rules, before he could learn to use his Freedom. The first form of Obedience, is Obedience to Parents: the first kind of Government, is the Government of the Family. When, by the growth of succeeding generations, the Government of the original Family became the Government of many Families, there came into existence *the Patriarchal State*, in which the Supreme Authority resided in the Patriarch, the Head of the Original Family. And when the Ori-

ginal Patriarch died, the habit of filial obedience was retained, and the obedience transferred to the new head of the complex family, however selected. In this kind of Government, we hardly see Freedom as a distinct element: for Freedom of thought is so subduéd by Filial Reverence, that it hardly appears as a Principle of action opposed to Rule. Yet under the Patriarchal Rule, we may suppose the members of the Family to have their distinct Rights of Personal Security, Property, Contract, Marriage. And if any wrong were done by one member to another, the Patriarch would be the natural Judge; he would determine who was the wrong-doer, and pronounce the sentence of redress or punishment, according to his judgment of the equity of the case; or it might be, according to express Rules which he had promulgated among his children for their guidance.

871 By the migrations of men in the earliest times the original families of mankind were separated, and settled in various parts of the earth's surface; they were divided into races; the races were again separated into nations, tribes, clans. These nations acquired a property in the territory which they occupied; it may be, according to the appointment of the Patriarchs of the race, dividing the land among their descendants; or it may be, by a series of mutual agreements between the heads of neighbouring tribes, like what is recorded of Abraham and Lot (Gen. xiii. 9): *If thou wilt take the left hand, then I will go to the right; or if thou depart to the right hand, then I will go to the left.* The heads of tribes and clans, and other persons also, might, in such a state of things, acquire wealth in cattle, and food, and raiment, and ornaments, and other objects of desire; and might have many followers and servants, obedient to them, because dependent upon them for subsistence or enjoyment. The Natural Rulers of men, in such a state, would be those in whom the remnants of the Patriarchal Authority were supported by the inheritance of a large portion of the Patriarchal possessions. *An Aristocracy of Birth and Wealth* combined, would be the Government of Nations in such a Condition.

872 In such a kind of Government, however little Freedom poor and common men may possess, the Chiefs have considerable Freedom to act, and means of manifesting the differences of character and purpose which prevail among men. The chief of one tribe may make war upon the chief of another: they may lead their followers to battle; may show courage, skill, energy, sagacity, perseverance in war. One Chief may be a Conqueror of many

others. He may, by his actions, excite fear, admiration, and enthusiasm. He may be regarded as a *Hero*; and the empire over men's minds which he thus acquires, may make them submit to him, and obey his Commands. In this case, the Government may be termed *Hero Sway*. And this Sway may be acquired, not merely by success in war, but by any of that superior power in overcoming great difficulties and executing great designs which subjugates the minds of other men. Those who are subject to such Government are not free; they are, as it were, fascinated, and their obedience is a kind of Worship.

873 Such Government therefore cannot unfold the moral nature of man. For this purpose the opposite Principle must be called into action. In order that man may be a moral agent, he must not be subjugated and fascinated, but freed and enlightened: he must be governed and directed by something, not because he *does not* understand it, but because he *does*. He must be directed not by mere external Will, but by intelligible Rule. He must obey, not a creature of superhuman power, but the dictates of our common Human Reason. The Reverence for *Ideas* must take the place of the Worship of Heroes.

874 It is only when Government assumes this character, that it becomes fitted for man. Man, when his moral faculties are awakened, requires that his Government be just; and submits to it willingly, in proportion as he sees embodied in it this Idea of Justice. He is not satisfied to be ruled by a *Hero*, except he be also a just *Judge*. He must have not merely Commands which all obey, but Laws which all observe.

875 But neither is men's Conception of Government satisfied by the abstract Idea of Justice, administered so far as its Rules are universal. In the actual world, we never can have the Idea liberated from the Fact. The History of man, as a series of facts, must be combined with this conception of Justice, as the rule of his moral being. There will still remain the traces of the original tribes of men, and of the actions of the Heroes who conquered their lands, or founded their cities, or ordained their mode of life. Their Languages will bear the marks of the distinctions thus introduced among them. Men are divided into *Nations*; each Nation has its Speech, its History, its usages, its Laws, its National Character.

876 A Nation requires not merely to have Justice administered, but also to act *as a Nation*. It must have a Governor to act for it; to foresee, design, execute, on the part of all; as well as

to keep each from wronging each. If it be governed by Judges only, it will ask for a *King*.

The King represents the Nation, both as to Facts and Ideas. He exercises the Will and Power of the Nation, and acts its part in History; and he is also the Source of Justice, the Preserver of Order, the Assertor of Rights, the Punisher of Wrongs.

877 But within the Nation also there may remain traces of ancient actual distinctions; which the national union, though it has comprehended and superseded, has not obliterated. Ancient conquerors and heroes, and rich and historical families, may have their successors; who continue to retain a portion of the ascendancy over men's minds which belonged to Patriarchs and Heroes at earlier periods; and may also have power from their present wealth. These *Nobles* form a natural Aristocracy in the Nation. There may be several Ranks and Conditions of persons. The individuals of a Nation are thus distinguished variously as Noblemen and Common men, Patricians and Plebeians, Rich and Poor, High and Low. But in almost every Nation, there is, to some extent or other, this *Difference of Conditions or Classes*.

878 This Difference of Conditions will enter into the consideration of questions of Right between the members of the Nation. For the Definitions of Rights of all the Citizens are necessarily historical facts; namely, the historical facts which have established the differences of which we have just spoken. The same series of facts which has made one field belong to Caius and the next to Titus, has made Caius a Patrician and Titus a Plebeian.

879 This difference of Ranks is accompanied with a difference of Political Rights. The history which has produced Patricians and Nobles, has also, in general, left them some portion of the power of Aristocracy. They have some share in the Government. The Government is compounded, variously in various countries, of Aristocracy and Monarchy.

880 Although the King is, as we have said, conceived as the representative of Justice and Order, and the Assertor of Rights, the person who is at any time King, becomes so by the course of historical facts, and not by any process which makes him necessarily conformable to the Idea of a King. As a matter of fact, he may be unjust in his judgments between his Subjects, and in his actions towards them. He may take advantage of their habit of obedience, for his own personal gratification. Or he may act, on the part of the nation, in a way which does not at all represent the will of the nation. He may wish to use its power for war, when

all his subjects wish for peace; or may neglect the defense of the Country, or the administration of the Laws, or any other National Obligation.

881 In the Cases in which any portion of the government remains in the hands of any other part of the nation, as the Elders, or the Nobles, this portion may be used by them, on the part of the Nation, for the purpose of preventing that neglect of the National Obligations, or Violation of Personal Duties, which the King would otherwise have committed. If, for instance, there be a Senate, without whose consent the King cannot make war or peace, or by which unjust Judges can be punished; such a Senate will be a *Check* upon the power of the King. It will *balance*, in some measure, his authority; and may thus prevent the results of unjust intention or perverse will in him.

882 The Senate are in the Condition, both of Governors, and Governed: they are subjects of the King, and Rulers of the People. For them, the Government combines the conditions of Order and Freedom, at least to some extent: for they are, in some respects, not only free to act for themselves, but also to act for others, and to exercise a share of command over others. They are not irresistibly controlled by the will of the King, for they have a power of resisting it, and even, in some degree, of controlling it.

883 But the People, who are thus subject to the King and the Senate combined, are they free agents, such as their moral nature requires them to be?—If the sway possessed by the King and the Senate be exercised mildly and temperately, the People may be, for a long time, free, so far as almost all the purposes of Morality require. Under the paternal sway of good and kind men, acting without check, as King and Senators, the subjects have the means of acting as good children. But such a sway cannot answer all the purposes of Morality. Men cannot feel themselves free, when their freedom depends upon the arbitrary will of others. They are not free, if their freedom may be taken from them to-morrow, without their having any power of resistance. They are not free, if they have no security for their freedom; no means of asserting and defending it, should it be assailed or infringed; in short, they are not free, if they have not some Political Rights; some Rights in relation to the Government. And not being free, their moral career cannot be complete. They cannot carry on their moral and intellectual culture, in the hope of bringing into intelligible harmony with themselves all the

circumstances of their condition; for there is one element of their condition, the Government, on which they have no power of acting, and which does not allow itself to be scrutinized and understood. They cannot go on constantly and indefinitely in the realization of their moral ideas; for when they would extend this realization from private to public life, they find themselves stopped by the impassable barrier which separates them from the ruling classes.

884 Thus, without Political Rights securing the Liberty of the People at large, Government incompletely attains that Combination of Order and Freedom which is requisite as the Condition of man's moral being. For this purpose, besides the checks and balances which a Senate may offer to the injustice or imprudence of a King, there must be some security of Popular Rights, some protection of the Liberty of the Subject. The Monarchy must not only be balanced by an Aristocracy, but must also recognize a Democracy.

885 Thus the State, in order to answer its purposes completely, must contain a combination of Monarchy, Aristocracy, and Democracy. The Aristocracy stands for Order, and the Democracy for Freedom in the Combination: the Monarchy gives unity to the Combination. The Aristocracy stands for Order; for the Sovereign Power cannot subsist except it be supported by the natural Aristocracy of the Community; if not by the Aristocracy of Birth and Wealth, by the Aristocracy of Prudence and Force. The Aristocracy represents the actual Past; the events which have taken place and left their effects: the Democracy represents the actual Present; the events which the powers of men, acting freely, are bringing into being. Monarchy is an Ideal Power which binds together these elements; acts for the State in present history, and is the source of the Order and Justice which the State must realize.

886 Thus, these three-kinds of Government must be combined in the Idea of a State; and they have, in general, been mixt together, in the States which have best answered their moral purposes. But yet, from various circumstances, one or another of these elements may become so obscure, as to seem to lose its nature, and still, the Government may have a long and tranquil existence. If a State be established by actual contract among a number of men meeting as equals, it has no past, and need have no Aristocracy. For the moment, the Aristocracy and the Democracy are identified. Every man is at the same time Governor

and Subject, bound to Order, and possessed of Freedom. And if the Constitution be wisely framed, such a condition of things may long continue. The natural tendency of the progress of time, is to generate an Aristocracy; but this tendency may be counteracted by the activity of the Democracy. Again, the Democratic element may be so feeble that the nation may be entirely governed by the past;—by an ancient Aristocracy, or an ancient line of Monarchs. Where Freedom is thus extinguished, the State, as we have already said, answers its moral ends imperfectly. Again; the Monarchical element may be enfeebled in various ways: as by dividing the executive from the judicial character; by presenting the State itself, not the King, as the source of Justice, and by distributing the Sovereign Executive Power. The Executive Power may be held but for a short time, as by Consuls or Presidents for a year, or a few years. By such means, Democracy may be established, with very small evident mixture, either of Monarchy or Aristocracy.

887 In nations which have subsisted for many centuries the Aristocratic element is generally conspicuous and powerful, having on its side accumulated property, the habit of command, superiority of culture; and in its favour on the other side, the habit of respect for historical families, and of obedience to existing authority. But on the other hand, where there is a germ of freedom to begin with, there are strong influences on the Democratic side. For the influence of the past becomes constantly weaker by the lapse of time; and the balance, which at first was kept steady by the weight of old families, is disturbed by the rise of new men, who grow in wealth, or in some other form of power. And as the love of power on the one side, so the love of freedom on the other, may become a craving for more. Thus there are tendencies which may produce a struggle between Aristocracy and Democracy: such a struggle has taken place in most old countries, and has occupied many centuries.

888 In the contest between Aristocracy and Democracy, the Aristocracy represents the Principle of Order; for the authority of the existing laws is the inheritance of the past, and belongs to the heirs of the past. But the Principle of Order may also be embodied in a line of Kings, as well as in families of Nobles; or in the two conjointly. In this case, the Monarchy derives its force from the actual past, as well as from the Idea of a National Will and a National Justice. On the other hand, where the people have already acquired Political Rights, the Democracy

represents, not only the Principle of Liberty, but the Principle of Order also; for they assert their Rights, as fixed by existing Laws. Hence we do not find in the History of Nations, the Cause of mere Order and of mere Liberty opposed to each other. The Democratical party, assert the necessity both of Order and of Liberty: the opposite party, whether Monarchical or Aristocratical, respect Liberty, so far as it is established by Law. Yet still there is an opposition; the one party make a stand for Order combined with Liberty, as it is by Law established; the other party contend for an extension of Liberty, which they hold to be reconcilable with Order. The one is the Cause of Authority, the other of Relaxation. The one Party are a *Conservative* Party, who contend for the position of equilibrium of Order and Liberty, which already exists; the other are a *Movement* Party, who seek a new position, in which a larger share of Liberty enters.

889 The forms which such struggles take, and the means which are employed in them, are very various. Popular Rights are embodied and protected by Laws, which give to the people security of person and of property; by a share in the election of Magistrates; by Magistrates who are the special defenders of such Rights; (as the Roman Tribunes of the Plebeians;) by men of the People holding Magistracies; by the People having a share in making the Laws; and the like. The Assemblies, whether Senates or General Assemblies, in which such questions are discussed and decided;—in which Laws are passed, Magistrates elected, the National Acts determined upon;—are the especial scenes of the struggles of Parties: either of the Conservative and the Movement party, which universally exist in such cases; or of Parties, which, without being guided by any fundamental Principle, have for their object Power; namely, the Power of directing the national acts. If such Assemblies be moderately numerous, and if the citizens who take part in them, really aim at Order, Liberty and Justice, the balance of the Constitution may long subsist. And if, on the increase of wealth and intelligence in the People, a large share of Popular Rights is pressed for, the Conservative Party may, by yielding slowly and yet holding steadily, find the new position of equilibrium which is suited to the new condition of the community.

CHAPTER VIII.

THE REPRESENTATIVE SYSTEM OF GOVERNMENT.

890 WHEN a nation becomes very large, such a balanced Constitution, as we have just spoken of, in its simple form, becomes difficult or impracticable. The General assemblies of the citizens become too numerous and too mixed, to deliberate and to act with order, freedom, and virtue. When freedom has existed in large nations, it has existed under more complex Constitutions; and the struggle between Established Authority and the demands for Enlarged Liberty have assumed corresponding forms. Sometimes the struggle has been between the King and the Nobles, the Nobles contending for Liberty for themselves, while the question of Liberty between their dependents and them is left to be settled afterwards. Thus the Barons of England, as the assertors of English Liberty, obtained Magna Charta. Or the struggle may be between the King, and certain Classes of the Community, collected (they or the principal persons of them) in Assemblies, Class by Class. Such Assemblies are the *Estates* of the Realm: thus in England the three Estates were anciently, the Spiritual Body, the Temporal Lords, and the Commons. The Members of the Estate of the Commons, the Third Estate, may be appointed by the People in various ways; but in all its modifications, this Estate is a *Representative* Assembly. And in nations where Classes of Society with broad historical distinctions have never existed, or where the distinctions have been abolished, the whole body of the people may be divided into Electoral Districts; and the Representatives of these Districts may form assemblies by which free government may be exercised for a territory, perhaps, of unlimited extent.

891 The Principle of Representation in government is entirely of modern origin. In the ancient world we nowhere find it brought into play. As we have just said, it is a necessary condition of the freedom of a great nation; for the whole body of the citizens could not, in any other way, have their share in the Government. But the conduct of national business by Representative Assemblies has advantages much beyond its making freedom merely possible for an extensive and populous country. It prevents the tumultuous meetings and rash proceedings of large popular assemblies. It also, by reducing the number of the

deliberative assembly, increases the calmness and reasonableness of their discussions and decisions. The members of the assembly, not having found their place into it by chance, but being chosen for their real or supposed merits, act with a greater sense of responsibility; and will be, really, a wiser and more trustworthy set of men, than the citizens taken at hazard. Their being few in number, selected for merit, the object of public notice, makes them more likely to act for right ends, and less likely to be seduced by the prospect of personal advantage to oblique and selfish courses. The members of such an assembly also attend to their public business more regularly and carefully than the people at large would do or could do. The Members of the Assembly become statesmen by profession, and attend to their work with a professional care and skill. They guard both order and liberty, the Rights of the State and of all citizens, more watchfully and better than the citizens would guard their own Rights.

892 On the other hand, in the Representative System, the people at large are liberated from the task of managing the Government, which they could not execute well; and are charged only with a business to which they are fully competent, that of electing those who are to govern. The citizens who would be wholly unfit to be trusted with the decision of a question of foreign polity, or domestic economy, or jurisprudence, may be qualified to choose a person as their Representative. In this manner, the whole people have a share in the government: both the masses of population in the towns, too numerous and too ignorant to rule directly; and the people of the country, too scattered otherwise to act at all in public business. For these two may be brought together without difficulty on such occasions as the choice of a Representative.

893 We see, then, that this Modern Step in Polity, the introduction of the Representative System, makes a combination of Liberty and Order possible upon any scale however large, and brings with it other vast advantages. But for this purpose, the Representative must not be merely a Delegate, who reports to the Central Assembly what his constituents have directed him to say; nor must be a Senator for life, who, once elected, is no further responsible to the electors; nor must be a Patron, who has the people whom he represents, not for his Electors, but for his Clients; and finally, he must be a Representative in an Assembly which acts for the Nation; for it is of National Government that

we are speaking. Hence it has been rightly stated* as essential to Representation, that in electing him the power of the People must be parted with, and given over, for a limited time, to Deputies chosen by the People; the Deputies fully and freely exercising Power instead of the People.

894 After the Representative System is fully established, the Struggles of Parties, and especially the Struggles of the Conservative and the Movement Party in each Country, are mainly carried on by means of Debates in the Representative Body. The leading Ideas of these two opposite Parties are, as we have seen, Order and Freedom. In the historical course of the struggle, these Ideas are exemplified and embodied in special forms; in Coercive Laws on the one side, and Popular Rights on the other; and the Struggle is carried on with reference to a series of special and subordinate objects of this kind.

895 When men begin to direct their thoughts and actions, not towards a Practical Order and a Practical Freedom, to be attained by the removal of Special Disorders and Special Grievances, but towards a general *Notional Order* and *Notional Freedom*; these Notions are too vague to direct their actions safely, while the very largeness of the Notions makes them disturb the tranquil progress of men's thoughts. And thus, the enthusiasts of both sides strain after a Visionary Polity, in which they think they could realize their Notional Order or their Notional Freedom; but without making any real progress towards the Object. In Polity, as in the Inductive Sciences, every large ascent towards Truth consists of a number of small ascents; and is to be forwarded only by struggling with the difficulty at which we have arrived; not by tracing in our minds a visionary scheme of the Science, which conducts us to some complete body of knowledge. Bacon has remarked that though the human Intellect naturally tries to reach the ultimate Truth at a single flight, yet that the only way in which truth can really be attained is by a gradual progress through many intermediate steps†. The same is the case, for the most part, in the historical progress of nations towards a realization of the combined Ideas of Order and Freedom.

896 By means of the Representative System, Freedom has been established in some of the Monarchies of Europe, in the Democracy of the United States, and in some of the British Colonies. In all these cases, however, there has been, in addition

* Lord Brougham, *Polit. Phil.* Part III. 33.

† *Nov. Org.* I. A. x. xix. xv.

to the Assembly directly representing the People, another Assembly, a Senate, or a House of Peers, consisting of persons, either not at all, or not so directly, elected by the people. The joint assent of this Upper House and of the Lower Assembly has been made requisite for the validity of the measures of the State. And there appears to be strong reason to believe, that without such an Upper House, the balance between Order and Liberty in a State could not long be preserved. For an Assembly, chosen by the People, and brought directly into conflict with the established Authority in its highest form, if it be strong enough to struggle at all, will be enflamed by the struggle, and will act hastily, angrily, and immoderately. The assent of another Assembly in its proceedings, if required for their validity, secures a deliberate and calm survey of the question, by men not heated and blinded by the same contagious passions and interests. With three bodies in the State; the Sovereign, the Senate, and the Representative Body, it is probable that two will be against the one which would disturb the balance of the Constitution.

897 Yet the balance is sometimes disturbed in most States. It is only by a rare felicity, that the struggle between the Conservative and the Movement party is carried on from age to age without producing such oscillations as overturn the balance. To yield slowly and firmly, to advance steadily and moderately, are virtues in Political Parties. Moreover, as we have said, besides the struggles of Parties from Principle, there are struggles of Parties for Power. It may happen that the Established Authority uses its Power to crush Established Liberty; and that the forms of the Constitution fail in providing adequate means of resistance. It may happen that Established Authority refuses all concessions, till the sense of practical grievances becomes intolerable, and leads to popular violence. It may happen that when the popular Party is strong, men's minds are enflamed with a Love of Notional Liberty, which no practical concessions can satiate; and then, the popular party itself violates the Constitution. In these and many other cases, we may have *Revolutions*, or violent and anomalous Changes in the Constitution. They are, as we have said, Cases of Necessity; to be justified only by their necessity.

CHAPTER IX.

ACTUAL PROGRESS OF GOVERNMENT IN ANCIENT
ROME AND IN ENGLAND.

898 THE history of ancient Rome is an example of a long-continued struggle between an aristocracy and a democracy. According to the views of the most philosophical historians, the Patricians alone had a place in the original constitution of the Roman State. The Senate was the Administrative Council, with the King, and afterwards, with the Consuls, at its head; the Senate and the People (*Senatus Populusque Romanus*) had the Legislative Authority, exercised in the *Comitia Curiata*, the Assemblies of the *Curies* or Wards of the Patrician Houses (*Gentes*). The Plebs was a populace occupying a portion of the city, but not admitted to any place in the Senate, the Magistracy, or the *Comitia*, although forming a considerable portion of the army. Servius Tullius, the sixth King, gave a legal organization to the Plebs, by dividing it into thirty Tribes; and gave it a place in the Constitution, by the institution of Classes divided into *Centuries*, including, as the army included, Patricians and Plebeians together; and by the introduction of an Assembly of these, *Comitia Centuriata*, with authority for certain purposes. But it was long before the Plebeians obtained the advantages which such a Constitution seemed to promise them. They were still oppressed and kept under by the Patricians. They were excluded from the Consulship, the Senate, and most Magistracies, and from intermarriage with Patricians. The Patricians had the profitable occupancy of the land (*ager publicus*), which nominally belonged to the State; and in many cases, lending money to the impoverished Plebeians, acquired personal power over them, in virtue of the severe Roman Laws respecting Debtors.

899 This inequality of Rights and Advantages led to a Sedition, in which the Plebeians began, in a body, to separate themselves from the Roman State. They were brought back by concessions, that the debts of insolvents should be cancelled, and that they should have two magistrates appointed as their protectors; Tribunes of the Plebeians; whose persons should be inviolable, and who should have the power of interposing, so as to arrest any legal proceeding. From this time, the Plebeians, by struggles of various kinds, obtained many of the Rights from which

they had at first been excluded. The practice of voting according to Tribes, in the *Comitia Tributa*, was employed: and by this means the power of the Plebeians was very greatly increased. *Connubium*, the intermarriage of Patricians and Plebeians, was allowed; the Senate was thrown open to the Plebeians; afterwards it was ordained that of the two Consuls, always one should be a Plebeian. The Plebeians succeeded in their attempts to carry Agrarian Laws, for an equal division of the public land. At length the remaining Magistracies were thrown open to Plebeians; the decrees of their assemblies (*Plebiscita*) were invested with the force of Laws; and the distinction of Patricians and Plebeians ceased to have any political value. The Polity of Rome had been changed by these struggles, from a rigorous Aristocracy, to a combination of Aristocracy and Democracy. This may be looked upon as the golden period of the Roman Constitution. It is at this period that it obtained the admiration of Polybius: who describes the Constitution as exhibiting, in the combined institutions of Consuls, Senate, and Commons, a happy mixture of Regal Power, Aristocracy, and Democracy.

900 When Rome had become Mistress of the whole of Italy, new struggles arose, in consequence of the demands of the Italians, claiming to be admitted into the privileges of the Roman Constitution. If the practice of modern times had been introduced, according to which the Citizens of free States act their political part by their Representatives, it is possible that Italy might have long flourished under the mixt Roman Constitution. But the attempt to make all Italy one City, in a political sense, soon led to confusion. The Democratic portion of the State was too numerous for orderly action; mobs of armed men, and armies, soon took its place. The evils of this state of things were so intolerable, that after a few transient changes, the Romans, in order to obtain tranquillity and security, were willing to resign their Liberty. They acquiesced in the sway of the successful General, bestowed upon him all their Constitutional Magistracies, and acknowledged him as their Emperor (*Imperator*).

901 The *Imperium* from which this designation was especially borrowed, was the military power which the Commander of the Army had assigned to him over his troops in the field. It was of the most absolute kind, and was made obligatory upon each person by an oath (*Sacramentum militare*), that he would be faithful and obedient to his General, saving the fidelity he owed to the Roman Senate and People. On the destruction of Public

Liberty, this Oath was taken to the Emperor, as Commander-in-chief; but the Clause in favour of the Senate and People was omitted. Instead of being limited to the Soldiers, the oath was extended to all magistrates and citizens, and ultimately to the provincials. And thus, the Roman Emperors had unlimited power, both by the accumulation of all civil authority in their persons, and by the military authority thus declared.

902 Accordingly, the Emperor had legislative as well as executive power. The Roman Jurists say*, "Quod Principi placuit legis habet vigorem, utpote quum Lege Regia quæ de Imperio ejus lata est, Populus ei et in eum omne suum imperium et potestatem conferat." Religious as well as Civil authority was given to the Emperor; a sacredness and a kind of divinity were ascribed to him. After Christianity became the Religion of the Roman State, high religious dignity was still attributed to the imperial condition. In imitation of the Jewish kings, he was anointed with oil, and consecrated by a priest; he was declared to hold his crown by the Grace of God, and was spoken of as the Vicar of Christ over Christian people. And thus, the monarchical office was elevated to a transcendent supremacy and ideal perfection; it was the Source of Order, Justice, and Right; and absorbed and superseded all other powers and Rights which had existed in the Constitution.

903 Very different from this view of the chief ruler of the State, was that which prevailed among the northern nations who gradually took possession of the provinces of the Roman Empire. In the most considerable of the Germanic tribes, the form of Government was republican. Some of these had a Chief, to whom the Romans gave the name of King; but his authority was very limited. The Supreme Authority of the nation resided in the Freemen of whom it was composed. When a national war was undertaken, one of the Chiefs was selected to command the army, but his authority expired with the return of peace. But when these tribes settled as conquerors in the Roman provinces, they adopted, in many respects, the customs and the legal language of those whom they subjugated. The superiority of the Romans over the Barbarians in intellectual and literary culture, the advantages attendant upon fixed laws, and laws already fixed, strongly promoted this result. And after a time, the servility of men's

* *Dig. I. 4. Inst. I. 2. § 6. Gaius, I. § 7.* "The command of the Emperor has the force of Law; for by the Royal Law

respecting his authority, the People gives to him and confers upon him all its authority and power."

language infected their thoughts; and the subjects of the kingdoms which arose out of the empire not only spoke but in some measure thought of their King, as the Romans had been accustomed to do of their Emperor.

904 But there was another especially Germanic element, which modified the feelings of men towards their Chief. Every German Chief had a band of Followers, who had voluntarily attached themselves to him*. From him they had received their recognized place as warriors; at his table they feasted; to his service they were devoted. In war, *he* fought for victory, *they* for their chief. But they received from him occasional presents, as horses and weapons. From an ancient Teutonic word signifying their *trustiness* to him, they were called *Antrustiones*. They were also called the Chief's *Vassi*, his young men, or his men†: as the act of a person declaring himself a superior's *man* was afterwards called *homage*, by a derivative from the Latin *homo*. This connection was regarded as the most sacred which could subsist between one man and another. The usage of this personal connexion the Germans carried with them into the countries which they subdued, and it became one of the chief bonds of political union in the Governments which they established. The connexion was commonly confirmed by an oath, promising fidelity, *fealty* or *allegiance*, on the part of the inferior, and sometimes, by an oath promising protection and justice on the part of the superior. The feelings connected with this ancient relation of superior and inferior have given a peculiar character to *loyalty* towards a Sovereign, as conceived in modern times.

905 But there was another important element which entered into the constitution of that Feudal System, which was established on the ruins of the Roman Empire. The Chiefs appropriated to themselves districts of the conquered territory; and they granted portions of these their possessions to their followers, the obligation of reciprocal fidelity and protection being connected with this tenure of land. The Chief and his followers became the *Seignior* and his *Vassals*. The lands thus granted were termed Benefices (*Beneficia*), and afterwards Fiefs (*Feuda*). They were held by military service‡. Those who thus held benefices or fiefs

* Tacit. *De Morib. Germ.* Cap. xiv.

† This derivation of the word *vassalus*, adopted by Sir Francis Palgrave, makes it come from the Celtic word *guas* or *was*. Another derivation deduces it from the Teutonic word *geselle*, *companiön*. M.

Guizot inclines to believe that it comes from *gast*, *guest*. He finds *vassus* used in old documents apparently as equivalent to *conviva*. *Essais sur l'Hist. de France*, p. 102.

‡ Some writers discern in the prac-

often granted portions of them to inferior Vassals on the like condition of military Service; and this *Subinfeudation* of Vassals and *Arrière Vassals* was continued through several degrees. The subordinate holders of feudal benefices possessed some of the privileges of feudal *lords*. In the course of time, Fiefs became hereditary.

906 Thus the *Feudal System* was established; and gave to the relation between the Governors and the Governed a new form. Instead of the single transcendental authority of the Roman Empire, before which all Liberty was annihilated, there was, along with Monarchy, a Military Aristocracy, in which the Superiors and Inferiors, from the Sovereign downwards, had mutual Rights and Obligations, of Protection and Service; and in which there were, therefore, for them, Elements both of Order and of Liberty.

907 It is true that this Order and this Liberty were very imperfect, being only such as are maintained in a state of peace which is looked upon as subordinate to a state of war. The lowest members of the Feudal System were liable to great oppression. Moreover, the peaceable part of the community, the inhabitants of towns, and generally, those who had no place in the army, were not provided for in this System. So far as they were concerned, there was no Security and no Liberty. Hence, from this time, the struggle between Monarchy, Aristocracy, and Democracy, takes a new form. We have the Feudal Aristocracy in conflict with the Imperial Doctrine of absolute Regal Power; and we have the Burgher Democracy in conflict with the Feudal Aristocracy and the Monarchy.

908 Our own country exhibits to us an exemplification of these conflicts. The Feudal System was fully established in England by the Norman Conquest; but the Conqueror gave to it a more monarchical character than it elsewhere had, by requiring, not only those who held *in chief* of the Crown, but also their tenants, to swear personal fealty to the King. On the other

tices of the Roman Empire itself the germ of this element of the Feudal System, the tenure of land by military Service. Even while the empire was only commencing, Sylla and Augustus assigned lands to their Veterans; and a little later, lands were granted to the *Limitanean* or *Riparian* Soldiery, on condition of defending the boundaries of the empire. These were commanded by the *Dukes* and *Counts* of the Provinces. Under Constantine, the *Count of the Saxon Shore* ruled from Nor-

folk to Sussex, while the *Duke of Britain* governed the remainder of Britain. These military Counts and Dukes were the Magistrates, as well as the Commanders of the Soldiery. The Military, so organized, constituted a distinct and ruling Class, both in consequence of their privileges, and of the right which they exercised of electing an Emperor upon some occasions. They were, in short, a Military Aristocracy.

hand, the exorbitance of the royal authority was resisted, not only by the rights of feudal tenancy, but also by a spirit of Freedom which the Anglo-Saxons had derived from their German Ancestors, and by the Anglo-Saxon Laws and Institutions, which embodied this Freedom. The Anglo-Saxon Kings were guided, in the main acts of their government, by the great council of the nation, which bore the title of *Wittenagemote*, or the Assembly of Wise Men. All the Laws expressed the assent of this Council. It was composed of Prelates and Abbots, of the Aldermen of the Shires, and, as it is expressed in the Laws themselves, of the Noble and Wise of the kingdom.

909 After the Norman Conquest, when the Anglo-Saxons were, for a time, not only subjected to rigorous feudal servitudes, but reduced to the condition of a subjugated race, they looked back with an affectionate regret to the *Laws of Edward the Confessor*. William the Conqueror was induced to relax the rigour of his rule, so far as to grant his subjects a Charter, in which he professed to restore the Laws of the Confessor, and to relieve, or at least to limit, the feudal burthens. Similar Charters were obtained by the subjects from succeeding kings; and after various struggles, there was won, from the crown, the *Great Charter* of King John, which determines the character of the English Constitution. This Charter, from the time of its being granted, was always considered as a primary and fundamental law of the nation. Mr Hallam says*, "This is still the key-stone of English Liberty. All that has since been obtained is little more than as confirmation or commentary: and if every subsequent Law were to be swept away, there would still remain the bold features which distinguish a free from a despotic monarchy." Like preceding Charters, this redresses the worst grievances of the military tenants; but its more important clauses are those which protect the personal security and Rights of Property of all freemen. "No freeman shall be taken, or imprisoned, or disseized of his freehold, or liberties, or freecustoms; or be outlawed, or exiled, or any otherwise destroyed. Nor will we pass upon him but by the lawful judgment of his peers and the law of the land. We will sell to no man justice and right; we will not deny or delay them to any man." Other clauses restrain excessive and arbitrary demands of those pecuniary aids which the Feudal System authorized the Lord to claim of his vassals.

910 But the Great Council of the Nation, as well as the

* *Middle Ages*, III. 447.

Charters of the Kings, became a bulwark of Liberty. In the Saxon and in the Norman period, the King legislated with the advice of his Great Council or Parliament. It was a principle of the Feudal System that within the limits of his fief, a Vassal could not be bound by a law made without his consent*. New taxes, like other new laws, required the sanction of this Assembly; but the King had many old established claims upon his vassals, as *Escuage*, a commutation for the personal military service of his tenants; *Tallage*, a tax on his demesne lands and royal towns; *Customs*, on certain imports and exports. The Great Charter restrained escuage imposed without consent of Parliament; and the successors of John never pretended to a general right of taxation without this consent. This part of the Constitution attained a more definite form under Edward the First. His *Confirmatio Chartarum* not only gave to previous Charters most solemn sanctions, and universal circulation; but gave to private property that security against the aggressions of the crown, which Magna Charta had given to personal liberty. By this Statute the "aids, tasks, and prizes," previously taken, are removed as precedents; and the King grants to his Clergy, Peers, and to all the Commonalty of the land, "that for no business from henceforth we shall take such manner of aids, tasks, or prizes, but by the common assent of the realm, and for the common profit thereof."

911 But here the progress of the Constitution towards a balance is further marked by the appearance of the Commonalty, as well as the Nobles, in Parliament. There is a House of Commons as well as a House of Peers.

The earliest known writs of summons to cities and boroughs to send members to Parliament, are those issued by Simon De Montfort, Earl of Leicester, acting as Sovereign of the kingdom; after he, at the head of a confederation of Barons, had defeated Henry the Third at the battle of Lewes. The deputies of such places were finally and permanently engrafted upon Parliament by Edward the First. These formed a Council, in addition to that of the Barons and higher Peers; and Knights, sent by the Shires, were associated with the Burgesses, at least from the time of Edward the Second. In the course of that and the following reign, the efforts of Parliament established upon a firmer footing three essential principles of the Constitution:—the illegality of raising money without consent of Parliament; the necessity that the two Houses should concur for any alterations of the Law; and the

* Hallam, *Middle Ages*, I. 247.

Right of the Commons to inquire into public abuses, and to impeach the King's Counsellors.

912 From this time, the importance of Parliament was shown by its becoming the battle-field of conflicting Parties in the State. In the Reign of Edward the Second, it was not Parliament, but the Barons, who had the principal share in opposing the Government. But in the end of Edward the Third's reign, an opposition, headed by the Prince of Wales, urged their grievances by means of the Petitions and proceedings of Parliament. And Richard the Second, the son of this Prince of Wales, after a reign full of contests with his Parliaments, in which he repeatedly promised redress of grievances in return for Subsidies which they voted him, was compelled to abdicate the throne, and Henry the Fourth was acknowledged King in 1399.

913 In the reigns of the three kings of the House of Lancaster (Henry IV. V. and VI.) the powers of the Parliament to protect the Liberty of the Nation were more fully unfolded. The exclusive Right of taxation by Parliament was maintained, and their Right also to direct and check the public expenditure. They exercised the Right of making their supplies depend upon the redress of grievances; they secured the people against illegal ordinances and interpolations of Statutes; they controlled the royal administration in matters of peace and war; they punished bad ministers; and finally, they established immunity of person, and liberty of speech, for themselves in their parliamentary capacity. Some of the most eminent maxims of parliamentary law were established in this period: for instance, that the Commons possess the exclusive Right of originating Money Bills; and that the King ought not to take notice of matters pending in Parliament.

914 Under these circumstances, the election of Members of Parliament became a very important Duty and Privilege of Englishmen. It was in the eighth year of Henry VI. that the Elective Franchise of Voters for Counties was determined to belong to freeholders of lands or tenements of the value of forty shillings. The proper Constituents of the Citizens and Burgesses sent to Parliament appear to have been Chartered Boroughs, and Towns belonging to the demesne of the Crown, and all places of eminent wealth and importance, even though not incorporated. But probably no Parliament ever perfectly corresponded with this Rule.

915 Thus, many centuries ago, a Constitution was esta-

lished in England, in which Monarchy, Aristocracy, and Democracy, balanced and controlled each other. There were many Institutions, Laws, and Customs, which were a security against arbitrary power; protecting both the rights of the Commons and of the Nobility; while yet the Government, in its whole tone and character, was Monarchical. In the language of the Law, all seems to grow out of the King, and is referred to his advantage and benefit. The voice of the Commons towards the Crown was, in its form, humble and deferential. The royal prerogative was always named in large and pompous expressions. This monarchical tone still more pervades our law-books. Hence perhaps it is, that some writers, as Hume, have fallen into the mistake of believing that the limitations of royal power in this country, during the fourteenth and fifteenth centuries were unsettled, both in law and in public opinion. But the gradual development of the constitutional practices of parliament, in the way we have described, shows that there was nothing unsettled or ambiguous in their general character, as real securities of the National Liberty.

916 Accordingly, the English Constitution is described as free, and is put in contrast to despotic governments, by intelligent writers of those times. Sir John Fortescue, who was Chief Justice of the King's Bench under Henry VI., and afterwards Governor to the young Prince of Wales, wrote a Treatise, entitled, "Of the difference between Absolute and Limited Monarchy," in which the English Government is his example of a Limited Monarchy. He also wrote a Treatise "De Laudibus Legum Angliæ," in which he inculcates this doctrine upon his royal pupil: "A King of England cannot at his pleasure make any alteration in the Laws of the Land: for the nature of his government is not regal, but political [or, in more modern phrase, not absolute, but constitutional]. Had it been merely regal, he would have had a power to make what innovations and alterations he pleased in the laws of the Kingdom, impose tallages and other hardships upon the people, whether they would or no, without their consent; which sort of Government the Civil Laws point out, when they declare *Quod principi placuit legis habet vigorem*. But it is otherwise with a king whose government is constitutional; because he can neither make any alteration or change in the laws of the realm without the consent of the subjects; nor burthen them against their will with strange impositions; so that a people governed by such Laws as are made by their own consent and appro-

bation enjoy their properties securely, and without the hazard of being deprived of them, either by the king or any other."

917 To the same effect speaks Philip de Comines* in the reign of Edward the Fourth. "The King of England is not able to undertake things of great importance without calling his Parliament, which is in the nature of our Three Estates; and consisting for the most part of sober and pious men, is very serviceable, and a great strengthening to the King. At the meeting of this Parliament, the King declares his intention, and desires aid of his subjects, and they supply him very liberally." And elsewhere † he says, "In my opinion, of all the countries of Europe where I was ever acquainted, the Government is nowhere so well managed; the people nowhere less obnoxious to violence and oppression, nor their houses liable to the desolations of war, than in England; for there those calamities fall only on their authors."

918 The expressions exalting the King's authority to absolute power, though borrowed, as we have seen, from the Law of the Roman Empire, and inconsistent with English history, yet being retained by lawyers and others, perhaps stimulated the Kings of England to arbitrary conduct and imperious language, such as often proceeded from the Tudor princes. In opposition to this, the House of Commons did not fail from time to time to make declarations, and to take measures, in favour of the liberty and laws of the land: and though often overborne by power, they never surrendered the Cause of constitutional government. Even in the Act passed in the 28th of Henry VIII., which gave to the King's proclamations the force of law, this was limited, "so that they should not be prejudicial to any one's inheritance, offices, liberties, goods, and chattels, or infringe the established laws:" and the very passing the Act implied the recognition of Parliament as the legislative Authority. Even in this reign, in 1532, the commons refused to pass a bill recommended by the crown ‡. In the following reigns, of Edward VI. and Mary, the House of Commons recovered its independent powers: and the course which the Court took in order to strengthen itself was, to conciliate the assembly. Queen Elizabeth frequently spoke to her Parliaments in an imperious manner; but they too had members who spoke boldly on the other side; and though she exercised a large power in some instances, she yielded in others. The voice of English freedom was never silenced in the houses of parliament,

* B. IV. c. 1.

† B. V. c. 18.

‡ Hallam, *Eng. Const.* I. 59.

nor the voice of English law in the Courts of Justice. In this period, the House of Commons established some of their most important privileges; the exemption of their members from arrest during their Session; the right of determining contested elections of their own members; the right of punishing offenses against themselves by imprisonment of the offenders. The Government of England was still, as it had long been, recognized as a Monarchy limited by law.

919 In opposition to Hume, who, to show the despotic character of the English Government, has quoted from Raleigh a passage of servile flattery addressed to the Queen, Mr Hallam quotes Aylmer, who wrote a reply to John Knox's "Blast of the Trumpet against the monstrous Regiment of Women." In this work (in 1559), it is stated, as an undoubted doctrine, that "the regiment of England is not a mere monarchy, as some for lack of consideration think, nor a mere oligarchy nor democracy; but a rule mixed of all these, wherein each one of them hath or should have like authority. The image whereof, and not the image, but the thing indeed, is to be seen in the Parliament house, wherein you find these three Estates: the King or Queen, which represent the monarchy; the noblemen, which be the aristocracy; and the burgesses and knights, the democracy. If the parliament use their privileges, the King can ordain nothing without them: if he do, it is his fault, and their fault in permitting it."

920 There were, no doubt, persons who held that the Sovereign of England possessed, in a sense more or less strict, Absolute Power; and the opposition between these persons, and the assertors of constitutional government, became more and more marked under the Stuarts. James I. had dissensions with his parliaments, which lasted during his reign: and these led to the famous *Protestation* of the Commons, of December 10th, 1621, which is to the following effect; its various clauses referring to controversies with the Crown which had occurred at various times: "That the liberties, franchises, privileges, and jurisdictions of parliament, are the undoubted birthright and inheritance of the subjects of England:"—(this was in opposition to the doctrine asserted by the King, that they proceeded from the royal grace:) "That the arduous and urgent affairs concerning the King, State, and defense of the realm, and of the Church of England; the making and maintenance of laws, and redress of mischief and grievances, are proper subjects and matters of counsel and debate

in parliament: That in the handling and proceeding of those businesses, every member of the house hath, and of right ought to have, freedom of speech, to propound, treat, reason, and bring to conclusion; the same:" with other clauses of the like nature*.

921 Charles I. was in conflict with his parliament from the beginning of his reign; but in 1628, he gave his assent to the *Petition of Right*, which embodies many of the most important parts of the Constitution. This Statute recites the various laws which had established certain essential privileges of the Subject, and enumerates violations of them which had recently occurred in the points of illegal exactions, arbitrary commitments, quartering of soldiers or sailors, and infliction of punishment by martial law; and then prays the King, "That no man hereafter be compelled to make or yield any gift, loan, benevolence, tax, or such like charge, without common consent by Act of Parliament; and that no freeman in such manner as is before mentioned be imprisoned or detained; and that your majesty would be pleased to remove the said soldiers and marines; and that your people may not be so burthened in time to come; and that the aforesaid Commissions for proceeding by martial law may be revoked and annulled; and that hereafter no Commission of the like nature may issue forth to any person or persons to be executed as aforesaid, lest by colour of them any of your majesty's subjects be destroyed or put to death contrary to the laws and franchises of the land." Proceedings inconsistent with this law were resisted; as in the case of Ship-money, in which Hampden refused payment of the illegal exaction. And though the decision of the majority of the judges was against him, this judgment was annulled by the Parliament as soon as it was allowed to meet.

922 But the Parliament, which had so long been the defender, now became the assailant of the Constitution; and from this time, through the diseased and troubled period of the Civil War and the Usurpation of Cromwell, the public acts, both of Government and of Parliament, no longer express the national judgment of what was just, right, and constitutional; and have been repudiated by subsequent acts of the nation. Yet even in this time of conflict, we see the reverence with which the forms of the Constitution were retained. The Parliament employed the name of the *King*, even in acting against him; and the King assembled a *Parliament* at Oxford, denying the name to that

* Hallam, *Eng. Const.* i. 501.

which sat at Westminster. Even when Cromwell had, by the aid of the army, usurped the power of the Government, he retained the general forms of the constitution; a Parliament elected by and representing the nation; and a House of Lords. And he was constantly told by the lawyers,—That his authority could never be truly valid till he assumed the title of King; which was, to use their words, a wheel on which the whole body of the law was carried; which stood not on the top, but ran through the whole veins and life of the law:—That the nation had ever been a lover of monarchy, and of monarchy under the title of a King:—That, in short, this title of King was the title of the supreme magistrate which the law could take notice of, and no other.

923 The restoration of the Stuart line in Charles II., introduced no change in the principles of the Constitution; for Charles assumed the throne as King of England by law; and therefore, as bound by all the laws which preceding Parliaments had made, till they were repealed. The Convention Parliament, which restored him, not having been called together by royal authority, the validity of its acts was doubtful, till they were confirmed by the succeeding parliament; but from this time, the monarchy resumed its ancient course. The frequent session of parliament, and its high estimate of its own privileges, furnished a security against illegal taxation; and from this time we have no more of that grievance, hitherto so common. The power of the commons to impeach a minister, even for acts performed by the King's command, was established in the case of the Treasurer Danby; and this led to the decision of several important points, respecting the effect of such impeachment. In this reign, also, the ancient Right to a writ of *Habeas Corpus*, by which Englishmen are protected from illegal or arbitrary imprisonment, was invested with new securities and facilities. The encroachments on the legislative supremacy of parliament, and on the personal right of the subject, by means of Proclamations issued from the Privy Council, which had been frequent under former princes both of the Tudor and of the Stuart families, fell with the odious tribunal the Star Chamber, by which they had been enforced.

924 It is true, that some persons still held that the Royal Power was absolute, and could not be limited by opposite acts, or length of usage. But these doctrines were not those of the parliament; the attempts to exclude James II. from the throne showed how large a portion of the sovereign power was held to reside in other branches of the government. And the Revolution, which

placed William the Third on the throne, involved a complete repudiation, on the part of the nation, of the doctrines of the Absolute Power, and the indefeasible and imprescriptible Rights, of the King of England. Yet the assertors of the liberty of England, even in this extreme case, attempted to divest their act, as much as possible, of the aspect of violence. The great vote of Jan. 28, 1689, was to the effect that King James II. had "abdicated the government, and that the throne was vacant." In this, it was not pretended that the word "abdicated" was used in its ordinary sense, to denote a voluntary resignation of the crown. It was a somewhat gentler term than "forfeited," which was the notion really intended. But the national act, in this case, went beyond even the meaning of forfeiture; for it disregarded the rights of James's Heirs, and appointed another Sovereign. The modern constitutional writer whom we have mainly followed in our historical survey, says, on this occasion*, "It was only by recurring to a kind of paramount, and what I may call hyper-constitutional law; a mixture of force, and regard to the national good, which is the best sanction of what is done in revolutions; that the vote of the Commons could be defended. They proceeded, not by the stated rules of the English Government, but the general rights of mankind. They looked not so much to Magna Charta, as the original compact of society, and rejected Coke and Hall for Hooker and Grotius." As we have said (897), Revolutions cannot be justified by stated Rules of Government, but must be defended as Cases of Necessity. The defense of the Revolution of 1688 was, that the constitutional liberty and national independence in matters of religion, which by the historical education of Englishmen were become necessary to their moral agency and moral progress, could not subsist under princes whose views of the national constitution and national religion were those of the Stuarts: and the proof of this incompatibility, which had been gaining strength ever since the accession of James I., was completed by the last acts of James II. A Revolution of which this is the true defense, conducted calmly, resolutely, and peaceably, to its object, may very fitly be called *Glorious*.

925 This great occasion of the assertion of the liberty of England was signalized by the *Declaration of Rights*, which gave judgment on the past, and maxims for the future acts of the crown. It contains a recital of the arbitrary acts which James had committed, and a condemnation of them as illegal. In this

* Hallam, *Eng. Const.* III. 134.

important act, it is declared: "That the pretended power of suspending laws, and the execution of laws, by royal authority, without consent of parliament, is illegal: That the pretended power of dispensing with laws by royal authority, without consent of parliament, is illegal: That the Commission for creating the late Court of Commissioners for ecclesiastical causes, and all other commissions and courts of the like kind, are illegal and pernicious: That levying of money for or to the use of the crown by pretence of prerogative without grant of parliament, or for longer time, or in other manner than the same is granted, is illegal: That it is the right of the Subjects to petition the King, and that all commitments or prosecutions for such petitions are illegal: That the raising or keeping a standing army within the kingdom in time of peace, unless it be with consent of parliament, is illegal; That the subjects which are protestants, may have arms for their defense suitable to their condition, and as allowed by law: That elections of members of parliament ought to be free: That the freedom of speech, or debates in parliament, ought not to be impeached, or questioned in any court out of parliament: That excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted: That juries ought to be duly empaneled and returned, and that jurors which pass upon men in trials of high treason ought to be freeholders: and That for the redress of all grievances, and for the amending, strengthening, and preserving the laws, parliaments ought to be held frequently." This Declaration was confirmed by the *Bill of Rights*.

926 After the Revolution, the Constitutional Liberty of England seemed to be sufficiently secured; and was so: yet the care of Parliament was still employed in devising and enacting further Securities. The appropriation of the revenue by Parliament was carried into further detail, by the separation of the Civil List, and of the Navy, Army, and Ordnance Department, from each other. "This measure has given the House of Commons so effectual a control over the executive power, or more truly speaking, has rendered it so much a participator in that power, that no administration can possibly subsist without its concurrence; nor can the session of parliament be intermitted for an entire year, without leaving both the naval and military force of the kingdom unprovided for*." The *Mutiny Bill* also, by which alone martial law can be administered in the army, was from this time passed only from year to year.

* Hallam, *Eng. Const.* III. 159.

927 The *Act of Settlement*, by which the Electress-Sophia, after the death of Queen Anne, was declared to be the stock of the Royal line, contained further provisions, intended to secure the nation against arbitrary acts of the Court: especially the exclusion of pensioners, and many of the officers of the Crown, from parliament; and the protection of the independence of the Judges, by making their commissions continue *quandiu se bene gesserint*, during life or good behaviour, instead of *durante bene placito*, as long as the crown chose, which had been the practice.

928 Thus, so far as Parliament was the guardian of the National Liberty, the cause of liberty was fully vindicated; and the doubt might occur, whether, according to the Constitution so modified, Parliament might not sometimes be led, by some special object, to interpose its power so as to obstruct the acts of the crown, and to make government impossible. Order seemed to have been sacrificed to Liberty. But this was not the case. The balance between Order and Liberty was preserved by the struggle which took place within the boundary of Parliament itself. The Influence of the Crown and of the Aristocracy was, in that field, exerted in favour of Order; and with more steadiness and care than can be expected, on that side, from the Democracy. The efforts of the Democracy soon began to be directed to diminish or extinguish this Influence. One of the points, which thus came into conflict, was the mode of electing the Members of the House of Commons. By the theory of the Constitution, as it had been commonly stated, these Members were the Representatives of the Common People; but the advocates of popular Rights asserted that in fact, they were not so; and that the House of Commons ought to be *reformed*, so as to bring the fact into nearer accordance with the theory of Representation.

929 By the ancient Constitution, the House of Commons was supposed to contain representatives of all the parts of the Empire which were subject to English laws and parliamentary burthens. Henry VIII. extended the right of election to the whole of Wales, the counties of Chester and Monmouth, and even the towns of Berwick and Calais; and thus added thirty-three members to the Commons*. Edward VI. created fourteen boroughs, and restored ten, that had disused their privilege. Mary added twenty-one, Elizabeth sixty, and James twenty-seven members. But the design of the great influx of new members from petty boroughs, in these later reigns, seems to have been to secure the

* Hallam, *Eng. Const.* III. 50.

authority of government, which such members were likely to support, rather than to follow out a democratic principle of the Constitution.

930 Four different kinds of Electors of the Representatives of Boroughs appear in our Constitutional History. (1) *Members* of Corporations; the municipal magistracy or governing body of the incorporated place; (2) *Freemen* of Corporations, to whom the elective franchise was given by charters of incorporation; (3) Electors by *Burgage Tenure*; where the right was annexed to certain freehold lands or burgages, and did not belong to any persons but such tenants; (4) The inhabitant householders paying *scot and lot*, which include local and general taxes. This was the original form of the right as enjoyed by Boroughs in the time of Edward I., and was applied to all of a later date, where a franchise of a different nature was not expressed in the charter.

931 These varieties in the elective franchise, the various growth and decay of ancient Boroughs, and in some cases the rise of insignificant hamlets into great and wealthy towns, have at all periods produced great deviations from regularity and consistency, in the representative structure of the House of Commons. So long as the struggle of the House with the Crown was an external war, these irregularities were not considered as very prejudicial to the cause of Liberty. Taking the House altogether, the various classes of the Community were virtually, if not actually, represented, as to their interests, arguments, and purposes. But when the battle between Authority and the claims of a larger Liberty was to be fought within the body of the Commons, the mode of electing the individual members became a matter of great moment in the struggle. Those who wished to enlarge the Liberty of the People demanded a Reform of the Parliament, a correction of the Anomalies of its composition, and a more faithful application of the Principle of Representation. Such reforms in special cases would have been consistent with previous history; but the establishment of a new Rule for all cases, was giving a new basis to the House of Commons, and was resisted as a perilous experiment, by the adherents of the ancient forms of Authority. The act for such a new basis of the House of Commons was, however, carried in 1831. In the preamble it is stated to have for its objects "to deprive many inconsiderable places of the right of returning members, to grant such privilege to large, populous, and wealthy towns, to extend the elective franchise to many of His Majesty's subjects who have not heretofore enjoyed the same." By this Act, the voters

for Knights of the Shire were to be, in addition to the old electors, the forty-shilling freeholders, copyholders to the extent of ten pounds a year, and other tenants to the extent of fifty pounds. The voters for Boroughs were to be persons occupying a house in the borough of the value of ten pounds a year. A number of boroughs (sixty) were disfranchised, as inconsiderable places; the criterion adopted being, that the population was less than 2000. A number of other boroughs were allowed only one member, the population being less than 4000. Instead of two members to each county, there were assigned to some of the more populous counties three, to some, four, according to their importance. To towns containing more than 10,000 inhabitants, one representative was given; and two to places which had 20,000 inhabitants or more.

932 This is now the condition of the electoral franchise. The passing of the Act by which it was established is perhaps the largest attempt ever made at once to bring the Constitution nearer to a theoretical symmetry; but it is to be recollected, on the other hand, that the deviations of the composition of the representative body from the representative principle had become enormous. One caution, however, is suggested to the admirer of the English Constitution by this circumstance; In proportion to the largeness of the step made in the Reform Bill, should be the length of time which is allowed to elapse before any new Movement of an extensive nature is attempted. The New Part of the Constitution must have time to incorporate itself with the Old, before the body politic can bear with safety any new experiments. It may be that the Constitution has in this case drawn in a new life by a deep draught of the cup of Liberty; but it is requisite for the health of the nation that this strong potion be allowed time to assimilate with the system, before the draught be repeated.

CHAPTER X.

DUTIES OF THE STATE IN GENERAL.

933 WE have stated (377) that the State is a moral Agent: it has Duties; as Duties of Justice, Truth, Humanity, and the like. It has also a more general Duty; the Duty of the Moral Education of its citizens. We must now consider further these Duties, and the means of performing them.

Some persons may be disposed to say, that the only Duties of the State are the Duty of protecting the Persons, the Property, and the other material interests of its citizens. And it is true, that all these Duties are Duties in a more rigorous sense than the Duties of Humanity, and the like; they are *Obligations* of the State, and are included in the Obligation of upholding the Laws (790). But the practice of States, in all tranquil and cultured times, has pointed out other Duties of another kind, as belonging to them. If the protection of Person and Property be the stricter, they are also the lower Duties of States: and States in general have recognized higher Duties, in addition to these. They have recognized the Duty of paying their debts, a Duty of Justice; they have recognized the Duty of keeping their Treaties, a Duty of Truth: they have recognized the Duty of preventing Cruelty and Oppression, as in the prohibition of the Slave-trade, a duty of Humanity: they have recognized the Duty of prohibiting obscene and indecent acts and publications, a Duty of Purity: they have recognized the Duty of assisting and rewarding the progress of science and literature, as for instance, by means of Universities, Observatories, Voyages, and the like, a Duty of Intellectual Culture: finally, they have very generally recognized the Duty of morally Educating the young, of punishing and suppressing immoral books, and of uniting the citizens in general by the ties which common moral instruction produces; and this is a Duty of Moral Culture. I purposely abstain now from speaking of Religious Culture.

934 If any one were to assert the protection of Person and Property to be the sole duties of States, we should ask, whether he asserts the States to have done wrong, which have recognized the Duties above enumerated. Perhaps some would answer that some of the above Duties, as paying National Debts and keeping National Treaties, are necessary to a good understanding with other Nations, and therefore, necessary to the Duty of national Self-defense, which is a duty of the State in the strictest sense. To this we must reply, that to pay debts and observe contracts, without any love for Justice and Truth, and merely for the purpose of being trusted, is to have a lower standard of Morality than can satisfy most men, even when applied to the State. But we add, that the answer does not apply at all to the instance of Duties of Humanity performed by States, as in the prohibition of the Slave-trade; nor to the other Duties mentioned. If the only Duties of the States are the protection of the Persons and Property of the

Citizens; then the suppression of cruelty towards defenseless foreigners, the suppression of profligacy and mere vice at home, the encouragement of art, science, and literature, in all their higher forms, the education of children, and of all, except so far as teaching them the Law, must be proceedings with which the State has nothing to do; and those States which have employed themselves in aiming at such objects by Laws, or by the expenditure of the national wealth, have been altogether in error.

935 The necessity of the State undertaking such Duties, in addition to the Obligations of protecting person and property, may be further illustrated. If we suppose a State which undertakes to protect the persons and property of its members, but disclaims all higher Duties of Humanity, Purity, and the like; the members, when they have attained to a moderate degree of moral culture, will not be satisfied with the range of action of the State; and will not acquiesce in the State, as the highest representative of their common action. They will form themselves into Associations for purposes of Justice, Humanity, and other similar objects. These Associations may become so numerous and united, as to elect the magistrates, control the national acts, change the laws, or defeat their execution, and the like; and thus, may be something exercising higher powers than the State, and reducing that which is formally the State, to a mere mode of action of these Associations. Moreover it is probable that Associations thus bound together voluntarily by a sympathy in Justice and Humanity, will become so powerful as to control or direct the acts of the State, if their Standard of Morality is much higher than that by which the State acts; and if they, consequently, look upon the formal course of action of the State with no approval or sympathy. For instance, the State may give its members property in slaves; but if the general body of individuals have arrived at a point of Moral Culture in which they look upon Slavery as unjust and inhuman; when a man seeks to obtain possession of a slave by course of law, witnesses, judge, and jury (or some of these), will probably act so as to evade, or even to contradict the law; or the law will soon be altered. Perhaps even the Association may be powerful enough to compel the nation to interfere in behalf of slaves of other countries; and thus, in such a case, the voluntary Association, and not the Body which is formally the State, acts as the Nation. And in the same manner, if the State do not attempt to give to the young a moral education, there may be Associations which undertake to do this; and such Associations, as part of their teaching, may in-

culcate the injustice or inhumanity of the existing laws. Thus, so far as their teaching is effective, these Associations may produce fundamental changes in the laws, and may direct the National Action in some of the most important points. But further: Moral Education must necessarily depend upon Religion, and will always take the form of Religious Education. Men cannot think much of their Duties, and their Destination, without being led to think of, and to adopt Religion. Religion binds them into Associations, in which they have common convictions, and common privileges, which they earnestly wish to transmit to their children, and to others whom they love. If Classes and Bodies, charged with such objects, be not involved in the composition of the State itself, Societies will be formed, as an addition to the State; and these will exercise such power, that the State will be subordinate to them, or will be destroyed by them. In the history of States we have many instances of a Religion, independent of the State, displacing the Religion previously adopted by the State; though the latter has exerted the formal powers of the State in its defense. In several such cases, the struggle between the old and the new Religion has been long and obstinate. But then, the main strength of the defense of the old Religion lay in its being a Religion, satisfying in some degree men's religious needs, and binding them to its cause by religious ties. If the struggle were between a new Religion and no Religion in the State, the success of the Religious Association in obtaining its ascendancy over the State would be, we cannot but suppose, much more rapid. It may, indeed, happen; that in consequence of the existence of several rival Religious Associations in the State, no one of them obtains a complete Ascendancy over it. In this case, the power which the Religious Associations in every State possess, is not extinguished, but divided and balanced. But even in this case, Statesmen will find it necessary to recognize, on the part of the State, those Duties, which all the kinds of Religion agree in enjoining. And thus, the State cannot omit to recognize its higher Duties, without putting in the hands of those who do recognize such Duties, the means of combining men into associations more powerful than the State; the means of converting the State organization into their instrument; the means of acting for the Nation in spite of the State.

936 The necessity of a State recognizing its higher Duties, and especially the Duty of imparting or confirming the religious instruction of its members, appears also by considering the Right

of imposing Oaths, which, as we have said, is exercised by all States (781). By the imposition of Oaths, the citizen's Obligations are identified with his religious Duties; and the State relies upon this identity, as necessary to give it a real hold upon men, and to make them do its business in a sincere, serious, and solemn spirit. If the State cannot obtain this result, it will necessarily tend to dissolution. But religious Duties can have no force for men who have no Religion. The State therefore, in order to provide for its own preservation, must maintain the Religion of the citizens in such modes as it can; for instance, by the religious education of the young, and by arrangements for keeping up the religious convictions and religious sympathies of all. If the State do not, by such means, or by some means, keep alive the religious convictions to which it appeals in the Oaths which it imposes, the Oaths will be rejected, or regarded as unmeaning. In such a Case, men, thinking lightly of Oaths, will think lightly also of Duties and Obligations; and the State will be dissolved by the destruction of all the ties which bind its members to it. Or else, such Oaths will be looked upon as a sinful profanation of true Religion; religious men will refuse to take them, and will give all their efforts to the support of their own Religious Association, which is opposed to the Religion of the State; and thus the actions of such men will tend to destroy the Religion of the State, and perhaps the State itself. It may, indeed, happen, as we have just said, that there are several rival Religions in the State; and in this case, there are especial difficulties in employing Oaths for the purposes of the State, and in keeping up the religious convictions which give Oaths their force. In this case, if all the Religions allow that obedience to the Civil Authorities is a religious Duty, Oaths may still be employed, to promote the lower aim of the State, its own preservation; but the higher aim of the State, the moral and intellectual culture of its members, will necessarily be pursued under great disadvantages; for the moral and intellectual culture of men cannot be prosecuted without employing Religion; and Religion can be employed for such purposes, only by accepting it as true. The State therefore cannot employ, for its higher purposes, Religions which contradict each other; and in such a case as we have spoken of, the State may be prevented from pursuing its higher purposes at all; or may be much impeded in doing so. But even in such cases, the State has those Duties which all the rival Religions agree in recognizing; and has, besides, the Duty of promoting moral and intellectual culture, in

conjunction with the true Religion, as far as circumstances permit.

937 Thus, in all cases, States have Duties. The Duties of States may be arranged under the same heads which we have already had before us. Besides the Duties of Order, by which, especially, the State is the State, there are Duties of Justice, Truth, Humanity, Purity; and there is also the higher and more comprehensive Duty of moral and intellectual Self-culture. The State obtains moral and intellectual Culture for itself, by obtaining it for its members. And thus, the highest and most comprehensive Duty of the State is the moral and intellectual Education of its members. This Duty, as belonging to the State, modifies, in an especial manner, its other Duties; and must be considered in conjunction with all of them, as we shall have occasion to see.

CHAPTER XI.

DUTIES OF THE STATE—JUSTICE AND TRUTH.

938 THE Duties of Justice and Truth, as belonging to States, point out the same course of action which they point out for individuals: they direct the State to abstain from infringing the Property or Rights of other States; to pay its Debts; to observe its Treaties; and the like. In these instances, the Duties have analogy with the Legal Obligations, rather than with the Moral Duties of individuals; and accordingly, these Duties are the subject of an especial branch of Law or *Jus*; which we may term International Law, or *International Jus*, and which we shall treat of afterwards.

939 But the Duties of Justice and Truth, as belonging to the State, have also their Sphere of Action within the State; they require, for instance, that both the Laws, and the Administration of the Laws, be conformable to Justice and Truth. We have already stated (397) a general Maxim of *Justice*, which applies especially to Legislation: namely, that Justice requires us to aim constantly to remedy the inequalities which History produces. And this maxim applies to all the matters with which Law deals; to personal Rights, to Property, to Education. In these matters, Justice does not require Equality. Any attempt to establish Equality would tend to destroy all Property, all Law, and all

Right; for if Rights be permanent, their permanent subsistence will produce Inequality. But Justice aims constantly to remedy Inequality. Hence Laws should aim continually to enrich the poor, to strengthen the weak, to elevate the low, to instruct the ignorant. But they should do this in such a manner as not to shake at all the permanence of Rights. They should enable the poor to enrich themselves, the low to rise, the ignorant to learn, by the use of their own Rights, and without trespassing upon the Rights of any other Class. Just Laws will not transfer Property from one Class to another, merely in order to restore equality. Just Laws will not direct the poorest to be educated in the same degree as the richest. But Just Laws will not allow a condition of the community, in which any Class is condemned to a degradation, or poverty, or ignorance, from which they cannot escape. Just Laws will provide openings for the rise of the lower ranks into the place of the higher, as soon as they become fit for such a rise; and will assist such an event, by promoting, among the higher ranks also, such views as will make them regard this event, not as an evil, but as a good.

940 The regard of the State for the Duty of *Truth* will be shown both by the simplicity and sincerity of its own proceedings, and by its encouraging and promoting this Duty in individuals. For instances of the former kind, we may take the abolition of legal fictions and the removal of forced constructions of old laws by means of improved laws. Such steps make the language spoken by the State more true. Yet in the case of States, much more than in the case of individuals, we must take account of the Conventions (297) by which words, phrases, and processes, acquire a meaning different from their obvious meaning. This is more necessary in the case of States, because it is impossible for States to accommodate their language to each case, as individuals may do. States must act by stated forms of procedure and language, in which forms a complex multitude of interests are implied; and any alteration of the forms, since it will require a consideration of all these interests, and an agreement upon the alteration by the legislating bodies, cannot take place frequently and lightly, nor ought it to do so. Legal fictions, and forced constructions of the language of old laws, cannot be altogether avoided. They have existed in all countries in which laws have long subsisted; and to attempt to avoid them entirely, would be to make the legislator instantly conform to all changes, however capricious, of language and practice. Law Language, and Law Forms, must have an

antiquated cast, for this reason: that they must have in them a principle of steadiness and permanence beyond our daily speech and common manners.

941 The State promotes and inculcates the Duty of Truth in individuals, by requiring from them a punctual and faithful performance of Contracts and other Engagements. Yet here also, the consideration of other Duties comes in; and limits, in some degree, the extent to which the State insists upon the performance of Engagements. We have seen that the Roman Law did not compel the performance of a *nudum pactum* (703), a mere promise made for no reasonable consideration; and that the English Law takes the same course. The Law will not, for instance, in general, sanction or enforce an engagement to win and lose money according to the events of a game of chance. To insist upon the performance of such engagements, would be to encourage a reckless spirit, which loves to depend upon casual superiority, or upon mere accident, rather than on rational foresight and self-guidance. The State, in such cases, teaches its citizens that Property is a Trust of more value than the Veracity of such rash and reckless promises. The State, in doing this, does not slight the Duty of Truth; on the contrary, it sometimes condemns the whole proceeding, by making such Gambling a crime. Besides; such engagements are so frequently and so naturally connected with Fraud, as well as Folly, that Honesty, as well as the rational use of Property, would be damaged by the legal recognition of such Engagements.

942 In another kind of Engagements, Promises of Marriage, the Law teaches the Duty of Truth, by punishing the violation of the Promise; and sometimes, even when it has not been made in express words, but only implied in the general course of the language used between the parties. And though, here also, there may be room for Mistake or Delusion; to punish the Levity or Duplicity which can trifle with so serious a matter, is a moral lesson which it becomes the State to give.

CHAPTER XII.

DUTIES OF THE STATE—HUMANITY.

943 THE Duty of Justice on the part of the State is universally allowed: that the State has a Duty of Humanity, is perhaps

not so generally understood. But we have seen (412) and (418), in speaking of Justice and of Humanity in general, how near the Duties belonging to the two approach each other, and how difficult it is to draw the boundary line. It is a Principle of Humanity, and, in an extended sense of Justice, a Principle of Justice also, that all men should possess the Natural Rights of Man; namely (418) the Rights of Personal Security from violence; of Sustenance and Property so far as is requisite for Moral agency; and of Marriage. Such Rights, in every State, are actually possessed by the citizens only so far as the Law allows them; but the question now before us is, what the Laws *ought* to be; what Civil Rights it is the State's Duty to give to its citizens.

944 We have already seen (426) that the existence of Slavery is contrary to Morality. Such a condition of the community is a violation of the Duty of Humanity which belongs to the State; and wherever it exists, Humanity requires that the State should take steps towards its abolition. But we have also said (434) that the abolition ought to proceed by legal and constitutional means; and must often be attained only by many steps, and by slow degrees. Still, it must be again repeated, delay in this course can be tolerated by the Moralist, only so far as it is inevitable. Every State which acquiesces in the existence of Slavery among its members, as a permanent and stable condition of things, neglects the great Duty of Humanity, which is incumbent upon States as upon individuals. A State cannot neglect such Duties, without divesting itself, to an extent shocking to all good men, of its moral character, and renouncing its hope of that moral progress which is its highest purpose.

945 Slavery involves the denial of all Rights to the man, and especially of the Right of security from arbitrary personal violence, and of the Right of Property. But even in States where these Rights are allowed by the Law to all, it often happens that there are Classes of persons who do not practically enjoy them. With regard to the Right of Sustenance, and such Property as is requisite to make the man a moral agent, there are large bodies of the people, even in States conspicuous for their general freedom, who hold these necessary means of moral being very precariously, and occasionally lose them altogether. Men perish of hunger in opulent cities. Many are mendicants, who are supposed to have nothing of their own, and depend for sustenance upon the casual bounty of their fellow-citizens. Many, belonging to the industrious classes, are frequently destitute; though willing to work, they can

find no one to hire them, and they have expended all their previous earnings. Does the Duty of Humanity in the State admit of its tolerating the existence of such things? To pass by the Right to sustenance, in cases of extremity, which, as we have seen (700), the Humanity of the old law of England allowed, is it possible for the State to put an end to Mendicancy and Destitution? and if this be possible, is this the Duty of the State?

946 We find, in this case also, other Duties of the State which may interfere with the Duty of Humanity, and may limit or prevent its operation. It is the duty of the State to leave room for the exercise of the Humanity of individuals; for this is an important part of their Moral Culture. If the Beggar obtains alms on which he can live; if the poor Labourer be supported through his seasons of destitution by the benevolence of his richer neighbours; the men so provided for are not degraded from the rank of moral beings; and the givers are probably morally improved by what they do. Such dependence of the poor upon the rich, has existed in all communities; and it is not necessarily contrary to the Duty of the State to tolerate such a condition of things, which includes the means of a valuable Moral Culture of Benevolence. Moreover, it is the Duty of the State to teach Foresight and Thrift to the poor, as well as Benevolence to the rich. Beggary, destitution, and want of work, may arise from improvidence, carelessness, prodigality, idleness, and perverseness. By letting the consequences of these bad habits fall upon those who are guilty of them, the State teaches useful lessons. If the State were to maintain in comfort all who chose to beg, or all labourers who remained unhired, the produce of the labour of the industrious and provident would be given to the idle and improvident: and this might proceed to such an extent, as to destroy the rewards of labour and the value of property.

947 But if it appear that the destitute are not provided for sufficiently by the benevolence of individuals, what then is the Duty of the State? If, when room is thus left for the Humanity of the rich to act, it appears that there is still a large class of starving poor, what is the course to be taken? If benevolent individuals do much, but still not enough to prevent the existence of extreme distress among numbers of men; is it the Duty of the State to do the rest? And if so, how is this Duty to be limited, so as not to interfere fatally with the other Duties of the State which we have mentioned? Ought there to be a State Provision for the poor? and if so, upon what Principles?

948 To the first of these questions the Moralist must needs reply that taking the case as here supposed, the spontaneous bounty of the rich being insufficient to keep the poor from starvation, it is the Duty of the State to interpose, and to make, by taxation, or in some other way, a provision which shall save them from the extreme of want. This is a Duty of Humanity on the part of the State in any case. If the deficiency of private bounty arises from the want of benevolence towards their poor neighbours on the part of the rich, it is the business of the State to be humane for the rich, both in order to discharge its own Duty, and to teach them theirs. If the prevalence of distress arise, not so much from men's wanting the benevolence to relieve the distress which is brought before them, as from the multitude, density, and variety of the population, which conceals large classes of sufferers from the eyes of their fellow-citizens; it is then proper that the State should be humane for all and towards all, in order to supply, for the benevolent citizens, that which they cannot do for themselves: for the State has the means of reaching all classes; and can diffuse relief more widely than private givers can.

949 With regard to the Principles on which such public Relief is to be given, we may remark; First, that the Relief ought always to be contemplated as *temporary*. For the object of humanity is, that the man be preserved as a moral agent; but man, in a state of unlimited and hopeless destitution, is not capable of moral agency. He has not the means of self-guidance and advancement, which are requisite to his moral being. If a man, by accepting public relief, is placed in a condition in which there is a permanent bar to his becoming again an independent and thriving labourer, the object of humanity is defeated, and the man is reduced to a kind of servitude. Hence, it would be a mistake to require a man to sell or part with the tools of his trade, or the furniture of his house, before he receives public relief: for the want of these things will be a most serious obstacle to his resuming his character as an independent workman. On the other hand, in order that the State may not teach lessons of improvidence and idleness, it is necessary that the public relief be given on harder terms than the wages of independent labour. For the poor must be taught to earn their subsistence independently, as long as it is possible; and to recur to public charity, only in cases of necessity. These conditions appear to be satisfied if we make public relief come to the labourer, in the shape of wages for labour at some public work; the wages being smaller than those of the independ-

ent labourer, and yet sufficient for subsistence. In such a system it may be supposed that men would claim public relief, only so long as it was necessary; and would gladly return to independent labour, as soon as it was possible; while at the same time, relief to the extent of necessary subsistence, would always be within their power.

950 There can hardly be much difficulty in devising works which might be so conducted; especially if it be recollected that the question is not, whether such works will pay for the labour, but whether they will pay better than supporting the labourers in idleness. As instances of such works, we may mention making and repairing roads, harbours, canals, levelling obstacles, reclaiming wild land, draining morasses, building public edifices, ships, and the like.

951 It may be a question whether the relief of *Paupers* (as poor persons relieved by the State may be termed, for the sake of distinction) should be administered by the general Government; or whether the paupers belonging to districts, as Parishes, should have relief administered each by his own Parish. The latter scheme appears, at first sight, better suited, to make the relief—both a lesson of humanity to the givers, since it is bestowed on their neighbours, whose distress they know—and a lesson of industry and economy to the receivers, since, if they are idle and improvident, their neighbours, who know their conduct, will be disposed to show them less favour, in the public relief which they give them. If indeed there be a *Poor Law*, which gives the unhired labourer a Right to a sufficient relief, whatever be the judgment which the Parish Officers form of his willingness to work, the relief may be considered by the givers as an unmerited boon, and by the receivers as an undeniable right; and thus, may produce unkindly feelings on both sides, while it encourages improvidence and idleness as much as the most ineffective benevolence would do. On the other hand, humanity rejects the notion that the destitute should have no right to a subsistence. A mode of avoiding these opposite inconveniences, retaining the administration by Districts, appears to be that already mentioned; the employment of the unhired labourers upon a public work, at wages below those of the independent labourer, and yet sufficient for subsistence. But here an inconvenience of another kind may come in. If the administrators of the poor-laws be also the employers of labour, they may agree to employ the unhired labourers upon their private work, instead of public work; and may, thus,

bring them into competition with the independent labourer; they may thus lower the wages of all, while they pay a part of the wages of their private work out of public funds. This might be remedied, if there were in each parish, or in each district, a work really public, and if the independent labourer were always at liberty to seek work there. For then the employers of labour would always be compelled to give to labour the wages which it deserved.

952 But this plan is applicable, only when the number of persons to be provided for out of public charity is small, compared with the whole number of labourers. If a large portion of the labouring population were to ask for public relief, the condition of the community must be considered diseased: for by our supposition, public relief supplies only a bare subsistence; and, while it lasts, takes away a man's free agency, and suspends his moral advancement; besides which, it might be difficult to find in every district an unlimited supply of public work. In such a case, when great numbers of the poor are unemployed, what is the State to do?

953 We may remark, that there appears, at least at first sight, to be a tendency to such a state of things, in consequence of the improvements constantly going on in the productive powers of labour, and especially of agricultural labour. Our rural districts employed more labourers in ancient times, when a rude husbandry raised a scanty produce, than they do now. The produce of the land is much greater, but the portion of it assigned as wages to the agricultural labourer is smaller. The surplus goes to the Farmer as Profit, and to the Landlord as Rent. And this arises, generally, not from any want of humanity in the Landlord or in the Farmer, but from the progress of agricultural improvement. If the Landlord diminish his Rent, the Farmer puts the allowance in his pocket. If one Farmer pay his labourers higher wages, or employ a greater number, the Relief to the general body is small: for the general rate of wages will be determined, not by considerations of Humanity, but by the operation of the Demand and the Supply of Labour. We cannot expect a universal agreement among the Employers of Labour to increase the amount paid in Wages. A great number of them could not do this, without annihilating their profits, and subjecting themselves to positive expense; and if partially done, it would produce little effect beyond a rush of labour from one employment to another. Hence, the State cannot require that men should show their Humanity by lowering their Rents, or their Profits, or increasing the Wages

which they pay. It may be well that individuals should do this; both as an exercise of humanity, and of moderation with regard to wealth. But the nature of such self-discipline requires that it should be spontaneous, and unforced by external control. The State must leave Rents, Profits, and Wages, to be regulated by their appropriate influences.

954 What then is to be done with regard to the numbers who may be expected to be thrown out of agricultural employment by the improvements in agriculture? If we consider what form of society would be ideally the best under such circumstances, the system which we should picture to ourselves would seem to be something of this kind. We should conceive that, while the proportion of mere labourers, actually required, was constantly diminishing, the structure of society, both with respect to the conduct of the powers of labour, and the habits of domestic life, should change, so as to provide many new ranks and stages in the community, on which men might stand; and many new employments, by means of which they might obtain their share in the increased sustenance and comfort produced by the improvements in labour. Instead of merely the Landlord cultivating his own acres, with his Hinds and Labourers under him, in home-made clothing amid home-made tools and instruments; we may have many classes arising between these two, each living in some degree of comfort, and even ease. The Farmer steps in between the Landlord and the Labourer. He employs the Wheel-wright and other makers of agricultural implements; the Corn-dealer; the Carrier. His attire is furnished by Growers, Spinners, Weavers, Clothiers of various kinds. His house is furnished with implements of wood, iron, brass, silver, gold, glass, porcelain. The manufacturer or tradesman, who supplies each article, has many men working under him, and is himself surrounded by the like luxuries. There are many gradations of tradesmen of each kind; many manufactories subordinate to each tradesman, many tradesmen to each manufacturer. Classes so complex require many persons to facilitate and regulate their intercourse; Brokers; Factors; Notaries; Men of Law; Commercial Travellers; and all these classes, thus introduced, are, in gains and habits, much above the mere labourer. And thus, so far as the growth of these employments goes, there is a constant opening for those who are no longer needed as labourers. When the proportion of mere labourers in a community diminishes, in consequence of improvements in the art of labour, it is not that any are extinguished or extruded; a portion, who, if

the state of the community had continued unchanged, would have been labourers, are elevated into something more. There is a constant current upwards, in a thriving society; and the multiplication of intermediate classes provides for the increasing distance between the highest and the lowest. The agricultural classes produce food for an increased number of persons in addition to themselves; and the multiplied occupations bring forward persons who receive their share with advantage to all.

955 We have evidence that in England the advance of which we here speak has gone very far, in comparison with most countries. In all other countries, the agricultural classes are the largest share of the population. In France, for instance, they are two-thirds of the whole. *Two* agriculturists support *one* non-agriculturist, besides themselves. But in England, the non-agricultural is twice the agricultural population. *Two* agriculturists support *four* non-agriculturists*. And these four receive their support, as members of some or other of the various trades and occupations which have gradually grown up, amid the increased activity and multiplied bearings of our industry.

956 I have spoken of the increase of the productive powers in *agricultural* labour, because that labour belongs to the earliest condition of mankind, and is always the most indispensable. But improvements may be made in other kinds of labour also, by which its powers may be increased, and at least for a time, a number of persons may be thrown out of work. And this is more likely to happen in manufactures than in agriculture; because improvements are always slowly and gradually introduced in agriculture, but in manufactures often suddenly and rapidly. But on the other hand, the desire for manufactured goods may be extended much further than the desire for food, which is confined within moderate limits; and therefore, it may often happen, that when a body of labourers have been at first thrown out of work, by some improvement in manufactures, which dispensed with their labour, they may have been again-absorbed by the manufactories, in order to provide for the increased sale of manufactures to which the diminished prices had given occasion.

957 But we can hardly venture to assert that the multiplication of trades, and the extended use of manufactures, taken together, will always provide an adequate employment and subsistence for the numbers thrown out of work by the improvements in agriculture and manufactures. And even if agriculture be

* Jones, *On Rent*, p. 230.

unprogressive, and manufactures of small amount, the numbers of the people may multiply so that it is difficult for them to procure subsistence. If this happen, under a Government in which the sense of Duty is not unfolded, or in one in which it is rejected, the people will be left to struggle with their needs for themselves; and the hard discipline of want or famine, will limit their increase, or dispose of the superfluous numbers.

958 It has been sometimes said, that when the number of the labouring population is too great, it is the consequence of their own improvidence; that they ought not to marry and produce children except they have a reasonable prospect of being able to support them; that they have the remedy in their own hands; since, by abstinence from marriage, they may limit their numbers, and reduce them to that amount for which the condition of society has need, and which it will willingly support.

959 But this, though sometimes said by very humane persons, appears to be contrary to all consistent humanity. To expect that the labouring classes shall, by general consent, take the course thus recommended, is to expect that they, the most ignorant and helpless class, shall act for the State; and shall act with more foresight, combination, and self-denial, than any State has even yet acted. And if it be merely meant that each poor man should, for himself, act thus; it may be true, that such Forecast is a Duty; but to this may be opposed in many or most cases, other Duties; the Duty of chastity and the Duty of promoting the happiness of those we love. For it can hardly be meant that a poor man shall never love. We may add, too, that when a man looks to little more than a subsistence for himself and his family, he may, under the influence of love and hope, frequently reckon upon so much when he does not find it; and often his destitution may come by some change which no forecast could have divined. But supposing there be a great number of unemployed poor who have neglected such duties as these; still the question recurs, What is the State to do respecting them? To say that they have neglected their Duty, besides being of no use in pointing out the remedy for the evil, has the fault of being a one-sided censure. For it is equally probable that their richer neighbours also have neglected *their* Duty; in not employing them for humanity's sake, as well as for the sake of gain; in not warning and superintending the poor; in not helping them at an earlier period; and the like. And both parties being thus to

blame, there appears a kind of cruelty in applying the censure to the party who are already suffering the consequences of their fault, in the bitterness of want and destitution, and with no power of deriving present relief from the course suggested to them.

960 To the question, What is the State to do in such a case? we reply, that if the number of the destitute be so great that they cannot be employed upon public works at home, as we have suggested, it appears to be well worth consideration whether a number of them might not be encouraged to emigrate to some foreign country, uninhabited or slightly cultivated, in which their labour might procure them an abundant subsistence. Such Colonies have, in all ages, been frequently established as a vent for the overflowing population of a State; and in most instances, with mutual benefits to the Mother Country and to the Colony. Such lands are easily found, and may be occupied for such purposes, with a just regard to the claims and interests of the original inhabitants.

961 But though the Emigration of labourers may thus be a highly beneficial resource, if there be a temporary superabundance of that class, and no vacant occupation for them at home; it appears very doubtful whether the State ought to reckon upon Emigration as an habitual resource against the evils of a too rapidly growing population. So far, indeed, as Emigration is the spontaneous act of individuals, it belongs to the habits of the people, and is taken into account by families, and heads of families, in forming their scheme of life. But an Emigration on a large scale, conducted by the State, and composed mainly of destitute persons, makes too abrupt a change in the community to be entirely wholesome, and must needs be an expensive mode of providing for the emigrants. For they must be supported, not only on the voyage, but till they can support themselves in the Colony. A policy more generally wise, appears to be, to facilitate as much as possible that rise of men from the lower to the higher classes of society by which the lowest are prevented from being too numerous; and to encourage that increased use of manufactures of all kinds, which, as we have said, is the most general resource against the temporary inconveniences arising from increased manufacturing power.

962 I have discussed the question of Poor-laws so far, with reference to able-bodied labourers, because if it be allowed to be the Duty of the State to make provision for them, it will hardly

be denied with regard to the aged and infirm. Yet even with regard to these, there are not wanting important considerations which may modify this Duty. It is desirable, as an exercise of prudence and forethought, that labourers, as well as others, should save, in the season of health and manhood something on which they may subsist in sickness and in age. It is desirable, as an exercise of family affection, that aged and infirm persons should be supported and nursed by their children and near relatives. If the State be too ready to take upon itself the burthen of aged and infirm persons, children may feel less responsible for the comfort of their aged parents; parents, for that of their sick children; and other members of families, in like manner, with respect to each other: and thus, the family affections may be chilled, and family claims disregarded. And this danger is so far worth attention, that if a parent, or child, or wife, or husband, of persons who have enough and to spare, apply for public charity, the State may properly reject the claim, and cast the applicant upon the care of his relatives; not relieving him except when his necessities have stamped his relatives with the disgrace of want of natural affection. And the lesson of the Duty of natural affection, and love of independence for our relatives as well as ourselves, which the State thus teaches, is to be extended as far as may be, even among the poorer classes. If, however, at last there remain aged and infirm persons not duly cared for by their relatives, they are proper objects of the care of the State.

963 We have been proceeding, all through the argument, upon the supposition that voluntary charity is insufficient to relieve the distress which exists: but in every community, the question may be asked, Is this so? Is legal provision for the poor necessary, because voluntary charity is insufficient? And it has been urged that the connexion may happen to be in the reverse order; that voluntary charity may be insufficient, because legal provision is established. For men, it is said, if they are compelled by law to contribute to the support of the poor, think their Duty towards them quite fulfilled; and will not exercise voluntary, as well as involuntary bounty; but if they be left to the workings of their own hearts, and to the influence of the distress which they witness among their neighbours, they will give kindly, the poor will receive gratefully, and the effects will be better than any which a compulsory provision, a Poor-law, could produce. And this real charity to neighbours, which is exercised in the absence of a Poor-law, will not be confined to the rich; even the poor will give to those who

are still poorer than themselves, and all ranks will be bound together by ties of kindness.

964 Whether the State provision for the poor shall or shall not freeze the spontaneous charity of individuals, as here asserted, will depend much upon whether those who are taxed, on this account, look upon the State as acting towards the poor *for* them, or for the poor *against* them. If the former be the case, which is what we have supposed; if the State be looked upon as executing the benevolent intentions of the citizens, and thus, as supplying the inevitable deficiencies which must occur in the practical working of the charity of private persons, however benevolent and however vigilant, there appears to be no reason to fear that the public stream will stop the private sources. We do not find that the State's taking into its hand the enforcement of Ownership or of Contracts weakens men's habits of Justice and Truth; except that in cases where the Government is hated, men are willing to defeat the administration of the Law. Where men look upon the Laws as conformable to Justice, they readily help to enforce them; and in cases which the Law does not reach, they are the more likely to act justly, on account of their having promoted the administration of justice by the Law. In like manner, if men look upon a Poor-law as humane, and approve it on that account; they are likely both to make the law effective for the purposes of humanity; and when the law falls short of the measure of their humanity, to supply its defects by their own voluntary acts. They are the Nation; the law is *their* law; it is one part of their dealings towards their poorer friends and fellow-citizens, but necessarily one part only.

965 The example of England appears to show that a legal provision for the poor does not extinguish the disposition to spontaneous charity. In this country, all lands and houses are taxed for the relief of the poor; and this tax may be considered as a condition of the tenure of property. And yet there is, perhaps, no country in which there is more spontaneous charity; especially if we include, in this expression, the relief of the poor in the various forms in which it is undertaken by Charitable Societies. These Associations are something intermediate, in their nature, between the State and an individual; and they show, that the humanity of Englishmen does, as we have intimated, look upon the relief given to the poor by the State, as insufficient; and seeks to supply the deficiency, by the aid of supplementary bodies. These Associations, again, do not supersede the Duty and the

necessity of individual charity. The charity of each person to his immediate neighbours is especially a Duty; for of their distresses, he sees something, and gives to them because he feels for them. Not only no act of the State, but no participation in Associations, can supersede this Duty, as a necessary part of our Moral Culture. We may add also, that it does not seem likely that individual charity, in addition to the operation of Societies, will ever cease to be needed, or will ever be less needed, in order to relieve the distress which prevails in various forms. The forms of misery multiply so fast, and the number of the distressed is so great, that charity is never entirely victorious in her struggle with them. Or rather, all the exertions which we make are quite insufficient to bring the distressed part of the people into a condition which our humanity can contemplate with any satisfaction. All that we do, serves to show us, among other things, this; that both the State and individuals must cultivate the Principle of Humanity within them to a far higher degree than they have yet done, in order that their moral condition may correspond to the actual condition of things, and in order that the continued moral and intellectual progress of the nation may be possible.

966 If we can see, even by the light of rational morality alone, the necessity of thus cultivating our Humanity by acts of kindness and bounty to the poor, this is still more strongly brought to our conviction when we take into our account Christian Morality. The teaching of Christ and his Apostles accepts all the precepts of this kind which prevailed among the Jews, and carries them further. Yet in the Jewish Law, bounty to the poor was largely enjoined. The Jews were forbidden to glean their vineyards, and commanded to leave something for the poor and the stranger (Lev. xix. 10). They were directed to lend to their poorer neighbours, even when likely to lose what they lent (Deut. xv. 9). And almsgiving was among them one of the most necessary practices of a good man. Christ exhorted his disciples to carry this practice still further (Matth. v. 42): *Give to him that asketh thee.* He himself was in the habit of giving money to the poor (John xiii. 29). The early Christian congregations made frequent contributions for the poor (Rom. xv. 26; Gal. ii. 10, &c.). And this was often urged as a duty in Apostolic injunctions. The Christians were recommended to lay aside something for this purpose on the first day of the week, according as God had prospered them (1 Cor. xvi. 2). And such a collection on the Lord's day has continued to be a very general practice of Christian congre-

gations, up to our own time. In England, indeed, it has been generally discontinued; perhaps in a great measure in consequence of the absolute right to relief which the laws gave to the poor. But there appears to be no reason why the Humanity of the State should supersede the Christian Charity of the Congregation. There is, as we have said, abundant room for the exercise of both. We have already seen (496, 508) how strongly benevolence to the poor is urged upon us as a part of Christian Morality.

967 There is another way in which the Laws of some States, and of England among the number, express the humanity of the humane citizens, and teach a lesson of that virtue to those that need it: namely, by forbidding cruelty to animals, and making it penal. This is a remarkable kind of Law, as being a very distinct instance of Laws dealing with manners, as evidence of vicious dispositions, where no Rights are violated. For animals can have no Rights. And if it be said that humane men have a Right not to be shocked by the sight of wanton cruelty, it may be said on the same ground that truth-loving men have a Right not to be shocked by wanton lying; and the like; which probably no one would assert as a ground of legislation.

CHAPTER XIII.

DUTIES OF THE STATE—PURITY.

968 THE Duties of the State connected with Purity are principally those which concern the Institution of Marriage, which is the foundation of the notion of Purity, so far as regards the Intercourse of the Sexes. The State takes the course which the Duty of Purity prescribes for it, when it establishes and sanctions the Marriage Union, punishes Offenses against it, makes it a source of Rights to the married Persons and to their children. But a regard for Purity imposes still other Duties on the State with respect to this Institution. It is the business of the State, aiming at moral purposes, not only to sanction Marriages such as belong to the manners of any stage of Society, but also to purify and elevate the conception of the Marriage Union itself. Marriage must be, for instance, a union of the married persons upon equal terms, so far as the conditions of the two sexes allow; with an identification of their interests, and an engagement of permanent and obligatory

community of life. The Law teaches this, by prohibiting Polygamy; and by denying the Rights of children to the offspring of mere Concubines.

969 The closeness of the jural and moral union between two married persons may still further be taught by the Law, in its provisions concerning *Divorce*, the release of married persons from the marriage tie. The entire union of interests, affections, and life, which forms the highest conception of marriage, is expressed in Law, by making marriages indissoluble, and prohibiting Divorce altogether. It may perhaps be said, that this is legislating upon a standard of Morality too high for any existing state of society. It may be said, that the man and the woman may, after marriage, find themselves mistaken with regard to the union of hearts, and harmony of dispositions, which they supposed. They may come to hate each other, as much as they ought to love. Can it answer the purposes of Marriage to prohibit such persons from separating?

970 It may perhaps be further urged, that to shape Laws by this scheme of teaching a pure morality, is visionary and mischievous: visionary, because it will not succeed; mischievous, because the law deprives some persons of Rights, or makes them miserable, in its attempts to teach others. It may be added, that the true way to legislate concerning Marriage, is to treat it as a Contract, which it is; to make such provisions as shall most promote the benefit of the Contracting Parties: and among others, what more obvious than this: that when both the Contracting Parties, who must know best, find the engagement a source of unhappiness, they shall be at liberty to dissolve it?

971 To this we reply, that if we take this Principle simply, that the union of the Sexes is a matter of Contract, and that the Contract may at any time be dissolved by the joint agreement of the parties, we must abolish the Laws against Polygamy, and place illegitimate and legitimate children upon the same footing. For this Principle leaves no distinction possible between Marriage and Concubinage. If *any* voluntary engagement of cohabitation, for *any* time, be Marriage, there is no need for *any* Law respecting Marriage. The Law, which requires an engagement of permanency, in order that the Marriage may have legal consequences, limits the freedom of such Contracts; and does so, in order that the Marriage Contract may be more nearly what it ought to be. Concubinage and Marriage are distinguished, in order that an entire union of two persons, for social and moral,

and not merely sensual purposes, may be honoured and practised. No union is acknowledged as Marriage, which does not profess to be for life. It has been said, that if men and women were left free to settle the terms of the Marriage Contract, they would, in most cases, be led to make it a Contract for life. The number of cases of Concubinage which occur show that this is true only in a very limited sense. But even if this were true, why does the Legislator reject the cases in which the parties do not wish this? If persons wish to make such a Contract for a limited time, why does he not sanction and enforce it? Why does he, on the contrary, make rules which stamp it with a character of degradation and disgrace? Manifestly, because he wishes to impress upon the citizens the great social and moral dignity of a complete union for life, and its superiority over a temporary or capricious cohabitation. Every Law, then, which establishes Marriage, must have for its object to teach what Marriage ought to be.

972 But Marriage ought to be, not only an engagement of mutual affection for life, but also a provision for rearing a family of children; and this is a further reason against allowing a Marriage, once made, to be dissolved. While the children are young, the continued union of the parents is necessary for the support, protection, and education of the woman and the children. And the necessary offices of mutual service among the members of the Family, cannot be effectually performed, except they arise, not from the terms of a Contract, but from the family affections: and such affections must want the very nature of love, if they can look forward to the time when they can terminate. The ties of Family and Society are not commonly looked upon as the Obligations of a Contract, which may be dissolved at the Will of the parties. The Law of Marriage would be at variance with the general feeling of mankind, if it so treated them. Men do not think those excusable who desert their children, or their parents, in their need, even if it had been previously agreed between the parties that they should be nothing to each other. And further: as we consider it a Duty, and even an Obligation, of the parents, to support and educate the children, it is also a Duty to give them that Family Education which the permanent union of the parents alone can give.

973 In order to show that the divorce of the parents would not deprive the children of necessary support, care, and connexion, it has been urged that marriages are constantly dissolved by the death of the parties, at all ages of the children; and that this

event does not prevent the proper education of the children. And undoubtedly, if the parents be separated, by whatever event, the children may still be brought up, and even excellently brought up. But among the beneficial influences which operate to form their hearts and moral principles, their regard towards their parents must have an important place. And it must make a very material difference in this regard, whether they have to look upon their parents as united by an affection which lasted through life, though one be now taken away: or as separated by a voluntary act, and perhaps living in wedlock with new spouses. If the Law were to lend its aid to the distribution of the children in such cases, as readily and as approvingly as to the arrangements of an unbroken family, it would present to us a Conception of Marriage much lower and less pure than that to which a moderate moral culture directs us.

974 It is said that an engagement to retain our affection through life is absurd, since we cannot command our affections; and that to bind two persons together, who have begun to hate, instead of love each other, is to inflict upon them an useless torment. But though we cannot command our affections, we can examine our hearts before we make the engagement: when this is faithfully done, married life itself, well conducted, tends to give permanency to affection; and nothing can more impress upon us the necessity of being faithful to our hearts in the choice we make, than the knowledge that the step, once taken, is taken for life. Again, this same knowledge, that the union cannot be dissolved, tends to control the impulses of caprice, ill-temper, and weariness, in married life; and to keep two people together, and on the whole, very tolerably happy, who might have separated on some transient provocation, if Divorce had been easily attainable. And thus, the exclusion of Divorce tends both ways to the promotion of conjugal love and conjugal happiness.

975 All that we have hitherto said, tends to this: not that, in any given state of society, Divorce should be absolutely prohibited, but that the highest Conception of Marriage is expressed by making Marriage indissoluble; that the duty of the State, which is, among other Duties, to establish such Laws as may maintain and elevate the Moral Culture of the citizens, requires the Lawgiver constantly to tend towards this Conception of Marriage, and this condition. Whether, at the existing point of the moral progress of this Country, the moral teaching of the Law is made most effectual by prohibiting Divorce in general, (allowing

it only as the consequence of adultery on one side, and then with great difficulty,) I shall not attempt to decide.

976 So far, we have considered the subject in the light in which it is presented to us by Rational Morality. If we now take into account Christian Morality, we find that in it the highest view which we can form of the entireness and permanence of the marriage union is confirmed. We have already noticed (527) the condemnation delivered by Jesus Christ against the practice of Divorce, as it then existed among the Jews. It has been most commonly understood, that these expressions contain a condemnation of Divorce under all circumstances, except in the case of adultery. But there have not been wanting those who have explained these passages otherwise. They allege that when it is said, *Those whom God hath joined together, let not man put asunder*, we are to recollect that God has not joined together those between whom there is a settled unfitness for the marriage union, though man may have done so. When it is said that Moses allowed Divorce to the Jews *for the hardness of their heart*, it cannot be meant that he allowed a sin which, according to the common interpretation, is equivalent to adultery. Divorce, they urge, was allowed for the hardness of men's hearts, as all law exists in consequence of the hardness of men's hearts, that is, in consequence of their tendency to do wrong. Divorce was given especially for the hardness of heart of those who abused the privilege at the time of our Saviour, for it was the means of their showing the hardness of their hearts. And when it is said, *Whosoever shall put away his wife, and marry another*, it is to be understood that these acts were part of the same design: such a design is undoubtedly adulterous. Such are the arguments for the less strict interpretation of this passage. But even with this interpretation, the leading point of Christ's teaching is plain; that the Christian was not to be content with such an imperfect view of the marriage union as was placed before the Jew, but was to aim at that higher view which was manifested, when in the beginning God made them male and female.

977 It may be said, the view we have been taking, that marriage is an entire and interminable union of the pair, would lead us to reject all second marriages; and that the law, in order to express the highest Conception of Marriage, ought to prohibit these. And undoubtedly, a very high view of the sacredness and entireness of the marriage union may easily lead to a disapprobation of second marriages; and among Christians, in every age,

there have been those who have condemned them. But yet, when the life of one of the parties is prolonged beyond that of the other, and when, after the sorrow of the separation has subsided into calm, the survivor sees before him or her, perhaps at an early age, and after a brief married life, an indefinite remainder of life; the same causes which impel persons to marriage at first, must often operate again with equal power, and supply the same reasons why there should be marriage. And the law, in sanctioning such marriages, divests the union of none of its entireness and permanence; for the engagement is still for life on both sides. When the act of God has dissolved the first engagement, the law does not make that which is past and gone, a fetter upon the present and future; but allows a new origin of conjugal life, making what remains of the person's life as if it were the whole; which, as to all engagements, it is.

978 Most States have, in some way or other, punished Adultery, at least on the part of the wife. Yet the Law of England, placing Rights as much as possible on the basis of property, gives the injured husband pecuniary damages from the adulterer; and leaves the public crime to the cognizance of the spiritual courts.

979 There is another subject, on which it is necessary to say a few words; namely, the degrees of relationship within which Marriage is to be permitted by Law. In framing a system of Morality, the Moralist is often compelled to dwell upon subjects from which, on other accounts, he would wish always to turn the thoughts of men away: Incest is one of these subjects. But it will suffice us to treat it in a very brief and general manner.

980 Without attempting to exhibit, in a more definite shape, the reasons and feelings which have made men look with horror upon any connexion of a conjugal nature, between the nearest family relatives; it may suffice to say, that all family relations make the man the natural Guardian of the woman's purity. This feeling of Guardianship on this subject, commonly infused into the affections, from their earliest origin, extinguishes the very seeds of desire, and leaves only *Fraternal Love*. On the other hand, when no such relation exists, desiring love may grow up; and in societies where men are free to choose their partners, there is a constant and universal feeling of courtship between the sexes, which tinges their manners towards each other. This feeling of courtship, in however many folds it may involve the spark of desire, is yet inconsistent with the chaste guardianship of *Fraternal Love*. Hence, the necessity of separating the cases in which per-

sons may not marry, because they are relatives, from those in which they may marry.

981 Where the separation line is to be drawn, in any given state of Society, is a question difficult of solution, and necessarily in some degree arbitrary. The rule may be different in different states of Society; for it must depend, in a great measure, upon the Structure of Families, and the kind of the early intercourse of their members with each other, and with other Families. Hence, although the primary family relations must always have the same consequences, more remote relationships may be subjected to different Rules of intermarriage in different countries; and one Country or Age is no absolute Rule for another: except only, that the long-continued past existence of a Rule, on this subject, is a very strong reason for retaining and observing the Rule; since the separation of the two classes of cases, so necessary to the purity of families, produces its effect by being familiar to men's minds.

982 Some persons have sought a ground for the prohibition of marriages between near relatives in physiological reasons, and in the supposed degeneracy of the offspring when such a practice is continued. But if this result were far more certain than it is, we could not consistently make it a ground of legislation, except we were also prepared to prohibit unions which are far more certainly the cause of physiological evil: as for instance, when there is a great disparity of years; or hereditary disease, or insanity, on either side.

983 A question of prohibited degrees of kindred, which has been much discussed, is this: Whether a man may marry his deceased wife's sister. On this we may observe, that though much argument on the subject has been drawn from the law of Moses, such argument is of no direct force; since, as we have said, one Nation is no Rule for another; and the habits of society, and the relations of families, on which the Rule ought to depend, were very different among the ancient Jews, and in our own country at present. So far as the Jewish law has been the basis of the Rule hitherto received, it has weight; since, as we have also said, an existing Rule is entitled to great respect. As to the grounds of decision belonging to our own state of Society, we have mainly to consider, whether, by marrying one sister, men in general are placed upon the footing of Fraternal Love with the other sisters; and whether it is requisite to the purity of this Fraternal Love (on both sides) that there should be no possibility

of its being succeeded by the love which courtship implies. On these two questions, different opinions will be entertained by different persons. To the first, the manners generally prevalent in this country seem to direct us to return an affirmative answer. Whether Fraternal, may, in the course of a life, alternate with Conjugal, Love, it is more difficult to say. In one order, at least, this appears not to be unusual; since it often happens that a person courts first one sister and then another: but this takes place before the conjugal relation is established: and perhaps tends rather to show that the fraternal condition ought to supersede all other affections.

984 On both sides of this question, arguments may be drawn from the probable consequences. On the one hand, if the brother-in-law is never allowed to become the husband, the sister of the deceased wife may, without incurring reproach, live with him as a brother, and may thus give to the children a mother's care. On the other hand, if the brother-in-law may become the husband, both he and the children may often find, in such a union, a valuable consolation and resource, after the loss of the mother. But the purity which is the object of such Rules, is in danger of some tarnish from the contemplation of consequences; and we shall not attempt to decide the question.

CHAPTER XIV.

DUTIES OF THE STATE—ORDER.

Of Punishments.

985 ALL Legislation in a State may be considered as resulting from the Duty of Order; for all Laws are means of Order. We have considered Laws, according to their purpose, as directed by Humanity, Justice, and the like; and we shall not attempt here to make a separate class of those which have Order more especially for their object. But we may consider, as particularly resulting from the Duty of Order, the Office of the State in giving reality to the Laws by Sanctions, that is, by Punishments. The Laws of each Community not only lay down certain Rules of Action, commands or prohibitions, for the members of the Com-

munity. They do more: they direct that certain *Punishments* shall be inflicted on those who transgress the Law; as Fine, Imprisonment, Bodily Pain, Mutilation, Infamy, Exile, Death. And the Community, by its officers, inflicts these Punishments. It is in this manner that the Laws become real Rules of action; and that in the minds of all men, Law-keeping and Law-breaking become objects which are sought and avoided with the same earnestness and care as the other objects of the most powerful desires and aversions of men. The Punishment which thus gives reality to the Law, is the *Sanction* of the Law.

986 The Laws command what is in the community deemed right, and hence, Punishments are inflicted upon actions which are deemed wrong: although all wrong actions are not necessarily punished by Law. We have already explained (361, 362) the relation between the National Law and the National Morality. The National Law expresses certain fixed and fundamental portions of the National Morality, but not the whole. Law deals with external and visible acts, such as affect men's Rights; Morality deals, besides, with acts which are right or wrong, though they do not affect Rights; and with internal springs of action. The Law must always be just; but there may be many things which are just, and which yet cannot be enforced by Law. The Law must prohibit only what is wrong, though it may not prohibit all that is morally wrong.

987 Since the Law should always be Just, Punishments should be inflicted only on what is morally wrong. It is sometimes said that the sole object of Punishment is the prevention of harm to the members of the community; but this is not the conception of Punishment. Punishment implies moral transgression. Crimes are violations of Law; but Crimes are universally understood to be offenses against Morality also. If, in enforcing any law, of which the sole object were the prevention of harm to the community, some individuals were subjected to pain, these individuals being morally blameless, the pain would not be conceived as Punishment; if the infliction were to take the character of Punishment, the proceeding would be considered as intolerable. When persons, afflicted with or suspected of contagious disorders, are put in constraint for the good of the community (as in Quarantine), this constraint is not called Punishment. A Law that such persons should be put to death, even though the health of the community might be so best secured, would be rejected by all men as monstrous. An object of Punishment is the prevention of

Crime; but it is the prevention of Crime *as Crime*, and not merely as Harm.

988 Thus though an object of Punishment is to prevent the classes of acts to which it is affixed, this does not fully express the object; the object is to prevent such acts, as being *wrong*. And the Laws which affix Punishments to Crimes, prevent them (so far as they do prevent them) by making men look upon them as wrong; or at least by making each man regard them as something which the community deems wrong, and will punish because it so deems. And thus, Punishments, while they have it for their object to prevent certain kinds of acts, aim to obtain this object by making men look upon these acts as wrong. The Object of Punishment, even when it threatens most roughly, is not merely to deter men, but to teach them; not merely to tell them that transgression of the Law is dangerous, but also that it is immoral. Punishment is a means of the Moral Education of the Citizens. We will trace some of the applications of this view.

989 In Laws respecting Wrongs, we see very evident traces of the moral teaching which the Law-giver, consciously or unconsciously, has had in view. Thus, with regard to Wrongs against the Person, one of the most ancient and general Rules is the *lex talionis*, retaliation; a degree of suffering and harm inflicted upon the wrong-doer, equal to that which he had himself occasioned. Such was the Mosaic Rule (Exod. xxi.), *Stripe for stripe, wound for wound, burning for burning, foot for foot, hand for hand, tooth for tooth, eye for eye, life for life*: and still earlier (Gen. ix. 6), *Whoso sheddeth man's blood, by man shall his blood be shed*. Such an Ordinance, by making man feel that which he inflicts, plainly tends to teach him that all men are bound together as partakers of a common nature, and are required to act with a recollection of this community. Such is the mode in which children are still often taught, so as to have unfolded in them the feeling of humanity, both towards other children, and towards animals. And thus, in the earliest measure of punishment, we see a disposition to proportion it to the degree of guilt, as measured by the violence done to the common nature of all men.

990 But it may be said, that the maxims of punishment admitted in later times deviate from this view, and are regulated by the principle that the object of punishment is simply the prevention of crime, and not the moral education of the people. And as examples of such maxims, may be adduced such as these: that Crimes are to be punished with greater severity in proportion

to the difficulty and necessity of preventing them ; or the facility of perpetrating them ; or their being committed by combinations of men. These circumstances, it is said, do not increase the guilt ; and yet, in the common judgment of Legislators, they have been made to increase the Punishment.

991 But there is, in this judgment of Legislators, nothing at variance with the doctrine, that the purpose of punishment is the Moral Education of the people ; and that it ought to be regulated by this purpose. For such circumstances as we have mentioned, if they do not increase the guilt of the transgression, at least augment the need which men have of the lesson which the Law gives, and interpose difficulties in the way of making the lesson impressive. If stealing privately in a shop, or stealing from a bleaching ground, or any other offense, can be committed with special facility, those who are placed in temptation require to be taught the criminal character of the act with special emphasis ; which the Law can do only by annexing to it a severer punishment. And on the other hand, if the crime, though one of great moral depravity, be one which is easily provided against, the Law may express its condemnation by a lighter penalty than would otherwise be necessary. Thus a Breach of Confidence, though it must be looked upon as more guilty than a Fraud where no trust has been reposed, is visited with a smaller punishment. * And this is quite consistent with the character of the Law as a Moral Teacher. The forbearance of the Law in punishing Breach of Trust, is a significant lesson to the Trustor ; inculcating the circumspection, care, and precaution, with which he ought to select and control the depository of his confidence. And accordingly, when the trust is unavoidable, the punishment is not limited by this double bearing of the lesson ; as in the case of a theft committed by a servant in the shop or dwelling-house of his master* ; for there it is in vain to preach to the Master a vigilance which could not be effectually exercised.

992 In like manner with regard to crimes committed by Combinations of men, there are strong reasons why the Law should teach the criminality of such acts with a more emphatic voice, that is, by a heavier punishment. For this lesson has to contend against strong influences on the other side ; the countenance and encouragement, perhaps it may be, the confidence and enthusiasm, which men engaged in a criminal act derive from their combination. A solitary criminal must feel as if he had all the world

* Paley, vi. 9. *Crimes and Punishments.*

against him ; but a band of conspirators are a public to one another ; and the voice of this public, overbearing or misleading that of the conscience, requires to be itself overpowered by the voice of the Law, teaching with the authority of the whole community. Hence, conspiracies and combinations to do illegal acts, are very properly punished with greater severity than the like acts done by individuals.

993 In order that the Moral Teaching of the Law may be effectual, it must be in a great measure in harmony with the general opinion of the members of the community. An attempt to throw the strong condemnation of the community upon an act by an extreme punishment, when the community do not sympathize with the severity, will make the criminals objects of pity, and alienate men's minds from the Law. But this is not to be understood, as if the Law could produce no effect, in exciting, or keeping up, a greater horror of certain crimes, than would prevail if the law were relaxed. If the law be not very strongly at variance with the moral judgments of individuals, there are many citizens who, looking upon the law as being, in general, the support and expression of morality, will have their sentiments, with regard to special crimes, drawn towards an agreement with the law ; and will look upon such crimes with especial abhorrence, so long as they are the objects of extreme punishment. In such cases, the relaxation of the punishment may diminish the prevalent abhorrence of the act. Thus, it is possible that the removal of the punishment of death from the crime of incendiarism may make the common people look upon such acts as less atrocious than heretofore. The recklessness and malignity of the crime made men continue to sympathize with the extreme of punishment in this case, so long as the law awarded it ; but the mitigation of the punishment may possibly weaken the feeling.

994 The law of retaliation, which we have mentioned as the oldest measure of punishment, is one to which men's feelings still very generally assent. That punishment of death should be inflicted upon murderers, shocks few persons, compared with those who are shocked at the infliction of death in most other cases. Yet Capital Punishment has often been assigned to crimes of mere fraud, as forging bank-notes, coining money, and the like. It may be asked, whether this is consistent with the Principles we have laid down. Without pretending to justify any particular law, we may reply, that laws of this kind teach, and are intended to teach, a very important lesson ; namely, the value and dignity of that

established order and mutual confidence under which alone coined and paper currency can circulate. With the prevalence of such order and such mutual confidence, a nation may be populous, and its inhabitants may live in peace, ease, and comfort. Without such order and confidence, the land must be full of violence and mistrust; the inhabitants few, and comparatively wretched. He who destroys the order and confidence of society, may be considered as destroying those lives, which if such crimes as his had been common, could never have existed. The Law of ancient times treats the Coiner as guilty of treason against the Sovereign; but the Law, at any time, may treat the coiner and the forger of money as a traitor against the Sovereign Rule of Mutual Confidence, which is, to a prosperous and wealthy Nation, the breath of life.

995 This Lesson, however, applies only to the State currency; which necessarily circulates rapidly, and is taken and given with slight examination. Private bills are to be protected on other principles. And even with regard to State currency, if it can by any means be made impossible, or difficult, to forge or coin imitations of it, it is the business of the State to employ such means, rather than, by means of extreme punishments, to claim, for the existing form of the currency, an importance which does not really belong to it.

996 We may observe, further, that as the consideration of the high value and dignity of the established order of society, and of the security, confidence, and tranquillity which result from it, may justify the Law in asserting the claims of such order in the strong language of capital punishments, if it cannot be made intelligible in any other; so this part of the Law, no less than any other, requires the assent of a good citizen; and, in his proper place, has a moral claim to his co-operation.

997 It may be that sometimes the long duration of an orderly and tranquil state of society, and the comparatively rare occurrence of capital punishments, may lead men to forget that a disorderly and violent state of society is possible, and that the danger of it is kept off, only by the existence, that is by the enforcement, of laws. This forgetfulness, and the repugnance to the thought of the death and pain of any one, which a life spent in tranquil society commonly produces, may lead men to think with dislike of the punishment of death, and of other severe bodily punishments. But if this dislike operate so as to make citizens neglect, or violate, their duty of co-operating to enforce the Law,

the result will be the growth of crime, and the recurrence of a disordered and violent condition of society. Judge, Jury, Prosecutor, Witnesses, are alike bound by this Duty; and alike chargeable with the consequences of its neglect.

998 The degree of co-operation which the State has required of its citizens in the enforcement of criminal Law, has been different at different times. Among the ancient Jews, capital punishment, death by stoning, was inflicted by the hands of the assembled people themselves. In modern Europe, and in the world in general, the infliction of death, or mutilation, for great crimes, has usually taken place in public; and has been regarded with sympathy, or at least with acquiescing awe, as a natural act of justice, necessary to the safety of good citizens. The freedom and diversity of opinions which have prevailed on political matters in England, have rendered men less generally ready to sympathize with acts of the State against individuals; and thus, the sympathy for necessary justice has, in many persons, grown dull, while a sympathy for the individual is lively. But this disproportionate progress of sympathy, for the good and the bad members of society, may easily go to such an extent as to be a defect in our national moral culture. The humanity is a partial and perverted kind, which is drawn to the side of the criminal by the necessary consequence of criminality.

999 The prevalent detestation of criminals has been, in most states, one of the holding points of the general avoidance of crime; and consequently, one of the means of a general moral culture. Some punishments so far take this prevalent feeling for granted, as to make it the instrument of punishment; as when the criminal is declared *infamous*; or when he is put in the *Pillory*, which is infamy added to bodily pain. These punishments are, undoubtedly, very unequal in the weight with which they fall upon different persons, according to the public opinion respecting the person; and this is a defect in such punishments. But it does not appear that orderly society can subsist without assuming, in a great measure, that agreement between public opinion and judicial proceedings which such punishments assume. If acts, which are great crimes by the law, cease to be infamous, or to shock men's minds, the law ought to be altered: if for no other reason, yet for this; that the evils attending the frequency of such acts, being really felt, may excite general anger against such crimes and such criminals, and thus bring men's feelings into harmony with the law which condemns them. If the law, as a means of moral dis-

cipline, lose its hold upon men, from being too rigorous, it may regain its hold by being relaxed : but it is to be recollected that the hold thus gained consists in the suffering, alarm, and indignation which crime produces.

1000 Many attempts have been made to render punishment a moral Discipline, not only for society in general, but also for the criminal himself ; to reform him, while we punish. And so far as this is compatible with the reality of punishment it is a Duty to aim at such an object ; not only as a matter of humanity towards the individual, but also as a step in the moral improvement of the community : for the persons who are punished by imprisonment, or otherwise, are, after a longer or shorter time, liberated ; and these form a part, and in populous States, not a small or unimportant part, of those whose collective moral character is the moral character of the community. How the reformation of criminals is to be aimed at, whether by solitary confinement, by making the prisoner's subsistence or comfort depend upon his industry, or in what other way, is a question, rather of Prison Discipline than of Morality.

1001 The punishments besides death and bodily suffering, as Fine, Imprisonment, Exile, Deportation to a convict colony, and the like, differ much in the severity with which they fall upon different persons, according to their previous circumstances, and the circumstances of the community. Through the feeling of the repugnance which the infliction of death excites in bystanders, many persons have been led to think that capital punishments ought to be abolished altogether. If other punishments could come to assume such a character as to give to men's Rights their reality, capital punishments might cease. But such an increase in the efficacy of lower punishments,—exile, imprisonment, and the like,—must depend, in a great measure, upon the value of those benefits of social life from which the exile and the prisoner are excluded. If the general lot of man in society could be made so delightful, that it would be comparative misery to lose it, Banishment or Imprisonment for offenders might suffice to keep up such a condition. But then, it is to be recollected, that one requisite for our advancing towards a state of society so generally satisfactory, is the establishment of Moral Rules as realities ; and to this, at present, there appears to be no way, except by making Ignominious Death the climax of our scale of Punishments.

1002 We have said that there are two kinds of Laws, Laws against Wrongs and Laws against Vice. What we have hitherto

said respecting Punishments, applies mainly to the former kind. The general Principle which we have laid down respecting Punishment in such cases, namely, that it is to be regarded as an Instrument of Moral Education, is still more evident with regard to Punishments appointed for acts, which, though vicious, violate no man's Right. Such are Laws against Cruelty to animals; as we have said (967); Laws against Indecency and Profligacy; against Profaneness and Blasphemy; and the like. Punishments assigned to such Offenses, evidently have it for their purpose to mark the judgment of the State as to what is right, and what is wrong; and to call upon the citizens to agree in this judgment. Such laws are intended, not to protect the Rights, but to mould the Manners of the citizens: not so much to prevent the acts which the Laws forbid, as to foster in the community a disposition the opposite of that which such acts betray. The State forbids cruelty to animals, because it approves, and would cherish, the feeling of humanity. It puts down indecency and profligacy, as far as a regard for freedom will allow it to do so, because it respects, and would diffuse, chastity and purity. It condemns profaneness and blasphemy, because it reverences God, and would lead all its members to share in this reverence. Such Laws are manifestly Moral Lessons. The State, in promulgating such ordinances, plainly comes forward in the character of a Teacher of the Citizens.

1003 But yet, this office of teaching must needs be very imperfectly discharged, if the means which the State can employ for this purpose are only those which we have mentioned. Punishments, when viewed as Instruments of the Moral Education of the citizens, may have a significance which they cannot have under any other point of view; but still, they are Instruments which can carry the work but a little way. We must have something different from the Axè, the Scourge, the Chain, the Branding Iron, in order to raise the minds of men to any elevated standard of morals. The use that is made of them, may show that Moral Education is a Duty which the State acknowledges, and must needs acknowledge; but we must look in another quarter for the only effectual means by which this Duty can be performed.

CHAPTER XV.

DUTIES OF THE STATE—EDUCATION.

1004 Two main questions may be proposed on the subject now brought before us: Is it the *Right* of the State to educate the People? and, Is it the *Duty* of the State to educate the People?

We reply to the first question, that the State has certainly a Right to educate the People, at least so far as is requisite to one of the objects at which every State must aim, its own preservation. Such a Right is involved in the State Obligation of Self-Preservation, of which we have spoken. The State cannot continue to subsist as a State, except there be in the minds of the People, a certain degree of reverence for Law in general, and for the existing Laws in particular. The infliction of punishment requires in some cases (as in the case of ignominious punishments) the sympathy of the people: in all cases, their acquiescence. The State cannot give to its punishments that force which the maintenance of the existing order requires, except it can diffuse among the People a moral education in some degree corresponding with the Laws. For this end, therefore, the State must have a Right to control, in some degree, the education of the People; at least so far as to suppress all education which teaches them disobedience of the laws, and produces a hatred of the institutions under which they live. Again; the State must necessarily have a Right (781) of requiring, from its citizens, Oaths of Testimony, Oaths of Office, and the like, as means of securing a general coincidence between men's legal Obligations and their Duties. But oaths cannot produce their effect, if men's minds be not religiously educated: the State must therefore desire the religious education of its citizens: and must have a Right to require that they be religiously educated, at least so far as to feel the force of an Oath. Again, the State, in prohibiting offenses against Person and Property, aims, and has a Right to aim (791), at producing not only quiet, but security. It seeks not only to prevent battery and robbery, which prevention may, in particular cases, be effected by mere force: but also, to make men feel secure that they shall not be beaten or robbed: which can only be done by making the citizens in general peaceable and honest, instead of being pugnacious and rapacious. The State must therefore have a Right of educating the People, or of control-

ling their education, so that the general Principles of Morality (160), which inculcate such virtues as peacefulness, honesty, and the like, shall be diffused among them. And thus it is the Right of the State—a Right arising out of the Duty of Self-preservation, and of the protection of Person and Property,—to direct or control the education of its citizens, at least so far as is requisite to diffuse among the people a respect for the property and personal Rights of their neighbours, a reverence for the obligation of an oath, and a general deference for Law and for the actual Laws.

1005 But the State has not only a Right to direct and control education so far as this, and on this ground of its Lower Duties, of Self-preservation, and of the Protection of Person and Property. The State has also Higher Duties, as we have already shown in general (933, &c.), and as we have found to be universally recognized by nations in their Laws. For instance, the character of the Laws concerning Marriage in all nations implies that the State must not only aim at the continuance and bodily comfort of its population, but also at the encouragement of chastity and domestic virtue (968, &c.). The care for the destitute and wretched shown in the Laws of many States (943, &c.), shows that the State acknowledges in itself the Duty of Humanity, and naturally implies that the State desires to promote this virtue among its citizens. And thus the actual Laws of nations in general show that the State universally aims at something higher than the protection of Person and Property; and this higher object may fitly be described as the Moral Education of the People.

1006 There are obvious reasons why states should thus recognize as a Duty the general moral and intellectual culture of their citizens. The moral and intellectual culture of men, (including in this, as we cannot avoid doing, their religious culture also,) is the highest object at which men can aim; and one which they cannot be content to neglect, or to have neglected. They require to have their moral, intellectual and religious sympathies gratified, as well as to have their persons and properties protected. And many modes of conducting this culture, and gratifying these sympathies, are such as naturally draw men into associations which exercise a great sway over their actions. In some respects, the convictions and feelings which bind together such associations, may be said to exercise the *supreme* sway over men's actions: for, as far as men do act, their actions are, in the long run, determined by their conviction of what is right on moral and religious grounds: and a government which they hold to be wrong

on such grounds, must tend to be destroyed, so far as its subjects are free to act. And though men may for a long time be subjugated by a government which they think contrary to morality and religion, a society, in which this is the general condition of the subjects, cannot be considered as one in which the State attains its objects. The State, the supreme authority, must, in a sound polity, have on its side the convictions and feelings which exercise the supreme sway. It must therefore have, on its side, the convictions and feelings which tend to bind men into associations for moral, intellectual, and religious purposes. If this be not so, the State has objects in which it fails, and which are higher than those in which it succeeds: and a portion of the sovereignty passes, from it, into the hands of those who wield the authority of Moral, Intellectual, and Religious Associations. It must, then, be an object of the State, so to direct the education of its subjects that men's moral, intellectual, and religious convictions may be on its side; and that Moral, Intellectual, and Religious Associations may be duly subordinate to its sovereignty. See (798).

1007 But further, the State has a moral character, which is represented by the moral character of the governors of the state (806), with certain limitations and conditions (807). The Governors of the State will aim at the Moral and Intellectual Progress of the People. It is their Duty to do this, as acting for the State; and thus to promote the moral and intellectual progress of the people is a Duty of the State, inasmuch as the State is represented by the Governors.

1008 The Moral and Intellectual Education of men is closely connected with their Religious Education; and it does not appear that any Education from which Religion is excluded, will answer either the lower or the higher ends of Education as we have described them. For the convictions of men as to right and wrong, duty and virtue, almost universally derive their support and their efficacy from their convictions respecting the Will of God and the Rewards and Punishments inflicted by Him. And even matters which may be regarded as having an interest for the intellect only, inevitably lead men to higher questions which have a religious interest. Thus the study of the material world leads to questions respecting the way in which the world was created and is directed; which are to most minds more interesting than any questions of physical detail. The study of human history leads to questions respecting the providential history of the world,

which also are of higher interest than any mere narration, and which are religious rather than historical questions. And thus it does not appear that Education can be either complete or satisfactory, if it exclude religion.

1009 It is not easy to separate Education into two parts of which one shall be intellectual merely, or, as we may term it, *secular*, and the other, religious. Nor, if this were possible, is it likely that a merely secular education would answer the ends which the State must have in view. An education of the People which should exclude Religion, and the traditionary influence of Religion upon other studies, would not produce the beneficial effect upon the character and spirit of the nation which are commonly expected as the effects of education. If history and poetry, natural history and natural philosophy, have always been considered as important parts of education, they have been so considered because these studies have hitherto been pursued by almost all the masters of them in a moral and religious spirit; so that all the knowledge and thought which the pursuit of them brought in the learner's way co-operated with the influence of morality and religion. Even reading and writing, as branches of education, have been considered mainly valuable because they bring the learner into communication with the knowledge and the thoughts which belong to man's moral and religious nature. If this were to cease to be the case, if morality and religion were to be excluded from educational studies, the studies would be no fit education for moral creatures. And as we have already said (1008), it does not appear to be easy to teach morality, with any degree of efficacy or coherence, without combining it with religion.

1010 But on the other hand, this introduction of religion, as an element of education, leads to serious difficulties in carrying into effect the education of the people. For the religious culture of each person is a matter with which the State, of itself, cannot fitly interfere, as we have said (798). And moreover there may be, and in many nations are, different Religious Bodies in the people, which cannot easily, or cannot at all, conduct their religious education in common. And thus the State, and the Governors who, acting for the State, have to aim at the moral, intellectual, and religious education of the people, have to choose among very important alternatives. Shall they promote a moral, intellectual, and religious education, founded on the principles which they themselves deem to be true? Shall they endeavour to

separate the moral and intellectual elements of education from its religious portion; and promote the former portion in the whole of the population, leaving each religious body to provide for the religious culture of its members? or shall they promote a distinct education, moral, intellectual, and religious, within the limits of each religious body? For we have already endeavoured to prove that they neglect both the Safety and the Duty of the State, if they do not in some manner or other provide for, or promote, the general education of the people.

1011 We shall not attempt to answer in a general manner these questions; for it does not appear that they admit of any general answers. They involve, in each case, historical elements on which the answer must essentially depend. The mode in which each nation ought to pursue its moral, intellectual, and religious culture, depends upon the *History of the Nation*; and must in each case be determined by the past and present condition of the Nation.

1012 Further: the mode in which each nation ought to pursue its moral, intellectual, and religious culture, depends upon the History of Religion, as well as upon the History of the Nation. The History of Religion, (at least, since the coming of Jesus Christ upon the earth, and among Christian nations; and in a wider sense, even beyond these limits;) is the *History of the Christian Church*. And thus the solution of the principal questions which arise concerning the Duty of the State as to the moral, intellectual, and religious education of the people, are to be determined with reference to the History of the Church. And we are necessarily led to speak of the Relation of the State to the Church, which will be the subject of the next Chapter.

1013 Before we conclude the present Chapter, however, we may observe that the moral and religious culture of men, both as it stands among the aims and duties of the State, and among the functions of the Church, includes the teaching of moral and religious truths to men and women, as well as to children. It includes not only the education of the young, but also the instruction of the adult: preaching as well as teaching, and whatever is, in its effects, equivalent to preaching; that is, all discussion, exposition and admonition relative to the great questions of Morality and Religion:—as the grounds and limits of right and wrong, of Duty and of Virtue;—the Rewards and Punishments of well and ill doing;—the providential government of the world;—the work of its creation and preservation. All such teach-

ing affects men's moral character, and consequently, is a matter of interest to the State: all such teaching has to speak of the Laws and Government of God, and consequently, is a matter of religious truth. And thus, the State and the Religious Teachers of the nation necessarily come into contact, and require to have their Relation determined, not only as regards 'the business of education strictly so called; but also so far as regards moral and religious teaching in the widest sense; whether it proceed from the pulpit or the press, the chair of the professor, or the cell of the solitary writer. In Christian nations, however, the Teachers and Ministers of the Christian Church deserve, on every account, a more special and prominent consideration than any other set of Teachers, as being by much the most important, both on account of their influence in the nation, and in virtue of the history of the Church to which they belong.

CHAPTER XVI.

DUTIES OF THE STATE—THE CHURCH.

1014 As we have seen, it is the Right and the Duty of the State to aim at the Moral, Intellectual, and Religious Culture of the People: and as we have also seen, this Duty brings the State into contact with the Religious Teachers of the Nation. It must be determined what is to be the relation between Governors and Legislators on the one hand, and Religious Teachers and Ministers on the other.

But this question must, as we have said, be in all cases examined with reference to the history, both social and religious, of the nation of which we have to speak; and instead of propounding any general doctrines on this subject, we shall consider some of the ways in which the relation of the Religious Teachers of a nation to its Political Governors has been determined in the course of human history.

1015 In the earlier ages of the ancient world, the province of the Legislator and of the Religious Teacher, were conceived as identical. The Legislator was himself the Religious Teacher, or had the Religious Teachers associated with him so that their authority was combined. There was, in such cases, an identification

or fusion of Law with Religion. The Precepts of Religion were enforced by State Punishments; the Laws were supported by Religious Sanctions. In such cases, both the Right and the Duty of the State to educate the nation were assumed in the largest and most absolute sense; and were asserted, both speculatively and practically: as for instance, in the imaginary Republic of Plato, and in the actual Legislation of Lycurgus. In these cases, the education of the young is supposed to be conducted by means of Masters whom the State appoints, and of Rewards and Punishments which it assigns. And the individual citizens are supposed to be led to control all the natural human impulses, in obedience to the Laws, so as to be ready to lay down their lives when the State requires them to do so; which supposition was realized in fact by the Spartans on various occasions. In such cases the nation is educated by the State in a most effective and marked manner. Men's characters are modified and their wills are moulded into a conformity with the general purposes and will of the State. And so long as such a system can be practically maintained, the State secures both its own preservation, and the continuation of that model of human character which has been chosen as the best in the original scheme of the Polity.

1016 But such a state of things, though it might be suitable to the condition of man when his moral and intellectual nature was as yet very imperfectly developed, was after a time found to be intolerable and untenable. In Greece and in Rome the minds of men could not be restrained from pursuing their own speculations concerning the nature of the gods, and from coming to conclusions different from the belief which the legislator had enjoined: and though punishments were inflicted on this account, as in the case of Socrates, such occurrences only made the pressure of the evil more intolerable: while the diseased condition of the State, arising out of the discrepancy between the belief publicly professed and that privately entertained, went on increasing. Moreover the harshness of a polity which took no account of the kindlier sentiments of our nature, became more and more oppressive, as the ideas of benevolence and of justice in its largest sense, were unfolded among men. And when, in addition to these causes of dissolution of such a polity, the Christian religion came upon earth, teaching with convincing evidence the true relation of God to man, and representing kindness and love as the bonds by which men were mainly to be bound together, not merely law and necessity; men accepted Christianity as an internal government more truly

corresponding to their wants and their feelings, than the merely external government to which they had previously been subject.

1017 The internal government exercised by religion over the Christians did not immediately come into conflict with the external government of the State; for the precepts of Christianity taught men to obey the existing authorities:—to pay tribute: to submit themselves to every ordinance of man: to render unto Cæsar the things which are Cæsar's (see (541)). But still, in proportion as Christianity became more extensively diffused among the subjects of the Roman empire, the incongruities which flowed from the existence of two governments, the ecclesiastical and the civil, with no acknowledged and definite relation between them, became more and more unsufferable. For the Christians were, by their religion, associated into an organized body. They had their own governors and officers; and their own administration for purposes of justice and order. They had already, from the first, been enjoined (for instance by St Paul, 1 Cor. vi. 7) not to appeal to the tribunals of the State in support of their rights. They habitually raised among themselves sums of money, which they distributed among themselves, for the support of their ministers and worship, and for the relief of their poor. They had been allowed to acquire property in lands and buildings, for instance, their churches. The Christian body possessed the power of inflicting a most heavy punishment upon those members who grossly transgressed its Laws, for it could, by Excommunication, exclude them from Christian privileges and hopes. These influences had, in the time of Constantine, made the Christian organization of the Roman state much more real and effective than its traditionary political organization; and it appears allowable to say that the only mode in which health and vigour could then be given to the civil government, was by recognizing, as Constantine did, the authority of the Ecclesiastical Government. The Christian religion was recognized as the national religion of the Roman Empire: the office and dignity of the Clergy were acknowledged; they were excused from several burthens which were imposed on other citizens; Ecclesiastical Jurisdiction was ratified; Assemblies for the purposes of Ecclesiastical Government were authorized; the property of ecclesiastical bodies was secured; religious sanctions were thrown round the most solemn of political occasions; the times and places of Christian Worship were protected by law from interruption; the advice and assistance of eminent Christian Ministers was sought in civil matters. By these steps, the Christian Church was made the

*Established Church in the Roman Empire** (principally by the Edict of Milan, A. D. 313).

1018 We are now considering the reasons which the State may have to establish the Church; and it appears, as we conceive, that in this instance, such establishment was the only mode of preserving the State from dissolution: and that this was so appears further from the entire failure of the attempt of Julian to re-establish Paganism, although, in the very attempt, we have the recognition of the necessity, then felt, of an Established Religion. But the Church was established by Constantine, not only as a useful Institution, but as the true Church. Constantine himself became a Christian: and even if we were to doubt the sincerity of Constantine's piety, which there appears no good reason to do, yet still the grounds of the necessity and advantage of the establishment of the Christian Church in his time, lay in the Christian belief of the greater part of the persons by whom the State was administered and governed. It was because it was in their eyes the true Church, that its establishment gave security and health to the State.

1019 The establishment of the Christian Church as the true Church, and as a necessary and prominent element in all Polity, alleviated many of the evils which accompanied the decline and fall of the Roman Empire, and led to advantages which have been transmitted into every Christian Nation. The substitution of authorities and systems of administration which men revered, and with which they sympathized, for mere external compulsion, gave

* "During nearly three centuries, the Christian Society was latently forming in the center and as it were in the heart of the Civil Society of the Roman Empire. From an early period it was a real Society, possessing its governors, its laws, its revenues, its expenses. The organization, at first perfect, free and founded altogether upon voluntary and moral ties, was nevertheless stringent. It was at that time the only association which provided its members with the joys which belong to the interior life of man; and which possessed in the ideas and sentiments on which it rested anything which could occupy vigorous minds, employ lively imaginations, in short satisfy those needs of man's intellectual and moral being, which neither oppression nor misery can completely extinguish. The inhabitant of a *municipium*, when he became a Christian, ceased to belong to his city, and entered into the Christian Society of which the

Bishop was the head. In that Society were thenceforth his thoughts and his affections, his masters and his brethren. To the wants of this new association were devoted, if need was, both his fortune and his personal exertions. Into that Society in short his whole moral existence was in a manner transferred.

"When such a transposition has taken place in the moral order of a nation, it cannot be long in finding its consummation in the material order of things. The conversion of Constantine declared publicly the triumph of the Christian Society, and accelerated the progress of this triumph." Guizot, *Essais sur l'Hist. de France*, p. 19.

I have quoted this to show how completely the establishment of Christianity in the Roman Empire exemplifies the views stated in the last Chapter, art. 1006.

a new life to Society. The ecclesiastical organization of nations, into Dioceses and Parishes, tended both to disseminate moral and religious teaching, and to uphold social order. The Church was desirous to have religious Teachers, Places of Worship, Schools, diffused over the land. The whole of the People in the land, now made Christians, were recognized by the Church as belonging to her; and she wished to extend her ministrations to all. This was aimed at by dividing the land into small districts, and providing for the Christian instruction of each. The Christian ordinance which appropriated the first day of the week to religious worship and religious instruction was supported by the Law. All the great events of life, Birth, Marriage, and Death, were invested with religious ordinances. Men, bound together by local ties with which Christian feelings were connected, were moved to do good to their brethren as Christian teaching enjoins. They bestowed their wealth in providing present and future relief for the sick and needy, and in the maintenance of Christian ministers and Christian worship among them and their successors. The tenth part of the produce of the land was assigned to ecclesiastical uses*. These appropriations of property to religious uses may be looked upon as a measure by which a certain portion of the wealth of the country was saved from the grasp of mere private caprice and selfishness: for though such property might often be applied to its professed uses in an imperfect manner, and under the operation of mixed motives; still, it was necessarily better bestowed than wealth which was held under no condition or limitation. Ecclesiastical property has undoubtedly, in the course of the history of Christian Nations, been employed in promoting benevolence, piety, learning and merit, in a far greater degree than any other kind of property. The possessions of the Clergy, held on the condition of the holders being learned, pious, and benevolent, and commonly bestowed upon them, in a great degree in reference to their ability, have been of far greater value in advancing the moral and intellectual progress of society, than any other portion of the wealth of nations. The cases in which the possessions of the Clergy have failed to produce these effects, have occurred where clerical property has been corruptly used; namely, dealt with as if it were private property:—a sufficient evidence how much more beneficial is the operation of the former than of the latter kind of property.

1020 By the establishment of the Christian Church as a

* This was confirmed by a Statute of Charlemagne for the Empire. Tithes were established for England by a Law of Ethelwolf, A.D. 855.

part of the Polity of the Empire, the Clergy had naturally authority as well as maintenance assigned to them. The arbitration of the Bishops was ratified and enforced by positive laws; the Clergy were endowed with privileges in the courts of law and exemption from civil offices. It was natural that great weight should be attributed to the advice and judgment of the more eminent Clergy in all matters; and the counsel of Bishops was sought in the conduct of public affairs. And in the course of time the holders of ecclesiastical property became powerful and important members of the State in virtue of their property, as well as of their character. For a long period, the establishment of the Church and the power of the Clergy led to the sway of moral and religious principles of a better and higher kind than were recognized by mere secular rulers. And the union of all the elements of the religious organization, as members of the *Catholic* or universal *Church*, gave to that organization a strength which enabled it to resist and counteract the destructive and degrading influences which prevailed in the breaking up of the Roman Empire.

1021 But the growing consciousness of this strength led gradually to the assertion of an *Ecclesiastical Supremacy* or *Spiritual Domination*; a form of Polity which thus grew out of the Polity of an Established Church. According to this Polity, the Christian Church has, here upon earth, a Sovereign Head to which the Sovereign of the State is subordinate. The pretended Head of the Church claimed this authority upon religious grounds, as Vicar of Christ: a claim which was afterwards justly rejected by the most enlightened nations as a baseless usurpation. But for several centuries attempts were made to realize this large and lofty idea of a Universal Christian Church with a visible Sovereign established in it, having all the States of the Christian World for its members. "In this Polity, national and political distinctions were wholly lost sight of. The Vicar of Christ and his General Council knew nothing of England and France, of Germany or of Spain: they made *Laws for Christendom*—a magnificent word and well expressing those high and consistent notions of unity on which the Church of Rome based its system*."

1022 But whenever attempts were made to establish this system of Spiritual Domination in nations of energetic character, already swayed by their political Governors, these attempts led to fierce conflicts between the Ecclesiastical and Civil Power; and the Ecclesiastical Supremacy was nowhere completely established.

* Dr Arnold.

The Sovereigns of every Nation in Europe succeeded in possessing themselves, practically at least, of the greater part of the temporal Authority which the Popes, in the day of the full manifestation of their system, claimed as belonging to the Head of the Church; such as the Appointment of Bishops, the Control of Ecclesiastical Revenues, the Authority of Supreme Judge, and the like. No nation was completely subjected to the Ecclesiastical Supremacy. Those Nations which recognize the Pope as the Head of the Church on earth, have still, in various degrees, asserted the Liberties of their own Church; and thus, made it a National Church.

1023 But yet, in the degree in which Spiritual Domination was exercised, we see how little fit men are to be entrusted with Authority of such a character. The Dignitaries of the Church, thus placed upon a footing of equal negociation, or rivalry, with Statesmen, by no means carried into action that better Morality in which we might expect religious men to excel politicians. In their political acts, they were, like other statesmen, selfish, ambitious, false, violent. Indeed it might seem as if the absence of superior control, which belongs to unquestioned Ecclesiastical Sovereigns, tended to make men rather bad than good. Some of the most flagrantly wicked characters which history presents to our view, are the Church Dignitaries, and especially the Popes, just before the Protestant Reformation. It was made apparent that the notion of a Christian world, governed in a Christian spirit, by an Ecclesiastical Body, under an Earthly Head, is one which, from the habitual conduct of men, must always be a mere dream.

1024 The resistance which was made to the claims of the Papal Power, led in various countries in Europe to the rejection of that authority altogether. The nation, in those cases, claimed for itself the right of establishing a *National Church*:—a member, in some sense or other, of the universal Church of Christ, but independent of the Pope or any other pretended visible earthly Head of that Church. But the establishment of such Churches involved also a rejection of alleged abuses in doctrine and in discipline which had arisen during the prevalence of the Papal Power. The national Churches thus established were also *Reformed Churches*. In effecting such Reformations, it is plain that the governors of the nation assert for the nation, and for themselves as acting on the part of the nation, the Right and the Duty of judging what is true in Religion, and what is false. The authority of the Romish Church was rejected in the reformed nations of Europe, not only because the Pope's Power was an usurpation, and a political evil,

but because the Romish Doctrines were corrupt and erroneous. In such a reformation, the Church established in the nation might retain its organization, and become a member of the universal Church of Christ more truly than it was before, by rejecting unchristian errors and corruptions. An *established* Church, thus *reformed*, and not destroyed in its reformation, may be looked upon as a peculiar boon of Providence: this is the form of Ecclesiastical Polity which we possess in England.

1025 But though a Reformation of the national Church does not deny, but assumes, the Right and Duty of the nation to judge of religious truth; it may nevertheless happen that the indirect influence of such a Reformation may make it difficult to exercise this Right and Duty. For the very energy and freedom of mind which lead to the rejection of a system of Spiritual Domination, lead also to further differences of opinion within the nation itself. Thus the aim and plan of the *Reformation*, which established the Church of England, was to reject, both the Polity of Ecclesiastical Supremacy, and the various doctrinal Corruptions and Errors, which the Church of later times taught, along with that Polity. The Church of England retained Liturgies, and an organized Church Government by Bishops. But other Reformers, the Presbyterians, rejected Bishops; others, the Independents, rejected Church Government; and both, for the most part, rejected Liturgies. These Sects, however, did not professedly differ in essential points from the ancient Belief of the Christian Church, and are termed in England *Orthodox Dissenters*. Other Sects have arisen, rejecting more and more of the ancient belief.

1026 The existence of the Sects which thus arose in the various countries of Europe introduced difficulties into the administration of an Established Church in each nation. At first the duty of national religion was universally acknowledged; and the only questions agitated were what the national Faith should be, what its boundaries, and how to be secured. The existence of a great body of Dissenters from the national Church, made the nationality of the Church imperfect. To avoid this evil, it was urged that the Faith and Worship of the Established Church ought to be made as comprehensive as was consistent with a due regard for Christian Truth. At the Restoration of Charles the Second, attempts were made to modify the constitution of the Church of England so that it should include the greater part of the Orthodox Dissenters. If these attempts had succeeded, perhaps for a time the Church might have been more completely

national than it became by the exclusion of such Dissenters; but probably this course would have been attended with great dissensions within the Church itself.

1027 The Polity of an Established National Church was cast in such a form that Dissenters were' at first punished as such. This kind of Polity was in England (in 1688) soon succeeded by one in which Toleration was granted to Dissenters, including liberty of worship under certain conditions; but the exclusion of Dissenters from many offices in the State was continued, as a protection to the Church of England. This exclusion has now in a great measure been abolished; yet still the Church of England, by the possession of most of the property, dignities, and functions, which have in former times belonged to the Established Church, continues to be preserved as the Established Church.

1028 In some other countries in Europe, and in America, the Difficulties attendant upon the maintenance of an Established National Church, among a people divided by various religious opinions, and possessing free institutions, have led to forms of Ecclesiastical Polity in which there is no Established Church which can be called National. In some of these forms of Polity, all the principal prevalent forms of religion are recognized by the State, and receive pecuniary support from the State, as in France. In other cases, no form of religion receives such support, as in the United States of North America.

1029 In all such forms of Polity, the greater part of the advantages which we have noted as belonging to the Polity of an Established Church are forfeited; but as we have said, the question regarding the Ecclesiastical Polity of each country depends upon the history of that country: and it may easily be that in these cases, the Polity which has been selected has been determined by sufficient, or at least by weighty historical reasons.

1030 We may remark, however, that the establishment of either of these forms of Ecclesiastical Polity;—the System of Indifferent Protection, which supports the ministers of several religious sects, or the Voluntary System, which supports none, leaving them to be maintained by the spontaneous contributions of their own flocks,—does not appear necessarily to remove the difficulties and contentions which arise from the existence of an Established Church in a nation containing a large body of Dissenters. In the former system, the Clergy, though paid by the State, do not necessarily use their authority to uphold the Government. The Clergy of the principal sect may think the Govern-

ment irreligious, and unworthy of their support, precisely because it does not recognize any distinction of true and false among rival religions. And their influence, in the business of Education, which is precisely that which ought to make their existence useful and valuable to the State, may really be used so as to be dangerous and subversive. And if any attempt be made to avert this danger, by making the support which they receive dependent upon their fidelity to the Government, the consequence will naturally be that they will lose the confidence of their flocks, and with this, their power and their value.

1031 Again, as to the Voluntary System of providing for religious ministrations and religious Education;—if it were introduced so as to supersede an Established Church, it would be likely to lead to some of the difficulties just stated. Those who had considered the Established Church as one of the greatest national blessings, would necessarily have their regard for the Constitution much weakened, when the nation no longer pretended to give a preference to true religion over false. They would consider that by such a step, the nation had repudiated its higher duties. And such an opinion, prevailing extensively among the People, could not fail to shake the security of the State and endanger the permanence of its institutions.

1032 If indeed we imagine to ourselves a nation where there prevails a strong feeling of pride in the national history, and of confidence in the national institutions;—the course of the history having been such as to dissociate these patriotic feelings from all ecclesiastical establishments; and where there prevails also a strong religious feeling among individuals: the Voluntary System may in such a case be quite reconcileable with the permanence of the political constitution and the stability of the Government*.

Yet even in such a case there must, it would seem, be serious defects in the religious condition of the country:—for instance, a necessity on the part of the clergy, of courting the favour and adopting the prejudices of their flocks, on whom they depend for their maintenance: and the absence of all provision of religious ministrations and religious instruction for those who do not make such provision for themselves. And this want is no small social evil, since they who need religion most are they who are unconscious of their need; and if there be a large body of the people who, from poverty, or from whatever cause, remain without reli-

* This, there seems good reason to hope, is the condition of the United States of North America.

gion, and therefore, as we have said (1008), without effectual moral instruction, they cannot fail to be dangerous to social order. And if it be said that these classes will be provided with religious instruction by their neighbours, who have Christian zeal, and more abundant means; and who, perceiving and compassionating their needs, will teach them and establish teachers among them:—we may remark that such a system, so far as it tends to completeness and permanence, and has its established order sanctioned and secured by law, becomes of the nature of an Established Church. It was by such steps as these that the Christian Church was originally established among the nations of Europe.

We have hitherto considered the question of an Ecclesiastical Polity as it concerns the State:—as it is determined by considerations drawn from the Duty of the State to aim at its own permanence and at the moral and religious culture of its citizens. But there are also questions concerning the Duty of the Church, as determined by the precepts of its Founders and Teachers, and these we must briefly consider.

CHAPTER XVII.

DUTIES OF THE CHURCH AS TO ITS RELATION TO THE STATE.

1033 WE have seen that the State had originally strong reasons for establishing the Christian Church; and that still, where an Established Church exists it must be looked upon as one of the greatest of national blessings. We have seen that the State has grounds for offering to the Church many temporal benefits, in order that the Church may co-operate with the State, both in its lower and in its higher objects.

1034 But here the question occurs, Whether the Church can properly *accept* these offers? The Church must direct her conduct by the commands of Christ and his Apostles, and by the Spirit of their teaching. And there are texts which express, or seem to imply, directions to the Christian Minister, not to mix himself with the business of the State. His concern is with men's Souls, not with their bodies or worldly condition. Christ says, *My kingdom is not of this world.* He commands his disciples,

when they go forth to preach his Gospel (Matth. x. 9; Mark vi. 8; Luke ix. 3), *To provide neither gold, nor silver, nor brass, nor scrip, nor two coats.* He warns them against taking authority upon themselves (Matth. xx. 25; Mark x. 42), *Ye know that the princes of the Gentiles exercise dominion over them, and they that are great exercise authority upon them; but it shall not be so among you.* So Matth. xxiii. 10, *Be not ye called masters.* And the general tendency of the teaching of Christ and of the Apostles is, to inculcate, both an indifference to human riches and possessions, and a humility, which shrinks from human honours and political power. It may therefore seem to be inconsistent with the Christian temper of the Church, to accept such offers, of maintenance and authority, as we have shown reason for the State making to her.

1035 But we may remark, in the first place, that the injunctions, to disregard earthly possessions and earthly honours, are given, not to Christian ministers, in particular, but to Christians in general. We have already (506) considered the importance of these warnings against covetousness; but we have shown (509) that these warnings do not prohibit, and did not in the first ages prevent, distinction of property, and differences of wealth among the Christians. Nor did they prevent property being held in a permanent form. The injunction to take *no thought for the morrow*, was always understood of such thought as might interfere with religious care about spiritual things. There is no religious reason why Christians, and the Clergy as well as the rest, should not possess property on which they may depend for their subsistence and power of action, while they devote their time and labour to their own spiritual progress, and to the teaching and assisting of others.

1036 That the Christian Teachers ought to be supported by their flocks, was a rule which prevailed from the earliest times of the Church. St Paul says expressly (1 Cor. ix. 14), *The Lord hath ordained that they which preach the Gospel should live of the Gospel;* and he then quotes Christ's expression, used when the Apostles were sent forth (Luke x. 7), *The Labourer is worthy of his hire.* He further urges, as proof of the reasonableness of this Rule, both the ordinances of the Mosaic Law, and the general practice of mankind; according to which, the soldier, the wine-grower, the grazier, live by their respective employments. This he urges, entirely for the sake of establishing the Rule; for, as he says, here and elsewhere, he rejects the benefit of it in his own case

(1 Cor. ix. 7 and 15 ; 2 Cor. xi. 9 ; Gal. vi. 6 ; 2 Thess. iii. 9 ; Acts xx. 33).

In the earliest times of Christianity, the Ministers received their maintenance from the Hospitality of the Christians, dispersed through all parts of the Empire : but when the Empire itself became Christian, Churches and religious bodies were invested with the right of holding property. And it has been shown that such a maintenance of the Clergy in the form of permanent property, free from the uncertainty and distraction of casual contribution, is opposed to no dictate of religion : if offered by the State, it may be accepted by the Church.

1037 In the next place, as to Dignity and Power conferred upon the Christian Clergy, it is evident that the injunctions above referred to, containing warnings against ambition and rivalry among Christians, do not apply to cases in which the Christian Minister is requested by his Christian brethren to exercise authority in worldly matters, in virtue of the confidence they have in his ministerial character, and in authority exercised according to Christian principles. St Paul rebukes the Corinthians (1 Cor. vi. 1), while they were but a small part of the Community, for going to law before unbelievers. If, then, he had lived in a Community altogether Christian, it may be inferred, that he would have invested Christians as such with judicial powers, in the name of the State. The Bishops and Presbyters were Judges and Legislators for Christians then ; why should they be less so now, when all persons profess Christianity ? If the State, on the part of the Christian Community, offer, to the Bishops and Presbyters, such dignity and authority as may make them valuable helpers in the business of the State, there appears to be no ground, nor valid excuse, for their rejecting the offer ; especially when it also tends so much to forward that religious Duty, of bringing men to the knowledge of Christ, which is the highest object of their lives.

1038 With regard to such passages as have been referred to, where Christ says that his kingdom is not of this world, and warns his disciples against exercising authority ; it is plain, from the context, that these expressions were employed to correct erroneous views of the nature of his kingdom, and of the office of his Apostles and Disciples. When he told Pilate that his kingdom was not of this world, it was in order to disclaim his being a king, in that sense of rivalry to the Roman imperial authority, which would have made him criminal in Pilate's eyes. Accordingly, Pilate, after hearing this declaration, said (John xix. 4), *I find no fault in him.*

And the other warning is explained by the occasion on which it was given. When, on his way to Jerusalem, the disciples had had their worldly ambition enflamed, by misunderstanding what he had said (Matth. xix. 23), that they should *sit upon twelve thrones, judging the twelve tribes of Israel*. By this error, the mother of James and John had been impelled to ask (Matth. xx. 21), that they should sit *one on his right hand, and the other on his left, in his kingdom*. And he then uttered the injunction above quoted, in order to quell these ambitious thoughts; adding, *Whosoever will be great among you, let him be your minister; and whosoever will be chief among you, let him be your servant: even as the Son of man came not to be ministered unto, but to minister**. But this injunction would not answer the end thus pointed out, if the Church were so to apply it as to permit her Officers and Governors to minister only in those offices of the State, in which their services would be least valuable. Bishops and Presbyters minister to the good of Society, more by acting as Legislators, and as the Guides of their Parishes, in Civil, as well as Religious good works, than they would do as simple citizens: for, as we have seen, without such a union of offices, the State cannot pursue its highest objects. If the Church were thus to repulse the Offers of Honour and Office made to her by the State, as being a State of Christian men who believe that she is the true Church, and that, without true Religion, there can be no true benefit to man, or any blessing from God; she would sin against the command, to do good to all men, especially to those who are of the household of faith. With regard to temporal honours and riches, she must know both how to be abased, and how to abound; how to be full, and how to suffer need (Phil. iv. 12). And if, in the course of Providence, she has to labour in conjunction with the State, for the moral and religious advancement of men, the duty of Christian humility does not exclude official authority. Christ himself, while he offers himself as an exemplary reproof of unmeet assumption of superiority, was rightly called *Lord and Master* (John xiii. 13; Matth. xxiii. 3).

* See the corresponding passage Luke xxii. 25, *The Kings of the Gentiles exercise lordship over them; and they that exercise authority upon them are called benefactors. But ye shall not be so. But he that is greatest among you, let him be as the younger: and he that is chief, as he that doth serve. I am among you as he that serveth*. It seems strange that this passage should be quoted as of great weight against the recognition of the Church by

the State. We might understand its being supposed to forbid Christians to exercise any civil authority; or again, to exercise any ecclesiastical authority. But if it be allowed that one Christian may be a governor in the State, and another a director in the Church, what there is in the above or any similar passage to forbid the former officer recognizing, in its due sphere, the authority of the latter, it is very difficult to see.

And St Paul, notwithstanding such injunctions, gives various directions to the Churches, and to his disciples, Timothy and Titus; which imply that he expected to be obeyed. And (2 Cor. x. 4, &c.) he speaks strongly of the authority, which he might find it necessary to exercise at Corinth. *The weapons of our warfare are not carnal, but mighty through God to the pulling down of strong holds. And though I should boast somewhat of our authority which the Lord hath given us for your edification, I should not be ashamed.* The kind of authority which a Christian Teacher might claim, in the earliest times, he may accept, when offered by the State, on the part of a Christian community, in all later times.

1039 Thus the Church allows her Ministers, and her Governors, to be invested with authority in the State, in virtue of that very injunction to humility which has been quoted: *Whosoever will be great among you, let him minister.* The Church, in accepting this lot, is not forgetting the declaration of Christ, that His kingdom is not of this world; but fulfilling the prophecy, that the kingdoms of this world shall become the kingdom of God and of his Christ.

1040 We have spoken of this system of Ecclesiastical Supremacy (1021) in which the Bishop of Rome claimed authority over the whole Christian world as being the Vicar of Christ: and of the political objections to which it was found to be liable. But this Supremacy was asserted not only on historical, but on religious grounds: it was not only asserted that such Rights had been ceded to the Pope by Temporal Sovereigns, but that they were inherent in his office by Divine Authority. It was asserted that it is the duty of all Christian nations to acknowledge the Bishop of Rome as their Ecclesiastical Head.

The Supremacy, or Primacy, which has been claimed for the Bishop of Rome has been grounded on this argument; First: To St Peter was given by Christ a Primacy, or Supremacy of official dignity and power in the Church, beyond the other Apostles: Second; this Primacy was an Office designed to be permanent in the Church: Third; the Bishop of Rome is St Peter's Successor in this Office.

1041 But every step of this argument fails. We do not find in the New Testament any Primacy ascribed to St Peter. Christ gave his promises of future guidance and help, alike to all the Apostles. The power of the keys which was given to St Peter (Matth. xvi. 19), was given to the other apostles also (Matth. xviii. 18). The declaration (Matth. xvi. 18), *Thou art Peter, and upon*

this rock I will build my church; and the gates of hell shall not prevail against it; cannot be understood as if Christ's indestructible Church were to be built upon one particular person different from himself. According to the views of Commentators, ancient as well as modern, and the manifest bearing of the context, the expression *this rock* (ἐπὶ ταύτῃ τῇ πέτρᾳ not *this Peter*, Πέτρῳ) includes a reference, not so much to Peter's person, as to his declaration, just then made (ver. 16), *Thou art the Christ, the Son of the living God*. Even many of those among the ancient Christian writers, who apply to St Peter especially the terms, *Thou art the rock*, and, *I will give unto thee the keys of the kingdom of heaven*, interpret it of St Peter's opening the preaching of Christ after the resurrection (Acts ii. 22), and extending his preaching to the Gentiles. The narrative, Matth. xx. 25; Mark x. 42, gives an account of the earnest warning which Christ gave to the Apostles, when two of them, John and James, sought a superiority over the rest. In the history of the Apostles, we find no primacy ascribed to Peter. St James, not St Peter, spoke in the name of the assembled Apostles at Jerusalem. St Paul withstood Peter at Antioch, and declares that he was to be blamed (Gal. ii. 11). And in his enumeration of the offices in the Church, he says (1 Cor. xii. 28), *God hath set, first, Apostles, not, first, St Peter*.

There is another passage, by which the claim of St Peter's primacy is sometimes supported; namely, when Christ says to him (John xxi. 13), *Simon, son of Jonas, lovest thou me?...Feed my lambs...feed my sheep*. But here, evidently, Jesus Christ is not conferring a power upon Peter, but giving an admonition. St Peter himself uses the expression in the same way (1 Pet. v. 2), *Feed the flock of God which is among you*. He also, in the same place, implies a condemnation of assumed superiority: *Not as being lords over God's heritage*.

1042 The second assertion, that the primacy given to St Peter was intended to continue in the Church in after ages, is generally supported by urging that such a primacy is necessary, to preserve the Unity of doctrine and discipline, in the Church. But we must reject altogether the arguments of a theorist who imagines to himself a constitution of the Christian Church which he conceives to be necessary to its completeness, and on this ground asserts that such a constitution has always existed. We cannot assert any thing to be necessary to the constitution of the Christian Church which Christ and his Apostles have not declared to be necessary. Nor does it appear that the primacy of the Bishop of

Rome is fitted to secure, or has secured, the unity of doctrine and discipline in the Christian Church.

1043 The third assertion; that the Bishop of Rome is the successor of St Peter in the office of Head of the Church; is contrary to the early history of the Church. The Bishop of Rome was always recognized as the successor of St Peter in his bishoprick: but the claim of a legislative and judicial power over other bishops and their sees, was never allowed till a much later period; and was never generally allowed, even in those churches which agreed in doctrine with the Church of Rome. The Gallican Church, for instance, always strenuously denied the absolute authority of the Bishop of Rome as head of the Church.

1044 It is very natural for Christians to desire to see on earth a visible and organized embodiment of the Universal Church of Christ;—that body of Believers, united to Christ as their Head, to which are promised, as we have said (484), unity, perpetual existence, and the possession of Religious Truth through the guidance of the Holy Spirit: to which also is committed the office (609) of constantly labouring to make all men truly Christians. And the defenders of the Romish Church represent their Church as this Universal Church; having the Pope, guided on some occasions by a General Council of Bishops, for its earthly Head: and having Ecclesiastical Governors and Ministers, of various degrees and offices, acting in a regular subordination, in every Christian Country. But the experience of all history shows that, as we have already said, men are not sufficiently pure and spiritual to be entrusted with a *Supernational* Authority. The Papacy, at an early period, usurped temporal power: and ever since, there has been a struggle between the Ecclesiastical and the Political Authority, in every country into which the Romish Church has found admission. The struggle has, in different ages, turned upon various points, and been carried on by various means; but it has never ceased. The Pope has claimed and exercised, at various times, the Right of deposing sovereigns, of absolving subjects from their allegiance, of excluding whole nations from a participation in the Ordinances and Privileges of the Christian Church, of sole Jurisdiction over all ecclesiastical persons, and the like. Such claims, if allowed by States, would render the whole population of Christendom subjects of the Pope, in temporal as well as spiritual matters. By the very Idea of the Catholic Church, these claims, if they were ever Rights of the Church, must be so still; and may be revived, if a favourable occasion should ever arrive. But in

more recent times, the struggle between the Papacy and the National Government has turned upon other matters, as the appointment of Bishops, and their power in the State : but especially upon the question of Education. As we have said (1030), if the Church be protected only, its influence may be subversive of the State. The Romish Church, wherever it is protected, must, by its principles, seek to rule or guide the State. It is the necessary and perpetual rival of the National Government. It does not appear that any position of equilibrium can be found, in which the Romish Church and the National Government are balanced. It does not appear that the Rights of the National Church, considered as a branch of the Roman Catholic Church, can ever be so defined as to produce a tolerable measure of tranquillity. The whole history of Europe, especially from the time of Pope Gregory the Seventh, is, for the most part, the history of the War between the States of Europe and the Papacy. In England this war never ceased to agitate and torment the land, till the time of the Reformation. Perhaps in Countries where the Government is despotic, there may be a treaty of alliance between the Roman Catholic Church and the Despotic State, by which, expressed or understood, the subjects may be retained in tranquillity ; but this must be a tranquillity which excludes all Political Freedom and all Moral and Religious Progress. Where there is a movement party, its dangers and evils may be greatly augmented by its combination with a Romish Party in the same Country (888).

1045 The experience and apprehension of the national evils belonging to the Romish System of Ecclesiastical Polity, joined with a conviction of its religious errors, led many nations in Europe to cast off its yoke, and to establish National Churches. These National Churches are members of the Universal Church of Christ ; but, for the most part, they have no established extranational relations and ties ; except so far as religious sympathy may be deemed to be such. They have no extranational earthly Head ; if they have a visible Head, it is the Head of the Nation, the Sovereign. For since the Religious cannot be made superior to the Political Authority, the Political Authority must be superior to the Religious, in matters in which the Ultimate Authority comes into play. In such National Established Churches, the Ecclesiastical Authorities, as they are upheld by the State, derive their Authority in some measure from the State ; this derivation not interfering with the Spiritual Authority which they have as ministers of the Church of Christ ; and which they derive from

Christ's Commission through the channel of the Spiritual Authorities of the Church. (Matth. xi. ; Mark iii. 13 ; Luke vi. 12. And again, after the Resurrection, Matth. xxviii. 16 ; Mark xvi. 15 ; Luke xxiv. 44 ; John xx. 22.)

1046 A National Church affords' a position of equilibrium for the Relations of Church and State, in proportion as it is fully and completely established. If the Polity of an Established Church be imperfectly carried out, then there arise great difficulties; especially on the question of Education. These difficulties may draw the Polity nearer and nearer to the Polity of mere indifferent Protection of the Church. But this latter Polity, as we have already said, has its own difficulties and evils, which are, in most cases, greater than those of an Established Church.

1047 By the views which we have explained in the present and the preceding Chapter, we are led to the conviction that the Polity of an Established Church, the intermediate position between the System of an equal Protection of religious truth and falsehood, which can never satisfy a religious nation; and the System of Spiritual Domination, which is inconsistent with national tranquillity and freedom, is the position in which, if the course of history have happily led to it, national safety, national morality, and national progress may most reasonably be hoped for.

BOOK VI.

INTERNATIONAL JUS.

RIGHTS AND OBLIGATIONS BETWEEN
STATES.

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CHAPTER I.

INTERNATIONAL LAW.

1048 WE have already spoken of States as Moral Agents, and have treated of their Rights, their Obligations, and their Duties. We have hitherto spoken of these, only so far as they belong to the relation between each State and its own members. But States have also relations towards each other. States are Nations, acting through an organized Government; and Nations, as well as Individuals, may commit acts of violence, make agreements of mutual advantage, possess property with its appendages, and the like. In such actions, there must be a difference of right and wrong: Morality must apply to the dealings of Nations with each other; and before quitting the subject, we shall treat briefly of that branch of Morality.

1049 In the Morality of Nations, as of individuals, Duties must depend upon Rights and Obligations; and Rights and Obligations cannot exist without being defined.

The Rights and Obligations of individuals are defined by actually existing Laws: they have their form and limits, in each State, given them by the National Law; but their general conditions are the subject of an especial branch of Morality which we have

termed *Jus*. The Rights and Obligations of Nations must also be defined by actually existing Laws. The body of Law which gives them their form and limits is *International Law*. But, inasmuch as there exists no single definite seat of authority, from which such International Law can be promulgated, in the way in which the National Law is promulgated by the National Government; the Rights and Obligations of Nations are determined, in a great degree, by a consideration of their general conditions; that is, by *International Jus*. And hence, we give, to this part of our subject, rather the latter name, *Jus*, implying 'a Doctrine' of International Rights and Obligations according to their nature, than the more usual name, of International *Law*, which appears to imply a Code of such Law, already established by adequate Authority.

1050 But it may be asked; If no Code of International Law exists, how can International Rights and Obligations exist? and how can the Morality which assumes their existence be real? since we have already shown that Rights cannot actually exist without being defined, and cannot be defined except by Law. To this we reply, that though there is no Code of International Law, promulgated by any single Authority, there are many Rules, Maxims, and Principles, which have been, at various times, and on various occasions, delivered by various authorities; and which, being accepted and sanctioned by the assent of Nations in general, do compose, in some degree, a body of International Law. It may be added, that in so far as this body of Law is loose and imperfect, Rights and Obligations are also loose and imperfect, and the grounds of International Morality shake under us. It may be added further, that the body of International Law, in the course of the jural and moral progress of Nations, constantly becomes more and more exact, more and more complete; and that, along with this improvement and extension of International Law, International Morality becomes more and more firm on its basis. Nations have the power of pushing onwards their moral and intellectual progress in this direction, no less than in others.

1051 International Law is sometimes called *The Law of Nations*: meaning, by this phrase, the Law *between* Nations. But this phrase may create confusion, from its resemblance to the phrase *Jus Gentium*, which is used by the Roman Lawyers, to denote, not International Law, but Positive or Instituted Law, so far as it is common to all Nations. When the Romans spoke of

International Law, they termed it *Jus Feciale*, the Law of Herald's, or International Envoys.

1052 The *Jus Gentium*, the Instituted Law common to all Nations, is sometimes put in opposition to *Jus Naturæ*, the Law of Nature, a Law which it was conceived might be deduced from necessary Principles. Thus Grotius* asserts that *jure naturæ*, subjects are not bound by, nor responsible for, the acts of the Sovereign, but that *jure gentium*, they are. But from what has been said already, we see that this distinction cannot be maintained. For, as we have said, no *Jus*, no doctrine concerning Rights and Obligations, can exist without Definitions of Rights and Obligations; and such definitions must be given by historical fact, and not, by mere reasoning from ideas, as the conception of a *Jus Naturæ* assumes. And as this general reasoning shows that there can be no force in distinctions like the one just quoted, so we can easily show the distinction is untenable in the special instance. The reason which Grotius assigns for the distinction is this: *Mero naturæ jure, ex facto alieno nemo tenetur nisi qui bonorum successor sit*: "By the Law of nature, no man is bound by another's act, except he have the succession to his goods." To this argument we reply, that children are bound by the acts of a parent, not in consequence of any special expectation of succeeding to his goods, but in virtue of the general tie of the Family; and that subjects are, in like manner, bound by the acts of the Sovereign, in virtue of the general tie of the State. The State is a bond which unites men *Jure Naturæ*, in the same sense in which the Family does. Man, considered as a moral agent, can no more divest himself of the bonds of social, than of domestic society. The assumption of a State of Nature in which family ties, and their bearing on property, exist, while political ties do not exist, is altogether arbitrary. We see this arbitrary character strongly marked in the argument of Grotius. To say that, by the Law of Nature, the succession of children to the goods of the parent is recognized, but the authority of the sovereign is not recognized, is to assume a Law of Nature at variance with the most general Laws of Nations: for all Nations have enforced the latter Rule, but many have rejected, or limited and modified, the former.

1053 But though we are thus led to reject the *Jus Naturæ*, as a source of Rights separate from, and opposed to, the *Jus Gentium*; we are not to lose sight of the truths which Jurists have endeavoured to express by this separation and opposition.

* *De Jure Belli et Pacis*, III. 2, 1.

And these truths are of two classes. In some of the contrasts of this kind, the Law of Nations stands above the Law of Nature, as being a source of more full and definite Rights. Such is the case in the instance just noticed: for there, the bond that unites the Sovereign and the Subject is spoken of as something added by the Law of Nations, to Rights and Obligations which man has by the Law of Nature. And the truth here involved is, that however imperfect political society may be, we can conceive man to exist in a State in which political ties are still weaker, and yet not quite to lose his moral nature. If, hypothetically, we take away the mutual relations of the State and its subjects, we can still conceive the relations of Family to remain; and even Property to exist: although, in truth, on this hypothesis, Property can exist only, in so far as the Family takes the place of the State.

1054 But in another class of such contrasts, the Law of Nature stands above the Law of Nations; as being a source of a higher morality than may be exemplified by any given rude state of Law. Thus we may say, that, among the ancients, by the Law of Nations, the inhabitants of a conquered country became slaves; but that there is a Law of Nature, the bond of a common humanity, which abrogates this cruel Law. And the general truth involved in such assertions is, that the Law of Nations, whatever, at any particular time, it may be, may always be made more just and humane; and ought to be made more just and humane, in order to correspond to man's moral nature. As in the former contrast, it was implied, that the Law of Nations is never so bad as to divest man of his moral nature; so here it is implied, that the Law of Nations is never so good as fully to satisfy man's moral nature.

1055 The Law of Nations, including, in this, International Law, is subject to the conditions of which we have already spoken as belonging to the Law of any one Nation. It is capable (361) of Progressive Standards: it is fixed for a given time, and obligatory while it is fixed; but it must acknowledge the Authority of Morality (365), and must, in order to conform to the moral nature of man, become constantly more and more moral. The progress of International Law in this respect, is more slow and irregular than that of a well-guided National Law; and this circumstance, as well as the feebler and more mixed character of the authority of International Law, may sometimes make the influence of Moral principles more obscure in this than in other departments of Morality. Yet a brief survey of *International Jus*, in the form in

which it is presented by some of the most generally esteemed writers on the subject, will show that it is, in fact, an important part of Morality, and depends mainly upon the Principles which we have already established.

1056 We have said that International Law, in its rudest form, involves a recognition of the moral nature of man. To illustrate this, we may remark, that in the rudest form of International Law, we have a distinction of the States of *War* and *Peace*. This distinction implies a limitation, by common understanding or agreement, of the state of universal war of every man against every man, which we must conceive to prevail, if we consider man as a creature impelled merely by desire and anger. Among animals, we have, properly speaking, neither war nor peace. Some live together harmlessly, some are in constant conflict, according to their instincts. There may be pauses of the struggle, arising from mutual fear, or satiety. But there is, in such creatures, no consciousness of a common Rule, no apprehension of Rights vested in the parties by such a Rule. The conception of the *Rights of War* introduces the moral nature of man. In our survey of International Rights we shall therefore first speak of these.

CHAPTER II.

THE RIGHTS OF WAR.

1057 HISTORY gives us a glimpse of an ancient state of things in which the distinction of War and Peace had not been established for nations in general. The occupation of the Pirate, who plunders all whom he can overpower, was not less honourable than other occupations; and States granted to other States, or to particular persons, a protection from spoliation (*ἀσυνλία*) as an exception to a general Rule. When peaceable relations were permanently established among the Greek States, this was still looked upon as the result of a Convention, which included them only. In Livy*, the Macedonian ambassadors say, "Cum barbaris eternum omnibus Græcis bellum est, eritque." A like state of things is indicated by the Latin word "hostis," which signified alike "a stranger" and "an enemy†." The introduction of the

* B. xxxi. c. 29.

† Cic. *Off.* I. 12.

term "perduellis," an enemy *proprio nomine*, indicated the establishment of a distinction between the two; though Cicero interprets the fact the opposite way; namely, that the open enemy was called a *stranger* as a gentler term, "lenitate verbi tristitiam rei mitigante."

1058 It was an important step in International Law, to establish this distinction between War, and Piracy, the practice of general spoliation. And for this purpose, it is proper to give a definition of War. A definition which has been given, and which may serve as the basis of our remarks, is this*, "Bellum est contentio publica, armata, justa." It is necessary to attend to each of these three conditions. War is a *public* contest: it is the act of the State, towards another State; not an act of or towards individuals. Hence, a contest with Pirates and Robbers, who are lawless individuals, is not a War; nor do the Rights of War belong to such persons. Again, War is an *armed* contest: for States, having no common superior who can decide their disputes, have no other ultimate authority to which they can appeal. On this account War has been termed "ultima ratio regum." But still, though the contest is an armed, it is a *just*, that is, a professedly just one. Though War is appealed to, because there is no other ultimate tribunal to which States can have recourse, it is appealed to *for justice*. It may easily happen between States, as between litigating individuals, that each has a just cause. Thus, when Attalus left his kingdom by testament to the Romans, the heir had the Right of legitimate, the Romans, the Right of testamentary, succession. It is necessary that a State should have on its side some such asserted Right, in order that its War may be consistent with International Law. A State which should make war upon its neighbours, without asserting any claim of Right, professing only a desire of conquest, a hatred of its enemy, or a love of war for its own sake, would have no just claim to the Rights of War; and might most fitly be declared a Common Enemy, by all States which acknowledge the authority of International Law.

Under the above conditions, States have a Right to make War, as we have already said (775). This Right may be unjustly, that is immorally, used; as individuals may use their Rights immorally, and may employ the forms of justice for unjust ends.

1059 War, so understood, is conceived as a state in which

* Albericus Gentilis, *De Jure Belli*. 1589.

the hostile parties have mutual Rights and Obligations, notwithstanding the efforts they are making for each other's damage or destruction. The Rights of War, among the ancients, extended to the Right of enslaving or putting to death all who were taken prisoners in battle, and even all the inhabitants of a conquered country. Yet the same Laws of War condemned those conquerors who refused Sepulture to the dead bodies of their enemies; the same Laws required a reverence for the Heralds who acted as international envoys, and an exact fidelity in observing Truces and Treaties. Moralists have been blamed for saying that to enslave vanquished, and to kill captive enemies, is not contrary to the Natural Rights of War. Yet we see how natural such practices are, for they occur in all nations at the early periods of their jural career. The proper condemnation of these practices is, not that they are contrary to the Natural Rights of War, but that they are the Rights of War in a rude and savage condition of nations, and are condemned by International Law, when it has made any considerable progress in humanity.

1060 In ancient Greece and Rome, every citizen was considered as a soldier; but in modern times, the *combatant* is distinguished from the *non-combatant* part of the nation, and there are different classes of Rights of War applicable to these different classes of persons.

1061 The Rights of War, as they affect *Combatants*, are purified from much that was savage and cruel in their earlier form, by taking into account the general conception of War; that it is the use of the public Force of the State in order to enforce its asserted Right. The public Force, Armies and Navies with their munitions, act so as to damage, defeat, and destroy the Armies and Navies of the enemy. Armies are defeated by destroying their organization; and hence, as soon as a man, or a body of men, by surrendering, has ceased to belong to the organization of the army, he is no longer an object of active hostility. He is a prisoner. The same is the case, when a ship, in a fleet, strikes her colours. In the siege and capture of a fortress, the amount of severity exercised upon the defenders of the place, depends upon the obstinacy of the struggle between them and the assailants. If the defense have been very obstinate, and the place is taken by storm, the practices of War, up to the most modern times, partake of the savage and cruel habits of the rudest nations. But though, on such occasions, unresisting men and helpless women may suffer death or violence in hot blood, the voice of all civilized nations

condemns, as violaters of the Rights of War, the soldiers who commit such deeds *in cold blood*. Sometimes severities are inflicted upon a captured garrison, professedly on account of a resistance too long protracted. In such cases, the severity may be considered as a punishment which the Laws of War entitle the victor to inflict, in return for damage and delay which the defenders have needlessly occasioned him, since their ultimate success was hopeless. The Romans spared the garrison of a place, if it surrendered before the battering-ram struck the walls. To put to the sword the garrison of a captured place, in order to strike terror into other places, and paralyse their resistance, is a course which has an aspect of savage cruelty; yet it is asserted to be conformable to the Laws of War; and has even been defended, as humane, because it tends to bring the war to an end. In like manner, the putting prisoners to death in the way of retaliation, or of punishment from violated faith, has a most cruel aspect; yet if this be not done, how is the cruelty, when commenced on one side, to be punished or stopped? and how can there be any value in the giving of Hostages for the performance of a treaty? That War has necessarily inhuman features, such as these, shows us how much the cause of humanity requires that the operation of War should be superseded in all possible cases.

1062 The Laws of War which limit the modes of action of the combatants, flow from the conception of War,—that it is the Action of one State against another State, to enforce justice by its public force. The force used is to be public; hence assassins, poisoners, secret incendiaries, are prohibited. Damage done by such means, cannot be avowed by a State; and hence, cannot be a part of the conduct by which the State publicly seeks justice. Also, such damage cannot be used so as to make a State alter its conduct, and therefore cannot be used so as to obtain justice. But this view does not prohibit operations which are clandestine for a time, as an ambush, or a mine; for these are works of an army, and have the same results as other acts of warfare.

1063 Stratagems are frequently employed in warfare; and it may appear difficult to reconcile some of these with Good Faith; as when a general allows his enemy to get hold of letters, or informants, purposely contrived to deceive. But it is to be recollected, that the Rules of Good Faith apply only to those modes of communication with regard to which there is a Mutual Understanding. Soldiers are bound in Good Faith to respect a truce, a flag of truce, a demand of parley, or any other recognized mode

of communication between combatants: for these proceedings are conformable to known Laws of War, and tend to the termination of hostilities. But when a general judges of his enemy's intentions by his motions,—the information of neutral persons, intercepted letters, and the like,—he rests, not upon a mutual understanding, but upon his own sagacity and vigilance, in detecting the truth from the appearance. At the same time, the Laws of War allow him to visit, with the utmost severity, any person who intentionally misleads him by false intelligence.

1064 It appears, at first, an inconsistency in the Laws of War that though they do not forbid a general to use Spies, or to tempt the enemy's soldiers to desert, they visit with immediate death any one found engaged in such attempts. But it is to be recollected that in War, the infliction of death is not a punishment, but a means to an end. A general must, from a regard to his own safety and success, make the task of spies and seducers as difficult and dangerous as possible.

1065 By the progress of the Laws of War, from their ancient to their modern forms, much has been done to make Warfare more humane, or, as it is termed, more civilized. In the middle ages, the practice was introduced of sparing the lives of conquered foes, and giving them their liberty, on the payment of *ransom*. In more recent times, when soldiers yield, they ask for *quarter*, and are made *prisoners of war*. Such prisoners are often exchanged between the two hostile parties by a *cartel* or agreement. And even before a prisoner of war is liberated or exchanged, he often has his liberty allowed him, on giving his *parole*, or word of honour, that he will not serve as a soldier till the War is ended.

1066 In War, as we have said, the destruction of men is used as means to an end; but every step, in the Laws of War, by which bloodshed and violence are, in their extent, limited to their end, the attainment of just terms of peace, is a gain to humanity. Hence it is to be desired that the Laws of War should condemn that wanton and aimless inhumanity which, as has been mentioned, is often perpetrated in hot blood on the storming of a fortress. It is therefore very satisfactory to find an eminent military writer* expressing an opinion, that the plunder of a town after an assault ought to be made criminal by the Articles of War.

1067 In the treatment of *Non-combatants* especially, the modern Laws of War are more humane than those of ancient times. When an enemy invades the territory of a hostile State, it

* Napier, *History of the War in the Peninsula*, Vol. VI. p. 215.

strikes at the State, not at individuals. Its object may be to take permanent possession of the territory on the part of its own State; but at any rate, its operations suppress and exclude the authority of the hostile State; and thus do violence to it, as a State. Hence, the invading army, so far as it succeeds, supersedes the higher functions of the State in the invaded country. It respects private property; but it assumes the right of taxation, and exercises it, as in a case of exigency, by levying a heavy *Contribution*. If the inhabitants pay this contribution, by the Laws of War they are not to be further molested; and are to be protected in the exercise of agriculture, trade, and art. In such cases, the usual Tribunals are, to some extent, superseded by *Military Law*; because, as we have said, the invading Army assumes the functions of the invaded state.

1068 In War, though *Private Property* is respected on land, it is not spared at Sea. Merchant-vessels, and their freight, belonging to citizens of hostile States, become the prize of their Captors. There is an evident reason for this difference of the Laws of War, on Land and on Sea; for a merchant's vessel at Sea is not under the protection of the State, in the same manner as his warehouse on land. To make prize of a merchant-ship, is an obvious way of showing that its own State is unable to protect it at sea; and thus, is a mode of attacking the State. It has sometimes been proposed that, in time of war, *Private Property* should be respected at sea, as well as on land; but there are great difficulties in carrying such a Rule into effect*. Conventions have, however, sometimes been made between nations to this effect.

1069 On the other hand, States often grant to private persons, who are willing to fit out a ship at their own expense, *Letters of Marque*, authorizing them to carry on warlike operations against the enemy. Such persons are called *Privateers*. Such authority is sometimes given under the name of *Reprisals*, as a means of obtaining redress for private wrongs. Such practices make a kind of partisan warfare at sea.

1070 In many other cases, as well as in that of merchants, the fortune of non-combatants is inextricably mixed up with that of the combatants; thus, when a town is besieged, the inhabitants necessarily suffer by the attempts which the besiegers make to

* Manning, *Law of Nations*, B. III. c. iv. In the course of the present year (1854) additional mitigations of the Laws of War, as regards Naval Captures and Pri-

vateers, have been announced by England, France and America. I have given some account of these in the *Supplement*, Chapter v.

overpower the garrison. And sometimes the greatest weight of the misery thus produced may fall upon the peaceable inhabitants; as for instance, when a town is reduced to yield by famine. The horror excited by such cases, has led to the suggestion, that it should be one of the Laws of War that all non-combatants should be allowed to go out of a blockaded town; and that the general who should refuse to let them pass should be regarded in the same light as one who should murder his prisoners, or should be in the habit of butchering women and children*.

1071 In order that countries which are the seat of War may enjoy the advantage of the Laws of civilized warfare, it is necessary that they themselves should attend strictly to the distinction of Combatants and Non-combatants. If the inhabitants of an invaded country carry on what is called a *guerilla* or *partisan* warfare against the invaders; the inhabitants, individually, destroying them and their means of action, in any way that they can; such a country cannot be treated according to the more humane Laws of War; for the inhabitants themselves destroy the foundation of such Laws, the distinction of Combatants and Non-combatants. And this restriction need not interfere with the patriotic zeal which the inhabitants feel, to repel the invaders. For they may enlist in the organized army of their own country; and supply the Government with resources for its defense to the utmost of their power.

1072 It may be asked, whether, on these principles, the Laws of War allow the bombardment of an undefended town, or the laying waste a province with fire and sword. Such proceedings are condemned as odious by international jurists†; who, however, do not venture to pronounce them to be violations of the Rights of War. It is evident that, like destroying ships at sea, such acts show that the suffering State cannot defend its subjects. But they belong to a savage and cruel form of war, which all humane and civilized men must desire to see utterly abrogated.

1073 As War has its Laws, it has also its Formalities, which are requisite as a justification of warlike acts. It ought to be preceded by a *Demand of Redress*, and begun by a *Declaration of War*. This formality the Romans called *Clarigatio*. When war has been declared, Neutrals have not a Right to carry Munitions of War to belligerents: such commodities then become *Contraband of War*. And when a place has been declared in a state of *Block-*

* Arnold, *Lectures on History*, Lect. IV. p. 220.

† Vattel, Book III. § 169.

ade, neutrals have not a right to carry thither any goods or to go there, at all. The Belligerents have, even against Neutrals, a *Right of Search*, in order that they may ascertain whether the prohibition of Contraband is violated. The Conflict of the Rights of Belligerents and of Neutrals, in this and the like cases, gives rise to many questions of International Jus. Others arise from doubts whether enemy's vessels captured were taken in time of War or not, and the like. For the decision of such questions, there have been established Courts in which International Law is administered; *Courts of Prize*; *Courts of Admiralty*; *Courts of Maritime Law*.

1074* Having thus spoken of the Rights of War, I must now notice the International Rights which subsist during Peace, and those which belong to Neutrals. These I must enumerate very briefly, by the aid of well-esteemed writers on the subject: for my object is only to give such a sketch as may show the place which International Jus occupies in a system of Morality.

I shall arrange the Rights of which I have to speak, as International Rights of Property, International Rights of Jurisdiction, International Rights of Intercourse.

CHAPTER III.

INTERNATIONAL RIGHTS OF PROPERTY.

1075 WE have already said (772) that every State has a Right to the National Territory. This is an International Right; and is absolutely and completely valid, as excluding Rights of other States. With regard to the citizens of the State itself, the Right to any part of the Territory is not simple ownership, but that permanent proprietorship which is called *Dominium Eminens* (688), by which the State prescribes the conditions on which individuals are to hold and enjoy their possessions.

1076 Nations have come into possession of their present territories by the migrations of the various tribes of mankind (870); and by various other historical events, as conquests, colonies, and the like. Their present Rights rest upon these previous facts; and the fact of the national possession of any Territory, continued and unquestioned, of itself constitutes a Right

of possession. *Prescription*, which is a mode of acquiring a Right for individuals (695), holds also for States*.

1077 European nations have recognized a national property in uncultivated countries, founded upon the Right of Discovery. Where the land so claimed is inhabited by savages, such a claim of Right goes upon the supposition that a population of savages do not form an organized State which can have International Rights. But this limitation of International Law, and consequently of Morality, is rejected by the more humane views of modern times. The claims of European States to possessions in America, Africa, and Asia, originally founded on discovery or colonization, now rest, not only upon prescription, but also, for the most part, upon subsequent compact.

1078 The Right of Conquest, when it is stated barely as constituting rightful possession, belongs to a condition of International Jus more rude and arbitrary than now prevails. A State which would assert the mere Right of Conquest, would also make war for the mere sake of Conquest; which, as we have said, would justify civilized States in declaring such a State a Common Enemy (1058). But a Conquest, made in a just war, may rightly be considered as in the light of indemnity for wrong suffered; and may be either retained or used in the negotiations for peace, in order to obtain just terms.

1079 There prevail among nations several Rules and maxims with regard to the Rights of national territory. These Rules have been established by the gradual usage and successive agreements of nations and jurists; and are to be found, with the reasonings respecting them, in works on International Law. It may serve to illustrate the subject if I extract some of these Rules; which I shall do, principally following Mr Wheaton's *Elements of International Law*, and Mr Manning's *Commentaries on the Law of Nations*.

1080 "The maritime territory of every State† extends to the ports, harbours, bays, mouths of rivers, and adjacent parts of the sea enclosed by headlands belonging to the same State." These must be included, in order to make the territorial jurisdiction continuous.

1081 "The general usage of nations superadds to this extent of territorial jurisdiction, a distance of a marine league, or as far as a cannon-shot will reach from the shore, along all the coasts of the State. Within these limits, its rights of property and terri-

Wheaton, *International Law*, Part I. ch. iv. p. 205.

† Wheaton, Part II. chap. iv.

torial jurisdiction are absolute, and exclude those of every other nation*." "The rule of law on this subject is *terræ dominium finitur ubi finitur armorum vis.*"

1082 "The exclusive territorial jurisdiction of the British Crown over the enclosed parts of the sea along the coasts of the island of Great Britain, has immemorially extended to those bays called the *King's Chambers*; i. e. portions of the sea cut off by lines drawn from one promontory to another. A similar jurisdiction is also asserted by the United States over the Delaware Bay, and other bays and estuaries forming portions of their territory." Such regulations are justified on the ground of their being essentially necessary to the security and interests of the State.

1083 Besides such regulations, a "jurisdiction and right of property over certain other portions of the sea have been claimed by different nations, on the ground of immemorial use. Such, for example, was the sovereignty formerly claimed by the republic of Venice over the Adriatic. The maritime supremacy of Great Britain over what are called the Narrow Seas, has generally been asserted merely by requiring certain honour to the British flag in those seas." The Baltic Sea is claimed as *mare clausum* by the powers bordering on its coasts; and the Euxine was so claimed by Turkey, so long as she exclusively possessed its shores. Denmark asserts a supremacy over the Sound, and the Two Belts, which form the outlet of the Baltic. In opposition to such claims, the Freedom of the Seas is asserted by other States. They have asserted the Right to navigate the High Sea (*mare liberum*), as being essential to the Right of Commerce which belongs to all States.

1084 It is said by Jurists, that when a river flows through the territories of different States, the *innocent use* of it for commercial purposes belongs to all the nations inhabiting the different parts of its banks; but that this is an *imperfect Right*, and must be regulated by convention†. Such conventions have been established, for instance, with respect to the Rhine and the Scheldt. We have already said (89) that imperfect Rights are improperly called Rights; and are really moral claims, indicating what the other party ought to grant or to do. And it is plain that the general Duty of Humanity would lead a State to allow its neighbours to make such use of its rivers and straits as should be accompanied with no inconvenience to itself. But, as we have

* See also Grotius, J. B. et P. lib. II. c. iii. § 10.

† Wheaton, P. II. c. iv. § 12.

already said, by some a general Right of Commerce is asserted, which goes beyond this appeal to humanity.

1085 In time of War, this Right of Commerce comes in conflict with the Rights of War; and the conflict has, in modern times, given rise to many questions of international jurisprudence; and especially as regards Colonies of the belligerent parties. For it has been assumed, by modern European States, that they have a Right to direct and limit the trade of their Colonies, as well as of the ports of the Mother-country.

1086 The question of which we have spoken, between the Rights of War, on the one hand, and the Rights of Commerce on the other, implies, among the Rights of War, the Right of seizing the private property of citizens of the hostile State captured at sea. To this Right, of which we have already spoken, belligerents have sometimes added the Right of seizing also the property of neutrals, when taken in hostile ships: and they have expressed their Rule in the maxim, "Enemy's ships make enemy's goods." This Maxim is not inconsistent with what has already been said of the nature of War. All property is in some one's custody; this is in the enemy's custody. We deny their power of custody of property on the sea, and we strike a blow at them as a maritime State, by showing that they do not possess this power. The Neutral must attend to this, and must not place his goods in our enemy's vessels, except he is willing to share their fate. But the more indulgent rule now generally assented to is, that the goods of a friend are not to be confiscated, though found in the ship of an enemy*.

1087 The Rights of Commerce are asserted in a Maxim similar in form to the one just stated; namely this: "Neutral ships make neutral goods;" or, "Free bottoms, free goods." But it is plain that this maxim must be limited and modified, or it might be used as a powerful mode of warfare. Thus† belligerents have a Right to prevent neutrals from carrying to an enemy munitions of war. It is no interference with the Right of a third person to say that he shall not carry to my enemy instruments with which I am to be attacked. On the contrary, such Commerce is a deviation from neutrality; (or at least would be so, if it were the act of the State). If we allow neutral ships to be inviolable when they carry to the enemy the means of warfare, they, though

* Wheaton, P. IV. c. iii. § 18. For further mitigations of the Rule, see the *Supplement*, Chap. V.

† Manning, B. III. c. vii.

professedly not parties to the contest, may greatly damage one of the belligerents, and transfer the success to the other side. Hence, belligerents have a Right to prevent neutrals doing this. The Right of Commerce entitles the neutrals to carry to either party goods which do not affect him in his belligerent character; but military stores are prohibited, under the title of *Contraband of War*.

1088 Again, belligerents have, by the Laws of War, a Right to put a place in a State of *blockade*, and then to prohibit neutrals from entering it. Neutrals, who violate this Rule, are liable to confiscation for *breach of blockade*. According to modern practice*, in order that a party may be liable to punishment for breach of blockade, three things are requisite to be proved:—the actual existence of the blockade:—that the party offending knew of it:—that he commit some act which was a breach of it. The definition of blockade is given in various Treaties. It is generally agreed, that a mere declaration cannot constitute a blockade: it must be actually enforced by a continued circuit of troops and ships.

1089 The maxim, that “free ships make free goods,” has been a subject of much discussion in modern times, having been asserted by Confederacies calling themselves “Armed Neutralities,” in opposition to the claims of Belligerents. Belligerents, seizing the property of an enemy on board a neutral ship, have, on their side, both the ancient authorities, and the usually received Principles of the Law of Nations. In opposition to the Right of Commerce, urged on the side of the above maxim, it is replied, that the Rights of War suspend many of the Rights of Commerce, as when they authorize seizure of contraband of war, or confiscation of a ship for breach of blockade. And the general Rule must be, that all Rights of Commerce are suspended, which, being nominally neutral, are really favourable to one of the belligerent parties. Now to carry goods for an enemy, who is so weak at sea, as not to be able to carry for himself, is to give him a great advantage. It deprives the stronger naval power of the benefit of his superiority. The Belligerent cannot be required to allow this. When it is urged, on the other side, that a Neutral has a Right to trade with both parties; it is replied, that he may trade *with both*, but not *for one*. If he gives his protection to the property of one of the belligerents, who is too weak to protect it himself, he makes himself his Ally, and is no longer neutral. An argument sometimes urged on this side is, that a ship is like a part of the territory of the state

* Manning, B. III. c. ix.

to which it belongs, and as such, not to be violated by the belligerent: but it is plain that this analogy is too loose to be of any force. If the doctrine were true, it would be a violation of neutral Rights to seize contraband of war in the ship, or to resist breach of blockade. And it is plain that the analogy does not hold in other cases; for when a ship comes into a foreign port, she and all on board are subject to the jurisdiction of the foreign state.

1090 There is another kind of limitation of the maxim, "free vessels make free goods," which has also excited much discussion in modern times. This limitation has been termed the "Rule of 1756*," and is thus stated: "Neutrals are not allowed to engage in a trade with the colonies of belligerents during war, which trade is not allowed them during peace." In virtue of this Rule, the Stronger Naval belligerent Power enforces, during war, in order to distress its enemy, the same restrictions on commerce with the Colonies of the Weaker, which the Weaker itself had during peace enforced, in order to its own advantage. For, in all cases, European governments have, during peace, excluded other countries from the carrying trade between them and their colonies†. But in the Seven-years' War, begun in 1756, the French were prevented, by the maritime superiority of the British, from carrying on their colonial trade themselves. Upon this, they threw open the trade to neutrals; but Great Britain denied that neutrals had a Right to such a trade, and therefore acted upon the Rule of 1756 just stated. The consistency of the Rule with the common Rights of war is evident. Such an interposition of neutrals as was here attempted was a manifest assistance to France. It enabled colonies to hold out, which must otherwise have surrendered; supplied the mother-country with colonial produce and revenue; and enabled her to withdraw sailors from her merchant-service to man her fleet. It was a trade which the neutral had not possessed before the war; which he possessed, during the war, only in virtue of the British naval superiority; and which he would lose again on the restoration of peace. The neutrals exercise such a trade under the protection of the stronger naval power, and entirely to his damage. The prohibition of such a trade is no doubt a limitation of the Rights of Commerce; but, in this respect, the prohibition of a neutral from supplying the suppressed colonial trade of the weaker naval belligerent, does not differ from the prohibition of a neutral from supplying a blockaded town with food, or a defeated belligerent with arms. In such cases, the Rights of

* Manning, B. III. ch. v.

† Ibid.

War supersede the Rights of Commerce, in order that the operations of War may not become futile.

1091 The Right of Visitation or Search of neutral vessels at sea*, is a belligerent Right, essential to the exercise of the Right of capturing enemies' property, contraband of war, and vessels committing breach of blockade. Even if the Right of capturing enemies' property be ever so strictly limited, and the Rule of "free ships, free goods," be adopted, still the Right of Visitation and Search is essential, in order to determine whether the ships themselves are neutral. It is conformable to the Law of Nations to detain a neutral vessel, in order to ascertain, not by the flag merely, which may be fraudulently assumed, but by the documents on board, whether she is really neutral. Indeed, the practice of maritime Capture could hardly exist without this Right. Accordingly, the writers on the subject concur in recognizing the existence of this Right. But it is to be observed, that we here speak of it only as a Right of Belligerents.

CHAPTER IV.

INTERNATIONAL RIGHTS OF JURISDICTION.

1092 WITHIN its own territory, every State has complete and exclusive jurisdiction. The Laws are made, and the administration of them directed, by the State; and speaking generally, this administration extends to foreigners, so long as they are in the territory, no less than to natives. The practice and Treaties of nations may have introduced exceptions, but this is the general Rule.

1093 How far the jurisdiction of a State extends over its subjects, when they are out of the limits of all States, as for instance, when they are in a ship on the High Seas, is a question of International Law. As we have already said, it is maintained by some writers that the ship, wherever it may be, is to be considered as a part of the territory of the State; a sort of floating Colony. This is one mode of expressing a Rule which is assented to by all†:—That both the public and private vessels of every nation, on the high seas, and out of the territorial limits of another State, are

* Wheaton, P. IV. c. iii. § 26.

† Ibid. Vol. I. 152.

subject to the jurisdiction of the State to which they belong. But if we say that this is because the vessel is a part of the national territory, we express this Rule in such a way as to contradict other Rules generally agreed to. For if the ship were really national territory, contraband of war, or enemy's goods, could not rightfully be seized within it; which, by acknowledged International Law, they may.

1094 A State has an exclusive jurisdiction over its vessels on the high seas, so far as respects offenses against its own laws. But there are certain offenses which are violations, not of the Law of any single State, but of International Law; as *Piracy*, the offense of depredating on the high seas without being authorized by any Sovereign State. This is a crime, not against any particular State, but against all mankind; and may be punished by the competent tribunal of any country where the offender may be found, or into which he may be carried, though committed on the high seas.

1095 Hence, when a State declares an offense to be Piracy, it declares that persons committing this offense may be lawfully captured on the high seas by the armed vessels of any State, and carried within the territorial jurisdiction of the captors for trial. And if the nations of Europe and America were to agree in declaring any special offense, the Slave-trade, for instance, to be Piracy, vessels detected in the practice of the Slave-trade might be captured and condemned by any State which had the means of doing this.

1096 The International Law of Europe and America appears to be approaching this point, but has not yet reached it. The Slave-trade has been declared a crime by every Christian nation. It has been declared piratical by many treaties between nations. An American vessel engaged in the trade has been condemned by an English prize-court*. For the trade having been prohibited by the Laws of both countries, and having been declared to be contrary to the principles of justice and humanity, the Judge decided that it was necessarily illegal. But in more recent cases, it has been decided by Judges that the Slave-trade is not a criminal traffic by the general law of nations; that each person can be judged for it only by the tribunals of his own country, except so far as the treaties of nations provide other jurisdictions. The Judge† said that no one nation had a Right to force a way to the liberation of Africa by trampling on the independence of other

* Wheaton, P. II. c. xi. § 17.

† Lord Stowell.

States; or to procure eminent good by means that were unlawful; or to press forward to a great principle, by breaking through other great principles that stood in the way. But it must be remarked, on the other side, that there is great moral inconsistency in those States which declare the Slave-trade to be a crime and express horror at the atrocities to which it leads and which yet refuse to join in such an improvement of International Law as would enable the powerful maritime nations altogether to suppress this traffic.

1097 The suspicion of a piratical character in a vessel, authorizes a stronger vessel to search the suspected ship. For if merely showing the flag of a State at peace with that of the stronger vessel would suffice to pass the suspected ship unquestioned, no pirate need ever submit to be taken. Hence, the question as to whether the Slave-trade is to be treated as being Piracy by International Law, leads to the question, whether the Right of Search for the suppression of the Slave-trade exists by International Law. The Right of Mutual Search for this purpose has been established by treaties between several nations in modern times*; and probably the Moralists of all Countries will agree with the English Moralist†, who said that he felt a pride in the British flag being, for this purpose alone, subjected to search by foreign ships. It had, he said, risen to loftier honour by bending to the cause of justice and humanity.

1098 Besides its jurisdiction over its subjects on the high seas, there are cases in which, by the usage of nations, the jurisdiction of one State, more or less modified, extends into the territory of another. Thus, the person of a Sovereign going into the territory of a foreign State in time of peace, is, by the general usage and Comity of Nations, exempt from the ordinary local jurisdiction. And the person of an Ambassador, whilst within the territory of the State to which he is delegated, is in like manner exempt from the local jurisdiction. His residence is considered as a continued residence in his own country; and he retains his national character, unmixed with that of the country where he locally resides. Also by particular treaties between Countries, the Consuls, and other Commercial Agents which a State appoints in a foreign country, are authorized to exercise a jurisdiction on the part of the State which appoints them. The nature and extent of this jurisdiction depends upon the stipulations of the treaties. Among Christian nations, it is generally confined to civil causes

* Manning, B. III. c. xi. p. 376.

† Mackintosh.

among Merchants and Seamen, to matters relating to Contracts and Wills, and the like. But the resident Consuls of Christian powers in some Mahommedan Countries, exercise both civil and criminal jurisdiction over their countrymen; though this jurisdiction is of a limited kind. To these cases of exceptions to the territorial jurisdiction of a State, are added a foreign army, marching through the country, or stationed in it; and foreign ships of war in its ports, the two States being in amity. But the private vessels of one State entering the ports of another, are not exempt from the local jurisdiction, except so far as compact exempts them.

1099 With the exceptions just stated, the two leading Maxims of International Law, as it regards Jurisdiction, are generally admitted: *First*, that the Laws of a State have force within the limits of its own government, and bind all the subjects thereof, but have no force beyond those limits: *Second*, that all persons who are found within the limits of a government, whether their residence is permanent or temporary, are to be deemed subjects thereof*.

1100 Thus the inhabitants of each State are ruled by their own Laws. But this does not suffice for all the occasions of human action. Men of different countries have intercourse of various kinds with each other. Men travel from one country to another. As they move, they carry with them characters and attributes which have been assigned to them by the laws of their own country; as rank, wealth, wife, legitimate children, contracts. We cannot avoid inquiring how far these characters and attributes are modified by the transition from one country to another, in which the Laws respecting them are different. And here, we find that States in general have agreed to a Maxim, which gives, in all common cases, stability and permanence to the conditions and relations of men. This Maxim (the *Third* in addition to the First and Second which we have mentioned) is as follows. The Laws which are of force within the Limits of a State are allowed to have the same force in other States also, with regard to its own citizens, so far as they do not interfere with the powers or rights of those States or of their citizens. This extra-territorial efficacy is granted to the Laws of States, by a general disposition to further each other's ends, which is called the *Comity of Nations*.

1101 It has been thought by some jurists† that the term "Comity" is not sufficiently expressive of the Obligation of a Nation to give effect to the Laws of foreign nations when they do not interfere with its own. It has been said that it is not a matter

* Story's *Conflict of Laws*, p. 30.

† *Ibid.* 33.

of Comity, or Courtesy, *but of Duty. And undoubtedly it is a Duty of every State to give effect to the Laws of other States, so far as they are means of promoting Justice, Humanity, Truth, Purity, Order. But this Duty cannot be said to amount to an Obligation, (of the kind often called a perfect Obligation;) for if withheld, it cannot be enforced. One Nation cannot assert a Right to have its Laws made effective within the territory of another State, and without the State's Consent. The practice of giving to Laws this extra-territorial effect prevails, not in virtue of the Rights of Nations, but of their Moral Claims on each other, and of their Mutual Duty. And this Duty is called *Comity*, rather than by any name implying a stricter Morality, because a State, in carrying into effect the Laws of a foreign nation, does not pretend that they are necessarily good and moral Laws; which, with regard to its own Laws, it does pretend. The great ends of Law, the security of person and property, the observance of good faith, the stability of family ties,—these are the common objects of all States in their Laws and Administration.—The Laws of foreign States, with regard to Protection, and Property, and Contracts, and Marriages, may be different from our own. We (the State) cannot pretend to say that they are good, in the same manner that our own are; but we will not dwell upon this doubt; we will take for granted that they answer the ends of Law; we will recognize and assist their operation on that assumption.—This is the spirit in which nations adopt the Maxim which we have stated; and this spirit of action appears to be better described by calling it the *Comity* or *Courtesy* of Nations, than if we were to say that such a practice is followed in virtue of the Mutual Rights of Nations; for National Rights are not acknowledged to this extent;—or than if we were to say that it is followed in virtue of their Mutual Duties; for this would imply that it would be wrong not to accept the foreign Law; a doctrine which would too much infringe the special respect with which the State looks upon its own Law. Courtesy is a Duty, but a Duty which must give way, when it comes into conflict with higher Duties, in which the distinction of right and wrong is concerned; and such a Duty is the Comity of Nations.

1102 Since there are thus many Cases to which foreign, as well as domestic, Laws apply, it must often happen that doubts and apparent contradictions occur, as to which Law is to be followed in a particular Case:—there will be a *Conflict of Laws*. Examples of such difficulties occur in the following Questions: May a Contract which is valid by the Laws of the country where

it is made, be enforced in a country where such Contracts are invalid or illegal? May a Marriage between persons of full age, according to the laws of one country, be dissolved by their removing into another country by whose laws they are still minors? If a person has Property in one country, and Debts in another, according to what laws are his creditors to be paid? Such questions arise in endless number. They cannot be decided without the establishment of some general maxims on the subject of the Conflict of Laws. To lay down, however, and to apply such Maxims, is the office of works written expressly on this subject, and to them we must refer. I may notice, as a work of great value on the subject, Judge Story's *Conflict of Laws*; and in this, the reader will find the other standard works on the subject, quoted and discussed.

1103 I may however very briefly state some of the Maxims which have been generally accepted on this subject.

With regard to immoveable property (land and the like) the law of the place where it is situate, governs, in everything relating to the tenure, the title, and the forms of conveyance. Hence, a deed or will of real property, executed in a foreign country, must be executed with the formalities required by the local laws of the state where the land lies. This Rule is termed *Lex loci rei sitæ**.

1104 With regard to moveable property (money and goods), the modes of conveyance and the like are principally governed by the home or domicile of the party. This Rule is the *Lex domicilii*.

1105 It becomes necessary to lay down some Rule for the determination of the National Domicile of a person; for there may be instances in which, from change of residence, or from having several places of abode, a person's domicile may be doubtful. The definition given by jurists† is that the Domicile is a person's principal residence, to which, when absent from it, he always retains an intention of returning (*animus revertendi*). To this general Rule, others, applicable to particular cases, are subordinate, but we need dwell upon such details.

1106 With regard to Contracts, the general Rule is, that a Contract valid by the Law of the place where it is made, is valid everywhere else. This Rule, established by the general comity and mutual convenience of nations, is termed *Lex loci contractus*.

* Wheaton, P. II. c. ii. § 5.

† Story, § 41.

1107 But again*, every sovereign State has the exclusive right of regulating the proceedings in its own courts of justice. This Rule is *Lex fori*. And the *Lex loci contractus* of another country cannot apply to such cases as are properly determined by the *Lex fori* of that State where the contract is brought in question. Thus if a Contract made in one Country is attempted to be enforced, or comes incidentally in question in the judicial tribunals of another, every thing relating to the forms of proceeding, the rules of evidence, and of limitation or prescription, is to be determined by the law of the State where the suit is pending, and not of that where the Contract was made.

1108 The municipal laws† of most countries prohibit foreigners from holding Land within the territory of the State, because in most countries the Rights of Government are connected with the tenure of land, as was the case in Europe under the feudal system. In that case, the acquisition of land involved the notion of allegiance to the Sovereign within whose dominions it lay, which might be inconsistent with the allegiance which the proprietor owed to his native sovereign.

1109 The right of Succession, like the right of real property, was conceived to depend on the State, and to be a creature of the State. Hence, this right was denied to foreigners dying in the Country; and the Sovereign of the Country took their property. This Right of the Sovereign, as it existed in France, was termed *jus albinatus* (*alibi-natus*), and in French, *droit d'aubaine*. In such cases, the property was also said to *escheat* or fall (*escheoir*) to the King.

1110 Thus Laws which concern Property are, in their international application, mainly governed by the place. On the other hand, the laws which determine the Character and Condition of a person do, for the most part, accompany him with their effects into all places, wherever he may travel or reside. In general‡ the Laws of the State, applicable to the civil condition and personal capacity (*status*) of its citizens, operate upon them, even when resident in a foreign country. Such are the universal personal qualities which take effect, either from birth, as citizenship, legitimacy, illegitimacy; or at a fixed time after birth, as idiocy and lunacy, bankruptcy, marriage, and divorce, as ascertained by the judgment of a competent tribunal. The laws of the State affecting these personal qualities of its subjects, travel with them

* Wheaton, P. II. c. II. § 9.

† Ibid. p. 138.

‡ Ibid. I 141.

wherever they go, and attach to them in whatever country they are resident.

1111 With regard to Marriage, indeed, it has two aspects, since it may be considered either as a contract, or as a personal *status*; and will be governed by the *Lex loci contractus*, or by the original country of the parties, as the one view or the other is taken. The Law of England adopts the former course: a clandestine marriage in Scotland, of parties originally domiciled in England, who resort to Scotland for the sole purpose of evading the English marriage act, (which requires the consent of parents or guardians), is considered valid in the English ecclesiastical courts. The same principle has been recognized between the different States of the American Union. By the French Law, on the other hand, the age of consent which is required by the Code is considered as a personal quality of French subjects, following them wherever they remove; and consequently, a marriage by a Frenchman under the required age, will not be regarded as valid by the French tribunals, though the parties may have been above the age required by the law of the place where the marriage was contracted.

1112 With regard to penal Laws, it is a principle generally acknowledged among jurists*, that the penal Laws of one State have no operation in another State. Hence a person convicted as a criminal in one country is not, on that account, to be treated as a criminal by the Government of another country. Nor does it appear to be a Right generally acknowledged, or a part of the Law and Usage of Nations, that offenders, charged with a high crime, who have fled from the country where the crime has been committed, should be delivered up and sent back for trial, by the Sovereign of the Country where they are found. But though this *Extradition of Criminals* may not be a matter of general International Law, it is often a matter of compact between States. It is voluntarily practised by certain States, as a matter of general convenience and comity. And it is held by moralists† that it is the duty of the Government where the criminal is, to deliver him up; and that if it refuses to do so, it becomes, in some measure, an accomplice in the crime.

1113 There are some offenses which alter their character, according as they are committed by a subject or an alien. Thus an alien who bears arms against the Sovereign of the Country is dealt with by the laws of war; but the subject who does so is

* Story, § 620.

† Story, § 627.

guilty of treason. He violates his *Allegiance*. Hence it becomes important to determine from whom Allegiance is due to each Sovereign, and how far this tie may be cast aside or transferred.

1114 There are two extreme opinions on this latter point. According to one, the tie which connects a man with his country, like the tie which connects him with his family, can never be abolished. His original country is his Mother, in spite of all that he can do. According to the other view, a man's connexion with any Community is of a voluntary kind. At a mature age, and with due formalities, he may choose a country for himself. But this latter view, though it has been asserted by theoretical writers, has never been recognized in the practical legislation of States. The ancient Jurists had a maxim that no one can divest himself of his country: *Nemo potest exuere patriam*. The Common Law of England was to the same effect, that all the King's natural born subjects owed him an allegiance which they could not cast off. It is held* that it is not in the power of any private subject to shake off his allegiance, and to transfer it to a foreign prince: nor is it in the power of any foreign prince, by naturalizing or employing a subject of Great Britain, to dissolve the bond of Allegiance. Entering into a foreign service without consent, is a misdemeanour: taking a commission from a foreign prince, and acting against the King, is treason. The United States of America, and other new States, have made various provisions for admitting new citizens into their community. But they have not, in general, left their citizens at liberty arbitrarily to cast off the tie which connects them with their country. The Federal Courts of the United States have had the subject before them†; and the Opinion which there prevails is, that a citizen cannot renounce his allegiance to the United States, without the permission of government, to be declared by law. Also the Law of France does not allow a Frenchman so far to expatriate himself as to bear arms against his country.

1115 It may be inquired, From whom is this Allegiance due? Who are the subjects of a State? According to the old Law of England, all persons born within the King's dominions are his natural born subjects, and all persons born abroad are aliens. But more recent laws have given the rights of natural born subjects to all children, born out of the King's liegeance, whose fathers, or grandfathers by the father's side, were natural

* Kent's *Commentaries*, II. 42.

† Kent, II. 48.

born subjects*. Rules more or less resembling this prevail in other States.

1116 Besides this natural allegiance, jurists† recognize a *Local Allegiance*, which is due from an alien or stranger, so long as he continues within the dominions, and therefore under the protection, of the State. And as this Allegiance, by which they are required to abstain from injuring the State in which they reside, is demanded of strangers; so are they allowed, in a temporary manner, some of the Rights of citizens. Thus a subject of one country may, for commercial purposes, acquire the Rights of the citizen of another. He has a *Commercial Domicile*, and this domicile determines the character of the party as to trade‡.

CHAPTER V.

INTERNATIONAL RIGHTS OF INTERCOURSE.

1117 ACCORDING to International Jus, nations are regarded as distinct moral agents, capable of acting for or against each other, of contracting with each other, and the like. Hence they must have certain National Modes of Intercourse with each other; not merely such as consist in the citizens of one State communicating with the citizens of another; but in the States themselves communicating with each other, by persons who speak and act on their part. Such Intercourse is naturally under the direction of the *Executive* branch of the Government, as being that branch which acts for the State. But, for the most part, the communications with foreign States are not made directly by the Sovereign, as a part of his general administrative office, but by Ambassadors or other Ministers of the State, deputed for that express purpose.

1118 Every State, considered as an Independent State, has the power of negotiating and contracting Public Treaties with other Independent States. For this purpose, every Independent State has a right to send Public Ministers, and to receive Ministers from any other Sovereign State. No State is, strictly speaking,

* Blackst. I. 373.

† Ibid. I. 370.

‡ Kent, II. 49.

obliged, by the positive Law of Nations, to send or receive public ministers. But universal usage, the result of the Comity of Nations, has established this as a reciprocal Duty. Such being the Duty of every nation on the ground of Comity, it is what has been called an Imperfect Obligation. It may not and cannot be enforced as a Right; but the State which refuses to conform to the usage has no longer any claim to receive the benefits of the Law of Nations. *The Right of Legation* is a part of existing International Law.

1119 When States are not absolutely sovereign and independent, but semi-sovereign, or dependent, or united by federations of various kinds, it must be determined, by their relation to their superior, or their compact with each other, how far they possess this Right of Legation. Thus England, or Ireland, or Scotland, cannot send Ambassadors or Ministers to a foreign State, distinct from the Ministers of Great Britain. Nor can the Colonies, as Canada or Australia. The United States of North America, though each, for many internal purposes, sovereign, are restrained by their federal Union from treating separately with foreign powers. But the States of the German Federation send their separate ambassadors. When, in the course of historical events, several States coalesce into one, as by legislative union, or by conquest; or when one State is divided into several, as by revolt, revolution, or common consent; it is the business of other States to determine when each new State assumes a distinct and real existence; and they recognize this existence by receiving Ministers from it and sending Ministers to it. The same is the mode of recognizing the actual authority of a new Government, in a State which has undergone an internal Revolution.

1120 In deciding upon such recognitions of new States and new Governments, the Governors of a Nation, if they would act for the Nation in its highest character of a moral agent, capable of Justice, Humanity, Magnanimity, Love of Order, and Love of Liberty, will not make their recognition of the New Government depend upon mere caprice, or upon any low views of their national interest; but will regard it as a jural and moral question; as a point to be decided according to the best existing Rules of International Law, and without losing sight, in the decision, of the prospect of raising the standard of International Law; for this prospect all States must have before them, as the highest aim of their actions.

1121 The modern usage of Europe has introduced into the

customary Law of Nations certain distinctions of various kinds of Public Ministers: and at the Congresses of Vienna and of Aix-la-Chapelle an uniform Rule was adopted for this subject. By this Rule public ministers are divided into the four following classes*:

- 1 Ambassadors and Papal Legates or Nuncios.
- 2 Envoys Extraordinary, Ministers Plenipotentiary, and Internuncios.
- 3 Ministers Resident accredited to Sovereigns.
- 4 Chargés d'affaires accredited to the Minister of Foreign Affairs.

1122 Ambassadors possess a *representative* character; they are considered as representing the Sovereign or State by whom they are delegated, and receive peculiar honours on this ground. Formerly a *Solemn Entry* of the Ambassador was customary, but they are now received at a private audience, in the same manner as other Ministers.

1123 The Powers, Credentials, Privileges, and Modes of acting for their nation which belong to its Public Ministers abroad, need not be here dwelt upon. The Right of directing their actions, of negotiating and concluding Treaties, belongs, as we have said, to the Executive at home. But though the Executive thus makes the Contracts of the State with other States, the assent and cooperation of the Legislature may often be requisite to give effect to such Contracts. Thus, in Treaties requiring the appropriation of monies for their execution, it is the usual practice of the British Government to stipulate that the King will recommend to Parliament to make the grant necessary for that purpose. Under the Constitution of the United States, by which treaties made and ratified by the President, with the advice and consent of the Senate, are declared to be "the Supreme Law of the land," it seems to be understood that Congress is bound to redeem the national faith thus pledged, and to pass the laws necessary to carry the treaty into effect†.

1124 The General Contracts between nations are divided into two classes: *Transitory Conventions*, such as treaties of cession, boundary, exchange of territory, and the like; and *Treaties* properly so called, *Fœdera*; such as those of friendship and alliance, commerce and navigation. The first class are perpetual in their nature; and once carried into effect, subsist, notwithstanding revolutions within the State, and wars without. The second class are interrupted by war, and extinguished by the extinction of one

* Wheaton, P. III. c. i. § 6.

† Ibid. c. ii. § 7.

of the contracting parties as an Independent State. Most international Compacts contain Articles of both kinds; such is the case especially with most Treaties of Peace. Treaties of Alliance are either Defensive, when each ally engages to assist the other in repelling aggression; or Offensive, when an ally engages to cooperate with the other in a specified kind of hostilities. When the Alliance is Defensive, one of the allies cannot claim the assistance of the other in an aggressive war; such a war is not the *casus fœderis**.

“1125 The Convention of *Guarantee* is one of the most usual international Contracts. It is an engagement by which one State promises to aid another, when interrupted, or threatened to be disturbed, in the peaceable enjoyment of its Rights, by a third Power. Guarantee may be applied to every species of Right and Obligation which can exist between nations: to the possession and boundaries of Territories, the Sovereignty of the State, the right of Succession, &c.

1126 But if a State assumes the character of Guarantee for one of the Parties in another State; if, for instance, it engages to protect the Sovereign against the revolt of the Subjects, or the Subjects against the tyranny of the Sovereign, the transaction is then of another kind. It is an *Intervention* which necessarily interferes with the independence of the State thus dealt with. Such an Intervention may be necessary for the safety of neighbouring States; but is only justifiable in a Case of Necessity, and is not to be looked upon as one of the ordinary Cases of International Jus. A Sovereign may be wrongfully dethroned, and a foreign State may aid him as his ally against a hostile faction. He may be rightly dethroned, and a foreign Sovereign may properly aid those who, in a Case of Necessity, deprive him of his office. A nation may resist a usurper, and a foreign Sovereign may properly aid the nation in such a cause; or a nation may proclaim doctrines which make all exercise of international jus impossible, and other nations may hence refuse international intercourse with this, and may thus be driven into war. All these are Cases in which Intervention may possibly be justified by necessity, according to the circumstances of the Case. But for these, as for other Cases of Necessity, it is impossible to lay down Rules beforehand.

1127 States have hitherto been much impelled in their public transactions by their views of their own particular interest. Yet there have not been wanting, in the history of nations, many

* Wheaton, P. III. c. ii. § 13.

acts of justice, of magnanimity, and of humanity. The negotiations of States and the reasonings of jurists seem to show, that International Law rises gradually to a higher moral Standard. The declarations of all civilized States against the Slave-trade, although hitherto imperfectly carried into effect, are a recognition of the principle of Humanity in the public Law, to an extent which places modern far before ancient times, in this respect. The abolition of Slavery in the West Indies, carried into effect by Great Britain at a very great cost, is another strong evidence of the growing influence of such Principles in public acts. On several occasions in recent times, the Great Powers of Europe have acted and negotiated as if they deemed themselves bound, by a tacit Convention, to guarantee the Liberty and order of Nations, and the preservation of Peace.

1128 If States continue firmly and consistently to pursue this Course, applying to themselves the same Rules of Justice and Humanity which they require their weaker neighbours to observe; there appears to be no reason to despair of the realization of the most equitable and moral codes of International Law which Jurists have ever promulgated; nor of the indefinite moral elevation and purification of such Codes, in proportion as the characters of nations are elevated and purified by the practice of the political virtues.

SUPPLEMENT.



EXPLANATIONS AND ADDITIONS.

SUPPLEMENT.

CHAPTER I.

OF ENUMERATIONS AND CLASSIFICATIONS OF THE SPRINGS OF HUMAN ACTION.

1 To distinguish and enumerate the Springs of Human Action, with a view to determine what are and what ought to be the Rules of Human Action, has been the employment of ethical philosophers ever since Morality became a subject of speculation. The first traces of attempts to do this systematically appear in Plato. In some of the Dialogues (as the *Meno*,) which on this and on other accounts we must consider as among his earlier speculations, he considers man only so far as he is guided by Reason, and regards Virtue as only a kind of Knowledge. But at a subsequent period he notices other Springs of Action in man. Thus in the *Phædrus*, he represents the Soul as carried forwards in a chariot drawn by two steeds, which correspond in their characteristics to Reason, and to Passion or Desire. And in the earlier Books of the *Republic*, he carefully and accurately shows that there are in man three impelling principles distinct from each other; Reason, Desire, and Anger. In the later Books of the *Republic*, he further observes that Desire is really manifold: there are many Desires, though he takes the Desire of Gain as the representative of the group. And in the curious image of the human constitution which occurs in the ninth Book, while he represents Anger as a lion, Desire is figured by a beast with many heads. This view of the Springs of Action was the more important step, from its being made the basis of the distinction of the four Cardinal Virtues; each of these (in their original Platonic form) having a definite relation to the Springs of Action. Wisdom is the virtue of Reason; Courage, of Anger; Temperance, of Desire; while Justice is the harmony of all.

2 This view of the constitution of the human soul is referred to by Aristotle. He speaks (*De Anima*, III. 9) of those who make the parts of the soul to be Reason, Anger and Desire; but he objects that the parts of the soul are, in a certain sense, not these only, but an infinite number. Which may be true, and still these three may be, in the sense which ethical discussion requires, the principal parts. Aristotle, by further speaking of five Powers of the Soul, the *vegetative, sensitive, appetitive, motive, and intellective*, tended much to confuse the subject. For to ascribe all these powers to the *soul*, is to conjoin things the most widely different.

3 This distinction of the powers of the soul, as made by Aristotle, was adopted in the middle ages; but still, so far as ethics was concerned, the Platonic scheme was in the main retained, though in an altered form. The powers of the soul were taken as the *Intellectual*, the *Irascible*, and the *Concupiscible*. The latter term borrowed its passive form from the preceding one, *irascible*; for otherwise *concupiscent* might better have described that part of the soul which desires: or better still, *concupitive*; or *appetitive*. It is the *ἐπιθυμητικὸν* of the Greeks; Tertullian renders it *concupiscentivum*.

4 In this scheme, *Love* is arranged under Desire; and yet it is plain, that the Love of Money is a motive of a very different class from the Love of a Parent, or of a Friend. The latter is not merely a Desire of a Thing; it is an Affection towards a Person. It is more of the nature of Anger than of the desire of inanimate things, though opposite in its direction; attractive instead of repulsive. We may place Anger and Love as belonging to a special class of Springs of Action, the *Affections*, which we may distinguish from the Desires directed towards external things.

5 The Affection of Anger had attention especially directed upon it about a century ago by Bishop Butler, who pointed out very clearly that it is not only one of the Springs of Action, but of moral action. His two Sermons on the Uses and Abuses of Resentment, are employed in showing that this emotion has its due office in the guidance of man, and in his preservation. He distinguished Sudden Anger which resists and repels mere harm, from Settled Anger, which resents and repels wrong: and pointed out that Indignation against wrong is a balance against Compassion, in cases where this emotion might mislead us. Butler however has not attempted to deliver a general scheme of human action, or of the constitution of man. He says much of man's Moral Faculty, of which we shall afterwards have to speak; but little of the Desires,

of which, along with the affections of Love and Anger, we are now speaking.

6 The Desires are not only, as we have said, very various, but there are some of them which depend directly upon the bodily nature of man ; as the Desire of meat and of drink ; namely, Hunger and Thirst, and the like. These we commonly term *Appetites*. We may, without difficulty, distinguish these *Appetites* from the Desires in a wider sense : for though these latter also may tend to material objects, they do so, not in virtue of any bodily appetite for such objects, but in virtue of some aspect under which our *minds* regard the objects. Thus the Desire of Gain is not a bodily appetite for gold and silver, but a Desire for those metals as representing the means of buying, and as the cause of power, of honour, magnificence, or luxury. And accordingly, this Desire is gratified by the possession of a few scraps of paper which represent gold, just as much as by gold itself ; and even by a few ink marks in another man's book, denoting, for instance, a balance at our banker's. Hence we may call even this Desire of Gain, though in some respects it clings to matter, a *Mental Desire* : and still more may we give that name to other Desires, as the Desire of Society, or the Desire of Knowledge.

7 By this analysis, then, we are led to consider the Springs of Human Action as of four kinds : Bodily Desires or *Appetites* ; Mental Desires ; Affections (Love and Anger ;) and Reason.

8 This analysis became familiar to English readers in the course of the last century, and especially among the writers of Scotland : except that what I have called *Mental Desires*, they called *Desires* simply ; for want, as Dr Reid apologetically says, when he gives this classification, of a better specific name. They also analysed further the Rational Principles of Action, as I may have occasion to explain afterwards.

9 The Mental Desires of which Dr Reid principally speaks, (*Essay on the Principles of Action* ;) are these : the Desire of Power, the Desire of Esteem, and the Desire of Knowledge. He appears to regard these as distinct natural and original Principles of Action ; while the Desire of Money is an acquired Desire, the effect of habit, money being a species of power.

10 Dugald Stewart gives nearly the same analysis of the "Active and Moral Powers of Man ;" but he enumerates the Desires thus : the Desire of Knowledge, of Society, of Esteem, of Power, and of Superiority.

11 If this is to be regarded as an attempt to enumerate the

most simple elementary and original Desires by which man is impelled to act, I do not think the attempt can be considered as very successful. The Desire of Power, for instance, is made to include all these Desires :—the Love of pastimes and exercises, in boyhood, youth, and manhood ; the desire of superiority in fortune, station, intellectual endowments, eloquence ; the pleasure arising from the discovery of general theorems ; in part at least, our attachment to property ; avarice ; the love of liberty, and the love of tranquillity and retirement.

Of course the Mental Desires, on account of that very circumstance, that they *are* mental, and that their objects have their character and charm given them by an act of the mind, may take many forms, as the operations and habits of men's minds vary. The Love of Power is so wide and abstract a phrase, that there is scarcely any class of human actions in which thought performs any part, in which the love of power might not be held, by an ingenious man, to be an ingredient. But I do not think that such an analysis as this will help us much towards a classification of human actions for ethical purposes ; which is the object for which an analysis of the Springs of Human Action is principally useful in Morality.

12 Indeed it appears to be evident that we come much nearer to an analysis of the Springs of Action into elementary parts, if we make the *Desire of Property* in itself to be one of the original Desires, than if we suppose it to be one of the manifestations of the Desire of Power. For we see, even in some brute animals, a Desire of acquiring and possessing, in addition to the mere appetites which impel them to take their food ; and in these cases, we can hardly regard this Desire as derived from the Desire of Power. No doubt, when things acquired or possessed are regarded as Property, there is a new mental view introduced ; and on this account it is, that I call such a Desire a *Mental* Desire. In ascending towards wider and subtler views of the relations of human actions and human motives, there may possibly be interesting connexions brought to light, by considering that the love of property and the love of general truths have something in common : but we must narrow our abstractions and generalizations of human motives much within this range, in order to arrive at such simple moral rules as these: *Thou shalt not steal: Thou shalt not covet:* and the like ; which are the beginnings of Morality.

13 *The Desire of Society* is also an impulse of which we see germs in brute animals ; for some are gregarious, and in some the

male and female associate in pairs. But the latter kind of instinctive habit is plainly distinguishable from the former; and the Desire which corresponds to this,—that Desire of Society which appears in the marriage union,—may with great propriety be made one of the elementary Desires of man. It is connected, no doubt, with the Bodily Desire or Appetite of Sex, but it contains far more than that; so much more, indeed, that the bodily part of the Desire is transformed and absorbed by the affections, sentiments, and thoughts with which it is combined. The Desire of Family Society, connecting itself with an affection for a particular person, is the Desire of a state of entire love, confidence, mutual aid and support, common hopes and prospects, common objects of the tenderest affection. This Desire may, and often does, draw within its vortex floating thoughts and feelings from every quarter; as the poet says,

All thoughts, all passions, all delights,
 Whatever stirs this mortal frame,
 All are but ministers of love,
 And fan his sacred flame.

But though this is so, there are none of these feelings which so much deserve to be considered a prominent element of man's nature, as this kind of Love itself. Besides all that has its root in bodily desire, there is an original Mental Desire.

14 Thus we see that in man, a Mental Desire may include, and by including, supersede, a Bodily Desire. And this cannot fail to be so in man, a creature who possesses a mind. Man thinks of the things which he desires or shares; and by the operation of his thoughts, the direct objects of bodily desire necessarily come to be regarded by him in an abstract and general form. Thus he desires meat, drink, shelter, clothing; he shuns and fears blows, wounds, bodily constraint, menace, the anger of those who are stronger than himself. The former group of bodily desires are included in the Mental Desire of Property. The latter group of fears and aversions, may in like manner, be considered as included in one single Mental Desire, *the Desire of Personal Safety*. And we may regard this Mental Desire as co-ordinate with the other two, and may take these as three of the Springs of Human Action, in a certain way elementary, the Desire of Personal Safety, the Desire of Property, and the Desire of Family Society.

15 I have already said that in animals the desire of Society shows itself in two different forms; in pairing, and in gregarious animals. Man has an elementary desire corresponding to the for-

mer Instinct; has he a Desire corresponding also to the gregarious Instinct? In the universal habits of mankind we plainly see the working of such a Desire, or of such a Need; elevated, however, above the habits of gregarious animals, as much as human marriage is elevated above the union of pairing animals. Human Society is indeed something so far beyond the association of animals, that we may with great propriety say, as Aristotle says, that man is not a gregarious, but a *social* animal. Human society includes so much of the intercourse of thought, of the establishment of law, and of institutions for the administration of law, that the impulse to such society is very little like a mere gregarious instinct, and appears rather as the desire or the need of that social intercourse and those social institutions, of which men alone, as being endowed with thought and language, are capable. We shall best obtain a basis for reasoning concerning the actions of men, by assuming, as one of his Springs of action, a Mental Desire or Need, bearing to that gregarious instinct, the analogy which man bears to brutes; and this we may call the Desire, or the Need of Civil Society.

16 Men are drawn into such Society, and bound together in it, by the intercourse which Language, among other instruments, produces. But the use of this instrument not only binds them together in one general body, but also establishes especial relations and connexions between special individuals, in addition to their relation to the whole. Language is the instrument of Promises and Contracts, and of many other ways in which a mutual understanding is established among men. And such a mutual understanding, and the power of depending upon it as something settled and secure, is necessary to the comfort, and we may say, to the continued existence of human social life. Upon the mutual understanding established among men, by words,—or in some cases tacitly, under the influence of the general habits which society and language form,—we depend for our occupations and enjoyments, our hopes and prospects, from year to year; for our companionship and work, our dwelling, clothing, and food, from day to day and from hour to hour. Secure dependence on such mutual understanding is a necessity; and if this security be not habitually contemplated as an object of desire; if we do not place the Desire of a Mutual Understanding among the elementary Springs of Human Action, we must at least place the *Need of a Mutual Understanding* among the fundamental grounds of human action.

17 These five then;—the Desire, or Need of Personal Safety, of Property, of Marriage, of Civil Society, and of a Mutual Under-

standing, are five elementary springs or grounds of human action. These are the origin of the most general, frequent, and prominent of men's actions; and these therefore are the primary and elementary matter for morality to deal with. And accordingly, the first and most elementary rules of morality do refer to these springs of action: *Thou shalt not kill: thou shalt not steal: thou shalt not commit adultery: thou shalt not bear false witness:* are precepts which refer to four out of the five: while the necessity of Civil Government, which is the fifth, is implied in the very act of delivering such laws.

18 These elementary Springs of Human Action being established as the starting point of our moral speculations, there are many other wider and more subtle Desires, which may also be regarded as springs of human action, as the Desire of Power, the Desire of Knowledge, the Desire of Esteem, and the like: and such Desires may form an important and interesting subject for moral speculations of a more extensive and recondite kind. To enumerate all such Desires, however, would be a matter of no small difficulty, if it be at all possible.

19 The attempt to enumerate the Springs of Human Action, including such as these, has been made by Jeremý Bentham: and an attempt on such a subject, so recently made, by a person of so great a reputation among one class of writers on morality, must deserve some notice in the present survey of speculations on the subject.

Mr Bentham's *Table of the Springs of Human Action* (first published, I believe, in 1817) presents us with fourteen such elements, arranged according to the pleasures to which our desires tend, or the pains which we shun. According to this mode of stating them, the first ten are the following: the Pleasures of the Palatè or of Taste; of the Sexual Appetite; of the Senses in general; the Pleasures of Wealth, of Power, of Knowledge, of Friendship, of Reputation, of Religion, and of the Heart, or of Sympathy in general. To these he adds four other elementary Springs of Action; Anger; Love of Ease; Fear of Pain and Death; and Self-regard.

20 I need not dwell upon the somewhat fanciful way in which Mr Bentham assigns to each of these Springs of Action a corresponding Interest, which he designates mostly by some material thing. Thus to the Pleasures of Wealth, Power, Knowledge, Friendship, Reputation, and Religion, correspond the Interests of the Purse, the Scéptre, the Spying-glass, the Closet, the Trumpet,

and the Altar. And to keep up this arrangement, the Pleasures of the Palate have a corresponding *Interest of the Bottle*; the Affection of Anger has an *Interest of the Gall-bladder*; the Love of Ease has an *Interest of the Pillow*; while for the Fear of Pain and Death, no image is found, and it is referred to the *Interest of Existence*.

21 It cannot be doubted that the Desires and Fears here enumerated are powerful and pervading impulses to human action. That all these are *elementary* kinds of such impulses, and that these are *all* which exist in man, are propositions not so clear; though this is what Mr Bentham asserts of them. It does not appear, for instance, what is gained for moral speculation by separating the pleasures of the taste from those of the other senses. It would seem, therefore, that these heads are more numerous than they need be. And on the other hand, I think it will be found that several of the Springs of Action which play a most important part in human affairs do not find a place under any of these heads. Where is that Love which is peculiarly called *Love*, and which *we* describe as the Desire of Family Society? It is not given, except as to its coarsest subordinate element. And avoiding, as I must, to dwell on this subject, I may ask where is Maternal Love? Is not this a powerful Spring of Action? Indeed in Mr Bentham's scheme, the whole Affection of Love is put aside as non-existent, though the Affection of Anger is made prominent as one of our impulses. There is indeed given—as a motive arising from the Pleasures of Amity or Friendship; from the “Interest of the Closet”—a Desire of obtaining the good opinion and services of this or that individual. But it appears to me that we cannot accept this, as either an elementary or a complete account of the Affection of Love in its various forms, parental, filial, and the like. Similar remarks might be made with regard to several others of Mr Bentham's Springs of Action; but I will not now pursue the subject.

22 I still, therefore, adhere to the arrangement which I have already given; that the leading Springs of Human Action, and therefore the foundations of moral rule, are the Desire or Need, among men, of Personal Security, Property, Marriage, Government, and of the Mutual Understanding by which promises and contracts are preserved. Also among Springs of Action we must include the Affections of Love and Anger, which combine with the Desires in giving the character to Human Actions. And here we conceive the bodily appetites to be absorbed and included in the mental desires to which they belong.

23 The natural operation of man's mind, elevating material objects into abstractions, thus puts mental in the place of bodily desires. But man not only abstracts and generalizes from external objects, he also turns his mental eye inward, and reflects upon his own internal world, his feelings, motives and purposes. And then again he reflects upon the result of these first reflections; and thus his thoughts work forwards and backwards, again and again, like the light in a globe of glass, so that it is difficult to say how many reflections of the light there are, and which is the last. In this way his pleasures and interests, his motives and designs, are transformed and complicated, so that it becomes very difficult to analyze and classify them. Yet those who have attempted to enumerate the Springs of Human Action have naturally not omitted those thus arising from reflection. Thus we have Mr Bentham's class of "Self-regarding Pleasures and Pains," with the corresponding "Self-regarding Interest." And we have, among Mr Stewart's Active Powers, two, besides those which we have hitherto noticed; namely, "Self-love" and "the Moral Faculty." The assumption of these two principles of Mr Stewart may lead to considerable debate. The first may lead to the question whether *Self-regard*, *Self-love*, and the like, be proper objects of the blame which is generally bestowed upon *selfishness*. And this question, in consequence of the habit of multiplied reflection of human thought, as I have said, is difficult to treat. Still, I think we may with advantage, enumerate, among the springs which move men's thoughts, and consequently their actions, those Reflex Sentiments which arise when they turn their thoughts upon themselves; as the *Desire of Esteem* from others, and the *Desire of our own Approval*.

24 But esteem and approval imply a moral judgment already formed: they imply a practice of regarding actions and dispositions as good or bad, right or wrong. Is such a judgment an original and elementary endowment of man? Has he a Moral Faculty? Mr Stewart, as I have said, holds that we have such a Faculty, and makes it one of his Active Powers, dwelling upon it and its consequences at considerable length. I do not think that this assumption of a special Moral Faculty is a convenient mode of treating Morality: for we must, in the determining what actions and dispositions the Moral Faculty selects for approbation and disapprobation, give reasons: and thus the Reason comes to be the Faculty which we really employ in forming such judgments. But the sentiments of approbation and disapprobation which result from our judgment of things as right and wrong, however formed,

become in themselves powerful Springs of Action, combining with and modifying all the others. These *Moral Sentiments*, therefore, as we may especially term them, *Approbation* and *Disapprobation*, must be introduced as forming a necessary sequence to the Desires which merely aim at pleasure or shun pain, and to the affections, which seek a good or repel an evil, without consulting the Reason.

I have thus offered my reasons for the arrangement which in the Elements of Morality I have given of the Springs of Human Action ; and for preferring this arrangement and analysis to that of other writers.

CHAPTER II.

OBJECTIONS CONSIDERED.

§ 1. *Reasoning in a Circle.*

1 I HAVE said that the adjective *right*; used absolutely, means *conformable to a supreme Rule*; and that for what is thus absolutely right, no higher reason can be given. Why must I do what is right? Because it *is* right (Art. 76).

And the same is true of the other ways of expressing the Supreme rule. Why should I do what I *ought*? Because I ought. No higher reason can be given.

It is plain that if any one, instead of accepting this account, as a notice of what we mean by *right*, *ought*, and the like, should take one of these related terms, as giving a reason for the other, he might produce "reasonings in a circle" of the most palpable kind. As thus: Why must I do what is right? Because I ought. Why ought I? Because it is my Duty. Why is it my Duty? Because it is right. And so on.

2 On such reasonings, I have to remark, that the *Because*, thus used, is none of mine. I have not only given no such reasons, but have said expressly that they are not to be given.

Nevertheless an objector has pretended to educe from what I have said, such reasonings as these; and has numbered these reasonings in an elaborate manner, with the notice; "This is vicious circle the first:" "This is vicious circle the second:" "This is vicious circle the third."

3 But the objection will perhaps be followed out thus: To

construct a System of Morality, is to determine what is right : and how are you to do this, without giving some reasons for what you prohibit and what you enjoin : that is, some reasons why what is right, *is* right ?

4 To this I reply, that I do give reasons for the precepts of Morality ; but these reasons are given, not by extracting them out of the meaning or definition of *right*, *ought*, or the like: but by considering what the Supreme Rule of Human Action must be, according to the constitution and conditions of human nature.

5 As an intermediate step in the determination of this Supreme Rule, comes the establishment of certain Rights among men; as Personal Security, Property, Family, and the like. These are necessary conditions of men living in human society, and living under the sway of a Supreme Rule. A respect for such Rights is *a part* of what is right; it is *the beginning* of the right course of action and being. But *Rights* the substantive is a much narrower term than *right* the adjective, as I have shown B. I. ch. iv.

The Objector has not attended to this distinction. He says, "While the meaning of *ought* is that we ought to respect Rights, it is a previous condition that Rights must be such as ought to be respected. Morality must conform to Law, but Law must first conform to Morality. This is vicious circle the second."

6 Neither the expressions nor the purport of these assertions are mine. I do not anywhere say that the meaning of *ought* is, that we ought to respect Rights. On the contrary, I say that the meaning of *ought* is much wider than this. The meaning of *ought* is that we ought to do what is right, whether or not the Rights of other persons require it.

Nor do I say that Rights must be such as ought to be respected: —though I might very truly say, that there must exist among men such Rights as those of the Person, of Property, of Family, and that these ought to be respected, as the necessary conditions of human actions. Such Rights ought to exist. But this is not my explanation of the *meaning* of *ought*; nor is such an explanation consistent with my views.

Nor do I say that "Morality must conform to Law, but Law must first conform to Morality." I say that Morality must conform to Law in general, and herein I believe all Moralists agree with me. What Moralist says that we may make our own definitions of property, marriage, and the like, disregarding the definitions of the Law? I say also that Law must be brought constantly more and more into conformity with Morality; that is, the Laws ought to be

constantly made more Moral; and again, What Moralist denies this?

But though Morality and Law are thus connected, according to our Scheme, Morality and Law do not depend upon each other *mutually*, but rather, *alternately*; Morality improving Law, and Law defining Morality. See B. II. c. xix.

7 Again, the Objector says, "We wanted to know what Morality is, and Dr W. said it was conforming to Rights. We ask now how he knows that there are Rights, and he says that otherwise there could be no Morality. This is vicious circle the third."

Dr Whewell has no where said that Morality is conforming to Rights; nor could say so, without entirely disregarding his own system. Morality is "doing what is *right*," which, as I have just said, is a much wider expression than "conforming to *Rights*."

8 Dr Whewell *does* say that if there were no Rights there could be no Morality; and that this truth shows the necessity of Rights; and this he conceives may be and is proved very clearly. If there were no Personal Security, no Property, no Marriage, no Contract, no Government, there could be no Morality. This is a definite and fundamental proposition in his system of Morality, and is in no way liable to the charge of reasoning in a circle.

§ 2. Reasoning from Human Happiness.

1 Pursuing the objection just stated, it has been said that the mode in which the necessary existence of the Fundamental Rights of man is established in this system, is not, as is pretended, by showing that without them there could be no Morality, but by showing that they are necessary to the peace and comfort of society. And thus, it is asserted that we have recourse to the principle of increasing human happiness; which, in other places, we profess to repudiate.

2 That the existence and prevalence of Moral Rules promotes human happiness, we are quite ready and willing to assert. And even more than this;—that if there be any Rule which, by its prevalence, increases human happiness, rightly estimated, then this Rule is consistent with Morality, and is a part of Morality.

But this a very different thing from accepting a system which deduces *all* its Moral Rules from the Principle of increasing human happiness, and from that *alone*. Such a mode of deduction we reject, because we do not think that we *can* determine in all cases what does increase human happiness. The calculation is too vast, vague and complex.

Moreover we find that that there are other methods in which we can determine, much more easily and clearly, as we think, what is right. And we conceive that men in general do determine what is right by other methods, and that it was intended by their Maker that they should do so.

3 That the existence of Property, Marriage, Government, promote human happiness, we do not at all doubt. That their doing so is a reason why these institutions must exist, as attributes of human society, we readily join in asserting. That they are necessary in order that man may live in tolerable peace and comfort, is what we have said. That they are also necessary in order that man may live under the sway of moral rules, is in no way inconsistent with this. Nor is it inconsistent to put forwards both these necessities, as grounds for the existence of Property, Marriage and Government, among men. These Institutions are necessary, that man's life may be tolerable: they are necessary, that his condition may be social; they are necessary, that his course of action may be moral. Their ground is, that they are necessary to human happiness; their ground is also, that they are necessary to human morality.

4 Not only are these two grounds consistent, but they are closely connected. Human happiness cannot be conceived without introducing moral elements. The happiness, that is, the pleasures, of pigs and cows may be understood to consist of elements in which esteem, approbation, and the like sentiments, have no share: but the happiness of man cannot be understood without including such sentiments as these: and these are moral sentiments. That Property, Marriage, and other Human Institutions, increase human happiness is true: but we must lay a due stress on the adjective *human*. And if we do this, we shall have to recollect that man is, by his nature, a moral creature; and that no happiness is human which does not involve moral relations. And thus, the account of the ground of Property, Marriage, and the like, that they promote human happiness, is incomplete, unless we add, or understand as included in the account, that these Institutions are the necessary conditions of Morality.

§ 3. *Founding Morality upon Law.*

1 An objection has been made, that since we establish Rights, meaning legal Rights, as a step towards our System of Morals, our Morality is founded upon Law, and must be limited by Law.

2 I reply, that any one, looking at the book itself, will see that the Morality does not depend on the Law. The enumeration of the Primary kinds of Rights (80) is a step towards the determination of what is right and what is wrong: for it is wrong, among other things, to violate men's Rights. But the general determination of what is right and what is wrong, is carried on by means of the Principle that the rightness and wrongness of actions goes far beyond their legal character;—depends upon the Springs of Action from which they proceed; (108)—and includes in its domain the whole being of man. This Principle at once makes Morality far higher and wider and deeper than Law. Law is not the foundation of Morality, but an indication of its place and form;—not the groundwork, but the guide-post.

3 In one sense indeed Morality depends upon Law, in our System; and just as much, according to every scheme of Morals that ever was recognized among men. Law supplies the Definitions of some of the terms which morality employs; and without these definitions, Moral Rules would be indefinite, unmeaning and inapplicable. Morality says, You shall not seek or covet another man's property: Law defines what *is* another man's property. Morality says, You shall not desire her who is another's wife: Law determines whether she be his wife. Morality says, Willingly obey and wisely rule, according to your station in society: Law determines what your station is. In this way, certainly, our Moral Precepts depend for their actual import on Law. But it does not appear how we can have any moral precepts which do not depend upon Law in this sense. To what purpose does Morality say to me, Do not desire the house, or the field, or the authority which is another's, if I am allowed to take out of the hands of the Law the decision of the matter, what or who is another's, and to decide it myself some other way? *We*, certainly, do not think it a degradation to listen to the voice of Law, when Law pronounces about matters which especially belong to her;—matters which no other voice can decide, and which must be decided. So far as this, we accept from Law the determination of certain fixed points in the external world of things, in order that in the internal world of thought and will there may be something to determine the direction which thought and will must take.

4 That there is no ground for the objection that we make Law the basis of Morality in any other sense than this, the necessary and universally allowed sense, must appear abundantly to any one who reads the book. See Articles 364, 365, and again 396, &c.

In no instance, in this work, are the special maxims of Law referred to as in any other manner determining our Duties; except in a few cases to suggest the limitations of Duty: as Art. 312, the Law which does not permit us to kill the diurnal burglar, or the flying robber, is referred to for the purpose of showing that moderate danger does not justify acts of violence and blood: and the inference is, not that Morality is to be judged by Law, but that if Law require so much moderation and humanity, morality must require much more. And this is the very principle by which we establish our Moral Rule: namely that Morality must be something far beyond Law;—something deeper, higher, wider, purer, brighter;—the precious metal of which Law is a fragment of the rude ore;—the living tree of which Law is the dried fruit.

§ 4. *Why five Fundamental Rights?*

1 We enumerate (Art. 35, &c.) five Desires or Needs, as the leading Springs of human action: and (Art. 80) five Primary kinds of Rights. But why, it is asked, do these Rights so exactly correspond to the five Desires? Why, as it has been put in a lively way, are they so exactly face to face with the Springs of Action;—so many Policemen, watching so many Thieves? To this it has been replied, by those who urge the question as an objection, that it is so because the Rights are merely the Desires over again, only appearing in other people instead of ourselves. Each man's "Rights of the Person" are only the legitimate part of his Desire of Personal Safety; and so of the rest.

2 I do not know why this correspondence of the two parts of our system should be alleged as an objection. It appears to be rather an evidence of coherence. The constitution of Society, as a system of instituted Rights, corresponds to the constitution of Man, as a system of Desires that need regulation and control. If the enumeration of Fundamental Rights be correct, there must be so many impulses in man which require and produce them. If the enumeration of Leading Desires be true, there must be so many Rights which mark the sphere of their legitimate gratification. These Leading Desires must be capable of being gratified in a tranquil and legitimate manner, in order that man may aim at higher objects. The Policemen control the Thieves, that men may be able to do something better than merely look to their pockets, or avoid being knocked down.

3 But it is not exact to say that the Rights are merely the Desires in other persons. They are more than this; they are the

results of *Rules* directing and controlling the Desires;—making their gratification legitimate by being Rules. And these Rules, though they have for their origin the same Desires in other persons, have also other elements in their origin, and other purposes than merely to control the Desires. They have, as a part of their origin, man's faculty of conceiving and applying Rules, and of conforming his Desires and Actions to them.

4 Even this would not make them *Rights*, but only *Laws*; but they have further, as a part of their origin, that they are right;—that is that they are conformable to the Supreme Rule of man's nature. Right Rules controlling each man's Desires so that they may be in harmony, and in equilibrium with the Desires of others, do establish Rights: the conflict of Desires without such Rules does not.

§ 5. *Is Respect for Authority a Duty?*

1 An objector says, "We find Dr W. everywhere inculcating, as one of the most sacred duties, reverence for superiors, even when personally undeserving."

2 In the first place, I must remark that I have said nothing about "*sacred* duties," still less about "*the most sacred* duties." I do not make a scale of duties, or of the sacredness of duties.

I say (Art. 176), "Reverence for Superiors is a Duty:"—simply, "is a Duty." And I would ask the objector, Is it not? At least it has commonly been so reckoned by all moralists, sacred and profane. Are we not to acknowledge an order of society in which there are superiors and inferiors? We, at least, acknowledge such an order. And how do we acknowledge it really and morally, if we have no affections corresponding to it? We say that obedience to Law and Authority are Obligations binding upon us in general.—Are they not? And that these Obligations ought in general to have a moral signification, a moral value.—Ought they not? *In general*, we say; or marking the conditions more precisely, when the Law is just; when the Authority is rightful.

3 Is not this the common voice both of mankind in general, and of the loftiest moralists? Is not Socrates admired for his obedience to Law? Is he not admired for it, even by those who think the Law unjust and cruel? And St Paul allows himself to be rebuked for lack of reverence to the Judge in his seat; and himself quotes the text, "Thou shalt not speak evil of the Ruler of thy people." And, regarding him merely as a human moralist, do not other moralists agree with him? Are not persons disapproved

of and condemned for want of loyalty, for sedition, treason, rebellion? Does not this disapprobation, this moral condemnation, assume that loyalty to the sovereign, reverence for the laws and the constitution, are qualities approved, admired, loved: in short, are regarded as Virtues?

4 But it is objected, that we reckon reverence for superiors a duty, even when the superior is personally undeserving.—We have nowhere said so. We have said (Art. 176), that *we readily believe* that the superior has that goodness, which combined with authority, is the natural object of reverence. Is it not a good habit of mind, to have this readiness of belief, and to suppose such goodness, till we have grounds for believing that it does not exist? Is not this habit of mind characteristic of a good man?

5 But it may be said, "It is right to admire those only who are personally deserving." We reply, that Reverence for Superiors is a different sentiment from approbation and admiration of virtue and merit. However the two sentiments may be related to each other, they are not identical. As we have said, the recognition of the position of our superiors, joined with the habit of giving a moral meaning to everything, makes us *willing* to suppose that they are good, and therefore deserving of reverence. But if there come before us evidence that this is not so, we have not said that the sentiment of reverence should remain unchanged. If this be so,—if we find that persons to whom, on account of their station and relation to us, our love and reverence are due, are still such personally as we cannot love and reverence,—there is necessarily a struggle between opposing feelings; between the sentiments due to their position and the sentiments due to their personal character. And this may be the case, not only with regard to political superiors, but also to persons who stand in other relations to us; as father, mother, brother, sister, husband, wife, child, any near relative, guardian, governor, master, tutor. Most persons will allow, with regard to some of these relatives at least, that when we cannot love, and reverence, and respect them, there must be a struggle, a painful struggle, of feeling. And that there is such a struggle, is evidence of the existence of a sentiment of reverence and respect founded upon the relation, which has to contend with another sentiment, a moral disapproval founded upon the personal character.

6 Moreover such a struggle, in such a case, is, by almost every one, regarded as evidence of a right state of feeling. A person whose heart is painfully wrung by such a struggle is ap-

proved and admired, far more than if he could condemn, dislike and despise a blameable father or mother, without any struggle at all. And with regard to civil governors,—to Kings and Queens,—the same views have generally prevailed. The most ardent lovers of liberty in the English civil wars of the seventeenth century had, at first at least, a reverence for the king on the ground of his station. Those who had not, Vane for instance, who said that he would shoot him as soon as another man in battle, were looked upon with horror. This was Loyalty; and the general admiration for this virtue (even if it have its limits, or may cease to be a virtue under certain circumstances,) cannot be assumed to be absurd, without some proof that it is so. .

7 But it may be objected, “such a sentiment—Loyalty irrespective of personal desert—is servile.”—Granted that it is a different sentiment from the Love of Liberty; granted that it may be in certain cases antagonistic to the Love of Liberty; still the two antagonistic sentiments may both be right, both be virtuous;—just as love to a person, and indignation at a wrong, are sentiments which may be in many cases antagonistic, and yet may both be right. All depends upon the circumstances of the case, and the balance of sentiments adjusted thereto, according to moral considerations.

8 I say that Loyalty and Love of Liberty may be, in certain cases, antagonistic: but they are not necessarily so. Even when, the personal qualities of the Ruler are not the ground of their coincidence, they may coincide in their general conception, as the word *Loyalty* shows. Loyalty originally meant Love of Law, and of the Ruler as the Upholder of Law, in opposition to the insolence and instability arising from uncontrolled self-will.

9 I am aware that it is natural for some persons, and especially for those who most aspire to improve the existing morality of society, to look to writers on morality for principles, by the application of which existing laws may be improved, and made conformable to a higher moral standard than regulates them at present. And this is a just and reasonable expectation. But the expectation often leads them to expect that moral writers should occupy themselves mainly with the suggestion of such changes. Now I conceive that a general Body of Morality could not be framed on the scheme thus demanded: for such a work must be employed mainly in treating of private duties, and of the duty of self-improvement; not of the duty of changing the Laws. At most, this last is only one duty among many. And I venture

to say further, that the consideration of the improvement of existing Laws is not neglected nor treated slightly in our system. With those who think that Loyalty to the Laws, the Constitution, and the Sovereign, ought never to be mentioned by the Moralist, except to be repudiated and condemned, we do not aspire to agree.

10 In the same way, it is made an objection, that I teach (Art. 844) that "whatever be its origin, the Constitution of our Country is a worthy object of our fidelity, reverence, and affection."

That a reverence for the Constitution is no new doctrine, nor one confined to servile minds, I have shown by quotations from English and American writers, in Articles 835, 853, and other places. That it is difficult to express, in general terms, the mode in which such reverence for the existing Constitution is to be combined with a desire to improve it, I have also said. That there may be cases in which a great change, amounting to what is called a Revolution, is necessary, I have also stated: but I have abstained, and give reasons why the Moralist must abstain, from attempting to define such cases beforehand. Perhaps, too, an Englishman who reverences the Constitution of his own country may too readily presume that something of the same reverence is due to the Constitution of every country.

11 What is evidently intended to be stated, in thus speaking of the Constitution of every Country, as being a worthy object of reverence and affection, is that the Constitution of every Country has in it something which is suited to the national character and the result of the national history; and is therefore the best basis for political improvements. Perhaps it would have been more exact to say that "The Constitution of the Country *has claims upon* our fidelity, reverence, and affection." It is a fit object of such sentiments, as being the National Constitution; but its claims may be neutralized by its defects as a Constitution, and by the impossibility of producing a Reform by constitutional means.

§ 6. *Marriage by Parental Authority.*

1 Objector. "Even in a matter so personal as Marriage, the usage and practice of the country is to be a permanent law, according to Dr W. He says, (232), 'In some countries the marriage of the child is a matter usually managed by the parents.

In such cases, it is the child's duty to bring the affections as far as possible into harmony with the custom."

2 To this objection I can only reply, as in other cases, Is there any Moralist who holds that it is not so? Observe, we do not say that it is the duty of the child to marry at the command of the parent, even in such countries, without suitable affections; but that, supposing that matter settled, and the child (daughter, for instance,) must and does marry at the parent's command, we say that it is her duty to bring her affections into harmony with the conjugal relation. I am at a loss to understand what other advice the Moralist can give. Is he to say that, if the marriage be the result of external command, it is a virtue and a duty in the parties to keep up sentiments of indifference or aversion?

3 In truth, may we not go further, and say that such an accommodation of the affections to our condition is not only right, but peculiarly virtuous? Is it not true that, in times and places where such a custom is established, (and we know that there have been and are such,) the most amiable dispositions and tempers, the best regulated minds, the persons of the most kindly, pure, and sincere characters, do especially take this course, of conforming their affections to their conjugal circumstances, as regulated for them by their natural guardians? Such conformity is regarded as an eminent virtue, in the countries where such usages prevail. We ought to be very sure that the opposite teaching is an improvement, before we venture to introduce it into our Morality.

§ 7. *Slavery Laws.*

1 Objector. "According to Dr W., The Laws of the State are to be observed, even when they enact Slavery." (Art. 434).

2 In the Second Edition Dr Whewell has changed "observed," into "submitted to." The best explanation of the limitations under which Dr W. says this, are to be found in the Chapter itself.

3 I do not know whether any Moralist holds a different opinion from that here objected to;—whether there are moralists who hold that we have a moral right to go into countries where Slavery exists, authorized and upheld by the laws, and to disregard these laws. For instance: Abraham had slaves;—servants who were born in his house and bought with his money (*Gen. xvii. 23*). Would it have been right in any of his contemporaries to hire or deal with these slaves, as if they had not been slaves? The Apostle

Paul exhorts slaves to submit to their masters cheerfully. Would it have been more truly moral in him to tell them that the Laws which established slavery were not to be submitted to? He sends back a fugitive slave to Philemon: would it have been more laudable to have kept the slave, and taught him that he could not justly be held as a slave? There may be many persons who would answer in the affirmative to these questions: but the other side, that it was right in these cases to submit to the Law of Slavery, is not so manifestly immoral as to be disposed of merely by mentioning it. The maxim that such a Law is not to be submitted to, leads to great difficulties and doubtful advantages, as I have shown.

4 And let it be observed, that when we say that such Laws are to be submitted to, while they exist; we say this in conjunction with the strongest expressions which we can use, asserting the duty of all States to abolish Slavery; and of all persons to do all in their power to promote such a result. "Wherever Slavery exists," it had just been said, (433) "its Abolition must be one of the great objects of every good man."

5 Moreover we hold a belief that such a submission to the Laws, while they exist, combined with such a constant effort to produce a reform in the laws, is the most hopeful mode of promoting the abolition of slavery, and the course most beneficial for the slaves themselves. This may be a mistake; but at any rate it is an opinion not arising from any love of slavery or toleration for it. Besides this Art. 434 &c., see 855.

6 But it may be rejoined, "This submission to Slavery Laws is a matter of prudence, not a matter of right." I am not very solicitous to stand upon the distinction, if it be granted that to submit to the Law is the course which we *ought* to take. That in a certain loose sense, Slavery is contrary to the Natural Rights of Man, I am quite willing to allow; and to express the doctrine with any amount of emphasis which is likely to be of efficacy in promoting the abolition of slavery. Why I do not commonly use such language, I have given reasons, when I have spoken of the difficulty, (indeed the impossibility) of establishing any list of such Natural Rights (Art. 421). I have stated in what sense Rights may be said to be *indefeasible* and *inalienable*. I have stated that such assertions cannot be understood, as if the Laws limiting or taking away such Rights were *ipso facto* null and void. I have given a whole Chapter on Slavery, the object of which is to show that Slavery is inconsistent with any above the lowest degree of

Morality in a State. I have stated that though we cannot point out or define any Law of Nature, different from the existing customary Laws of Nations, yet that we must hold fast to the truth which is intended to be expressed by those who speak of this Law of Nature; namely, that the existing Laws ought to be improved, so as to make them more completely correspond to the Moral Nature of Man.

§ 8. *Rights of Animals.*

1 In speaking of the objection, that in our System, we really draw our conclusions from the effect of Rules in increasing Human Happiness, I have said that such an effect does prove Rules to be moral, provided we lay due stress upon the attribute *Human*, and consider what it implies. But those who have been wont to deduce all Rules of action from their effect in increasing human happiness, have of late shown a disposition to reject the limitation which this adjective implies, and to take into account the increase of the happiness, or pleasures, of animals, as a ground of Rules of action. This appears to me to be a *reductio ad absurdum* of the "greatest-happiness principle." That the pleasures of pigs and geese are to be weighed against the pleasures of men, in order to obtain Moral Rules, is so wide a deviation from the general sentiments of mankind, that such a doctrine appears to be a sufficient refutation of the principles from which it flows. At any rate we may ask for some proof of the principle, that we are to take into account the pleasures of animals, as well as the pleasures of men, in framing our moral system. For that we are to regulate our actions so as to give the greatest pleasure to the whole animal creation, is certainly not a self-evident principle. It is not only not an obvious, but to most persons, not a tolerable doctrine, that we may sacrifice the happiness of men, provided we can in that way produce an overplus of pleasure to cats, dogs and hogs, not to say lice and fleas.

2 To this it is objected, that kindness to animals is a duty (as we also have said, Art. 967); that it is generally allowed to be immoral to give animals unnecessary pain, or to treat them with cruelty; that thus their pleasures are recognized as a ground of Moral Rules.

It is further added, that Laws have been made by the English Legislature, making cruelty to animals a crime, and assigning to it a punishment; and this, it is held, invests animals with Rights.

3 In reply to this, we say that animals may doubtless be the *objects* of Moral Rule. Cruelty to animals is a vicious and odious

disposition, as cruelty to men is. It involves something of the same want of kindly affections; and arises in the same way from not repressing fierce and savage emotions, and from regarding pain with indifference, or even with gratification. Cruelty to animals is the natural associate of cruel dispositions towards man. It was a cruel tyrant who took pleasure in killing flies. The Hebrew Proverb (*Prov. xii. 10*) appears to imply this, when it says, "The righteous man regardeth the life of his beast: (much more of men:) but the tender mercies (the kindest thoughts) of the wicked are cruel." And the consideration of the way in which the Creator has provided for the pleasures of animals, naturally leads a religious man to shrink from needlessly giving them pain.

4 But this is a very different matter from regarding the pleasures of animals as deserving the same kind of regard with those of men. Man alone is the Moral Creature, for he alone can conceive Rules of Action;—can judge of actions as right and wrong, and cannot help perpetually forming such judgments. And hence, the purpose and aim of Moral Rules is the relation of man with man; and every other bearing of such Rules is subordinate to this. Cruelty to animals is odious and wrong, mainly as manifesting a want of the kindness which human intercourse demands.

5 And for the same reason—the peculiar moral character of man—man alone can properly be said to have Rights. Rights are expressions of the relations of man to man. Rights are attributes of Persons. Animals are not Persons; they are, so far as the question of Rights is concerned, Things; Things, no doubt, on which may be exercised actions right and wrong, dispositions good and bad; as there may on other things also. But we cannot speak of the *Rights of Animals*, without forfeiting all the exactness of expression which the Doctrine of Rights requires.

6 No doubt, in a certain loose and popular sense, we may say that animals have a Right to be treated with kindness; meaning that it is right so to treat them: just as we may say that savage nations have a *Right* to receive from us the benefits of civilization. But to speak in this manner would be to renounce all pretension to distinct and definite meaning in discussing International Rights. Just so to speak of the *Right* of a hackney-couch horse not to be overworked or galled, would confuse all classification of human Rights, which are the especial matter of Laws.

7 "But have not the English Laws, by condemning and punishing the overworking and tormenting of horses, given these

Rights?"—No. Such Laws are manifestations of the humane and sensitive character of the English People, just as Laws against indecent exposures are manifestations of the decency of the English People. Such Laws are enacted to prevent what is repugnant to the general feeling of the English public. Their object, (a very fit object,) is to prevent ferocity, and hard-heartedness, in the one case, obscenity and lasciviousness in the other, from prevailing and growing, as they might do, if not publicly repressed and reprovved. Such Laws are a remarkable manifestation of Legislation aiming at the moral education of a nation ; which, as we have seen (Articles 763, 988, &c.) is a proper and necessary object of Law. But they cannot give Rights to creatures which are not Persons.

8 On the statement made above, that "It is to most persons not a tolerable doctrine that we may sacrifice the happiness of men to the pleasures of animals," it has been remarked, as showing its inconclusiveness, "It is to most persons in the slave states of America not a tolerable doctrine that we may sacrifice the happiness of white men to the greater happiness of black men."

9 To this I reply : so much the worse for the moral condition of the persons in the slave states. But this does not affect Dr Whewell, who has argued at length, (Art. 424—439) that black men and white men are on the same footing.

10 "But this shows that a doctrine not being tolerable to certain persons proves nothing against it."

I reply : no expression of repugnance or rejection towards a doctrine can *prove* anything against it. If any one were to say that we ought to act so as to increase as much as possible the pleasures of vermin, what would the objector say to it? Dr W. would say that such a doctrine is not tolerable, and so leave it. Or he would ask for proof of it ; as he has above done with regard to the greatest-animal-happiness principle in its general form.

11 The objector exclaims : "This then is Dr W.'s noble and disinterested ideal of virtue. Duties, according to him, are duties to ourselves and our like."

The objector, by thus saying, ironically, that *our* ideal of virtue is "noble and disinterested," of course implies that it is base and interested : and this, because we contemplate duties only to our like, that is to men. It is to be recollected that our scheme embraces Duties to all men ;—to the farthest of mankind. It includes Duties which involve loss and pain, and even the sacrifice of life itself. And of such a scheme of Duty the objector exclaims sarcastically, "This then is your noble and disinterested ideal of

virtue!" because it does not include a willingness to sacrifice our happiness to increase the pleasures of the lower animals. This is a new view of the requisites for an elevated morality. When men have been found whose benevolence and whose beneficence extended to the whole human race, without exception of nation or condition, without hesitation arising from difficulty encountered or pain incurred, their virtue, though thus confined to their like, has hitherto been deemed sufficient to save them from being condemned as base and selfish.

Of course such men would be kind to the inferior animals, in virtue of their general habits of heart and mind.

§ 9. *Disinterested Virtue.*

I It has been objected, that by referring to the rewards of Virtue in a future state of being, (Art. 450, 471,) we make virtue, in our system, selfish.

This is an objection long ago put forwards by Lord Shaftesbury (*Inquiry concerning Virtue*). The objection is generally urged in so lofty a strain of morality, that it must be treated with much consideration. We must gladly accept any standard of Morality, however elevated, which is consistent with the nature of man; and must have a care that in attempting to make our system definite and coherent, we do not lose any of the purer elements of Morality which can really be retained. Let us therefore listen respectfully to the objector.

"Happiness, Dr Whewell says, is our being's end and aim, &c. To this, we should have nothing to object, if by identification [of object of desire with our happiness] were meant that what we desire unselfishly must first become an actual part of what we seek as our own happiness; that the good of others becomes our pleasure, because we learn to find pleasure in it: that is, we think the true philosophical account of the matter. But we do not understand this to be Dr Whewell's meaning: for in an argument to prove that there is no virtue without religion, he says that religion alone can assure us of the identity of happiness with duty. Now if the happiness connected with duty were the happiness we find *in* our duty, self-consciousness would give us a full account of it without religion. The happiness therefore which Dr Whewell means must consist, not in the thing itself, but in a reward appended to it: and when he says that there can be no morality unless we believe that happiness is identical with duty,

and that we cannot believe this apart from 'the belief in God's government of the world,' he must mean that no one would act virtuously unless he believed that God would reward him for it. In Dr Whewell's view of Morality, therefore, disinterestedness has no place."

2 I have already given a reply to the main portion of this objection; (Art. 450). It is difficult for the purest moralists to keep the identity of Duty and Happiness steadily fixed in their minds, as an Operative Principle; and it does not appear possible to make this identity evident and effective in the minds of men in general. Hence in those cases, it is necessary to refer to Religion, which presents to us this truth, (the Identity of Virtue and Happiness,) in a convincing and effectual form, suited to the acceptance of ordinary minds. To which we may add, that if it be true, as we believe, that virtue does lead to happiness in another life, if not in this, it must be important that men should be taught this doctrine; and that Religion, which assures us that this is true, directs us also to teach this truth to men as a ground of moral action.

3 It appears to be an extravagant mode of speaking, to say that a moralist adopts the *selfish theory*, because he teaches that God will ultimately make our happiness agree with our duty. In our system, we have urged the claims of all virtues, whatever pains they may bring with them, according to such connexions as our reason can discern. We cannot venture to say that the pleasures of virtue, as seen by the eye of reason, are superior to all such pains. And if our own reason, and self-consciousness, assured us of this, we know that the reason and self-consciousness of men in general do not concur in such testimony. They cannot see that it is so; they must trust that it is so; they must believe it on religious grounds. The belief is not possible for them any other way.

4 "But," it may be still urged, "it would be more disinterested to act rightly, though by so doing we forfeited our own happiness." We reply, that if we were to act in any way, it would be because we found or expected our happiness in so acting. Those who can carry benevolent affections so far as to procure the happiness of another at the expense of their own torment, may do so; and may act virtuously in doing so; but if they so act, it must be because, in spite of pain, they find their happiness in promoting that of another. They are disinterested. And their disinterestedness has the same place in our system, as in other

systems. Disinterestedness is the Operative Principle of those persons who can and do find their happiness in promoting the happiness of others. There are such persons; but to require that all should be such, would be not only to require what we certainly shall not find, but to put the requirements of our Morality in a shape in which it cannot convince men. We, on the other hand, teach that to promote the happiness of others will lead to our own happiness, not on the evidence of self-consciousness (which would in a great number of persons testify against us, if we were to appeal to it), but on grounds of Religion.

5 The accusation of selfishness against systems proposed for the regulation of human conduct by the hopes of happiness in a future state is, as we have said, not new: nor is the doctrine new, that virtue, even in this world, is its own reward. It is very far from our wish to weaken the latter conviction, where it prevails: but we cannot think that a scheme of morality which depended mainly or entirely upon the diffusion of such a conviction, could answer the purposes of human life. The conviction would never be sufficiently general and strong: and where it is not admitted and felt, our Morality would be without force, and even without a right to influence: it would not only have no actual power, but no rightful authority. On this system, if a man choose to reject the reward which is involved in virtue, Virtue loses her claim upon him. The only morality which can be universally authoritative,—which can possess a claim that no rational being can reject,—is that which identifies the reward of virtue with the Supreme Object of every rational being; and *Happiness* appears to us to involve the notion of such a supreme object. But this happiness, though not necessarily and by the evidence of self-consciousness, flowing from virtue, is necessarily and fundamentally connected with virtue. It is a happiness which is to be obtained only by the possession of Benevolence, Justice, Purity, Truth and Orderliness, and which therefore cannot be arrived at so long as anything of Anger, Greediness, Sensuality, Fraud and Caprice remains unchecked. A hope of Happiness which is to be obtained by such a course of doing, by such a mode of being, cannot be termed *selfish* in any ordinary, or we may say, intelligible sense of the word. That to be kind, just, pure, true, orderly, is the *way to be* happy, is what we teach. That to be kind, just, pure, true, orderly, is *to be* happy, is what is put forwards in opposition to us. We honour such teaching, as that of virtuous and happy men; but we think that the frailty of human nature will not

allow us to address it to men in general, as complete and sufficing. When we see what temptations, what struggles, what pains of body and mind, even virtuous men may be subject to, by no fault of their own, we think that it would be mockery to tell them that, notwithstanding such inflictions, they are happy. All men cannot hold to the conviction, (if any can always hold to it,) that "Virtue alone is happiness *below*." But all can understand that future happiness may be a compensation for present unhappiness; that though virtue alone is not complete happiness, in this stage of man's existence, virtue practised in due trust towards the Governour of the World may be happiness, taking in the destinies of man in a future stage of existence. Men may not be able to *feel* at present that virtue on the whole is happiness, but they may be able to *believe* that it is so: and it does not appear that such a belief is more selfish than the feeling itself would be: the belief being accompanied with a feeling of what virtue is.

6 The accusation of selfishness against the virtue which looks to future happiness appears to arise from considering virtue as if it were an assemblage of mere acts, without any necessarily accompanying state of the internal being, the desires, affections and sentiments. The virtue which looks to future reward is not selfishness; because if it were selfishness, it would not be virtue. The foresight which looks to future happiness does not cease to be virtue, merely by being foresight. The desires, affections and sentiments which aim at and tend to the good of others, may be virtuous, without so completely absorbing our being as to require nothing besides their own exercise, to make the owner of them happy. They may be virtuous, though accompanied with much of unhappiness at present, and with a trust in the attainment of complete happiness in future.

This is the case, even in the present stage of existence. A virtuous effort to subdue and eject misdirected and ill-regulated desires and affections may be accompanied with great unhappiness at present, and yet with a trust and belief (quite well-founded) that after the lapse of some years, the effort will produce happiness. But is such an effort selfish? Or would it not rather be selfish to yield to the perverse desires and affections?

CHAPTER III.

OF PALEY'S MORAL PHILOSOPHY.

IN several places (Articles 454, 455, 459, &c.) I have noticed defects and incongruities in Paley's *Moral Philosophy*; and as the work is still much referred to, and is used in courses of methodical reading, it may be useful to point out more fully its faults as a systematic treatise.

It is right that we should, in the first place, be ready to acknowledge the merits of the book;—its kindly and sensible tone, and the liveliness and idiomatic plainness which often grace the style. Thus the chapter on Human Happiness, though quite irrelevant with reference to the system, is an agreeable Essay on the subject, regarded as a detached composition; and might be read with unmingled satisfaction, if it were a paper in the *Spectator*. The Chapter on the Treatment of Domesticity (B. III. ch. ii.) beginning, "A party of friends setting out together upon a journey," is pleasantly and kindly conceived. Even such passages as that (B. I. ch. vi.) where Paley says, "Whatever is expedient is right," and that (B. VI. ch. iii.), where he asks, "Who shall judge of the justice of resistance to government?" and answers, "Every man for himself;" have the merit of seizing upon the reader's attention, and give an interest to the passages in which the danger of these maxims is explained away. But these sudden turns, while they give liveliness to the exposition, tend to break down systematic connexion. And in order to show how much this is the general character of the work, I will remark on some passages in their order.

Book I.

In chapter i. Paley says that the Rules of Life by which men are ordinarily governed are the Law of Honour, the Law of the Land, and the Scriptures. In Chapter ii. he describes *The Law of Honour*; and his description is a highly sarcastic sketch of the rules which prevail, or which he supposed then to prevail, in very immoral fashionable society. The Law of Honour, he says, allows of fornication, adultery, drunkenness, prodigality, duelling, and of revenge in the extreme. Profaneness, neglect of public worship or private devotion, cruelty to servants, rigorous treatment of tenants or other dependents, want of charity to the poor, injuries done to tradesmen by insolvency or delay of payment, are no breaches of

honour. Now if a few persons in high life are governed by such rules, current in their circles, the middle and the lower classes are just as much governed by the rules established by opinion in *their* respective spheres. Of *these* Rules of Opinion, nothing is here said. Paley's object is to show that we must go to the Scripture for our morality; which inference he might still have drawn, though he had noticed the Common Opinion of the middle classes, as well as the Law of Honour of the higher classes. This mode of stating the matter does injustice to the common state of opinion on moral subjects.

«In chapter v. the state of the question respecting the *Moral Sense* is grossly misstated. But as *we* also reject the doctrine of the existence of an innate Moral Sense, independent of the culture and development which human life necessarily produces, we shall not dwell upon this misstatement.

Chapter vi. on *Human Happiness*, is introduced because Paley's Morality depends mainly upon the consideration of human happiness. But this chapter is an Essay (pleasingly written, no doubt, as I have said) upon those elements of happiness which have *the least*, or have *nothing* to do with Morality. And accordingly, though Human Happiness is much spoken of afterwards, this chapter is never referred to.

In chapter vii. the definition of Virtue ("Virtue is the doing good to mankind in obedience to the will of God, and for the sake of everlasting happiness"), excludes all actions which are not done from obedience to the will of God, and for the sake of everlasting happiness. This would exclude all virtues of heathens, and all virtuous actions done from love, or other affection, without the thought of reward; restrictions which are unnecessarily harsh, and contrary to the common notion of Virtue.

Book II.

Chapter i. "The Question *Why am I obliged to keep my word?*" This, as being an example of a fundamental question in Morality, is intended to be understood, *Why ought I to keep my word?* But by Paley's explanation of what *obliged* means, namely, chap. ii. "to be urged by a violent motive resulting from the Will of another," *obliged* ceases to have a moral meaning at all; and the solution of the question in this sense ceases to have any bearing upon morality. A man might be *obliged* to do a thing, in Paley's sense, when he *ought not* to do it.

But the object of this attempted analysis is to reduce all Morality to the Will of God: and this being supposed to be done by these introductory chapters, Paley's reasoning properly begins here.

Paley urges (chap. iv.) that morality without religion supplies no sufficient motives to withhold men from vice; which is true; but this does not prevent our being able, by the light of reason alone, to discern what *is* vice, which is the first object of Morality.

Chapter v. contains a brief proof of the Divine Benevolence. But the proof does not exhibit to us the Divine Benevolence in such a manner that we can find in it a moral guidance. The most striking of the proofs referred to by Paley show that God designed the happiness of animals and of man *alike*; which is quite different from the doctrine on which his morality rests. So that a basis for morality Paley here has still to seek. But supposing it established that God intended human happiness, and that therefore we ought to try to promote it, he proceeds to call it *Utility* (chap. vi.), and to consider how we can best promote it.

To aim at what is useful, is a maxim which would plainly be no moral guide, except with some explanation annexed. The explanation is, that we are to aim at general, not particular, utility; and it is further asserted (chap. vii.), that we must necessarily have general rules.

When this necessity of general rules has been once established or assumed, it is possible to construct a system of morality, which shall enjoin most of the ordinary duties of men. For if precepts must be general, they must take the moral side. If we are to have a general rule, either bidding us to speak truly or allowing us to speak falsely, it is plain which rule must be given.

But the proof seems to be defective. Why may I not, in a particular case, regard the particular more than the general consequences? Because, says Paley, if you allow the excuse in one instance, you must in all. Why? Why can I not be allowed to distinguish the instances, and judge accordingly?

Because, I believe Paley would answer, to state such a distinction in any general form, would still be to establish a rule. If, to take one of his examples, we say that we may tell a falsehood in order to obtain a situation in which we may serve the public, this, however immoral a rule, is still a general rule.

If this were the answer, we should have to say in reply, that the necessity of *such* general rules is a very small step, or none at all, in constructing a system of morality. For on Paley's principles, the question, whether such a rule be moral or not, depends upon

the calculation of the good we may do by obtaining the situation, and the harm we shall do by a bad example of falsehood, and the like. And any conclusive result from such a balance of consequences, appears to us to be impracticable; besides that, according to *our* views, this very mode of dealing with the question is itself immoral.

At the same time, we allow that the consideration of the general consequences of actions, further pursued in chapter viii., may be of great use in fixing our attention upon the real moral character of actions.

In chapter ix. we have a little confusion between moral and legal obligations. It is true that "If one man have a *Right* to an estate, others are *obliged* (or under a legal obligation) to abstain from it." But we should say, If parents have a *moral claim* (rather than, as Paley says, a right) to reverence from their children, children *ought* (are under a moral obligation) to reverence their parents.

He says further, that moral obligation and right are correlative: and that because obligation depends upon the Will of God, Right signifies consistency with the Will of God.

But this is inaccurate: for though *right*, the adjective, implies, "consistent with the Will of God," *Right*, the substantive, implies further and in addition, "a possession established by actual law among men;" and is not correlative with moral obligation, though it is correlative with legal obligation. This confusion appears in various parts of the chapter.

In chapter x. *Natural Rights* are spoken of as if they were a special class, and could be distinguished from another class, *Adventitious Rights*. But this distinction is not tenable. (See Art. 1052.) Examples given are, of Natural Rights, the right of a man to his own life, limbs, and liberty; of Adventitious Rights, the Right of a Ruler over his subjects. But the latter kind of Rights is really much more general, and so far, more natural, than the former, among men; especially among savage nations, who are esteemed nearest to a state of nature. No class of Rights can be termed peculiarly *Natural Rights*; for Rights depend upon actual Law; and though the *existence* of Rights is a part of man's social nature, the *definitions* of Rights in every society are historical, and so far adventitious.

The phrases *perfect* and *imperfect Right* have already been considered, and the reasons for avoiding those phrases stated (89).

In chapter xi., the general rights of mankind, namely, a Right

to the vegetable produce of the earth and to the flesh of animals, are asserted to be founded on reason and scripture. These Rights do not much enter into Morality, though Paley's remarks on them are instructive. The Right of Extreme Necessity, as when a starving man takes food not his own, is a peculiar case in morals, and is properly enough here treated.

Book III. Part I.

In chapter ii., we have one of the most definite examples of the manner in which a Moralist proceeding upon Paley's principles, establishes his doctrines. He has to prove the morality of *Property*, as a Social Institution. For this purpose, he has, according to his plan, to show that there is more utility attained by its existence than if it did not exist;—that more is gained for man than lost by the Institution. With this view, he enumerates the elements of the gain;—property increases the produce of the earth; preserves it to maturity; prevents contests; improves the conveniency of living. But he does not reckon up the elements of the loss; the evils which property occasions;—the oppressions of the poor, the struggles of the covetous, the contests of the litigious, and the like. I do not mean that it is doubtful on which side the balance of Utility lies; but to do justice to the argument, both sides should have been stated.

In this as in most other cases, those who found their Morality on the basis of Utility, urge the Utility of one side only, after the manner of advocates; instead of weighing one side against the other, like judges or philosophers. The reason of which seems to be, that the preference arising from a mere balance of reasons, is felt not to be strong enough to represent the conviction which we feel, of the necessity of those human Institutions which are the basis of all Morality, such as Property and Marriage.

Our mode of establishing the morality of property leads at once to this necessity. We say (66, &c. 78, 79 &c.) that man, having to deal with the earth and its produce, and other external objects, cannot exist as a moral creature, except there be a part of Morality which concerns these objects. He must have Duties with regard to them. But he cannot have Duties without having, and without other men having, Rights, that is, claims established and limited by actual law. And such claims with regard to the earth and its produce, and external objects in general, constitute Property.

Chapter iv. "In what the Right of Property in Land is founded,"

is a good example of Paley's discussion of theories: and his result, that "the real foundation of our Right is the Law of the Land," is characteristic; as answering a speculative question in a sense quite different from that in which it had been asked. For the question was not how A, B, C came to have their especial shares of the English soil; (which is all that the Law of the Land can determine;) but how any body of men, A, B, C, or any other, came to have, as property, the English soil, which they cannot hold or possess except by occasional use, and which very often the proprietor does not possess even so.

Chapter vi. to xiv., on Contracts, contain rather questions of Law than of Morality: they are jural rather than moral discussions. Paley, in his Preface, says that the writings of Grotius are of too forensic a cast to answer the design of a system of ethics; but Grotius has at least carefully distinguished what is forensic from what is ethical, which Paley has not.

Chapter xvi. is on Oaths. I have in Art. 613 explained why I think Paley wrong in his interpretation of the ordinary form of an Oath. The succeeding Chapter, on the Oaths against Bribery, Oaths against Simony, Oaths to observe Local Statutes, and Subscription to Articles of Religion, are discussions of special questions with reference to the controversies of the day.

Book III. Part II.

"Of Relative Duties which are indeterminate;" treats of what we have called the Duties of the Affections, and contains many good remarks well expressed; for instance, the remarks on the pretences by which men excuse themselves from giving to the poor; as "6, That they employ many poor persons—for their own sake, not the poor's—otherwise it is a good plea."

Book III. Part III.

"Of Relative Duties which arise from the Constitution of the Sexes;" also abounds in sensible practical reflections.

Book IV.

"Duties to ourselves." I conceive that the division of Duties into Duties to our Neighbours, Duties to Ourselves, and Duties towards God, is unscientific and inconvenient. This Book of Paley's

Work illustrates this opinion; for the three points included in it, the Right of Self-Defense, Drunkenness, and Suicide, form an heterogeneous group; and include, moreover, relations to our neighbour, and to God.

Book V.

“Duties towards God.” All Duties are Duties towards God.

Some parts of this Book, those which refer to Forms of Prayer and to Sabbatical Institutions, are rather questions of Ecclesiastical Rule, than of Morality; and I have accordingly omitted the discussion of them, in my later editions.

Book VI.

“Elements of Political Knowledge.” I have so fully considered most of the questions here discussed in my Book v., *Polity*, and have so far examined many of Paley's arguments, that I need not here return to the subject.

CHAPTER IV.

OF MITIGATIONS OF THE LAWS OF WAR.

§. 1. *Capture at Sea.*

1 I HAVE, in speaking of the Rights of War, (Book VI. Chap. ii.) noticed several steps by which the Laws of War, as generally acknowledged, became less savage and severe than they were at first. That additional mitigations of these Rules may be introduced, so long as war itself shall continue, must be the hope and aim of the moralist; and therefore we may add a few words to what we have said already, in order to point out some further advances in the same direction which have been recently proposed, and are, we may trust, on the eve of being carried into effect.

2 We have already said (1060) that in modern times a distinction has been made, in the conduct of war, between Combatants and Non-Combatants; and (1067) that in invading any country, Non-Combatants are relieved from any unnecessary molestation

and loss; and the invader, so far as he succeeds, contents himself with superseding the higher functions of the State in the invaded Country, and perhaps imposes a special Tax or Contribution for himself; but does not disturb the persons, families, or private property of the subjects. They are allowed to carry on business and trade as at other times.

3 This is the acknowledged Rule of warfare by Land; and in ordinary cases it is practically observed; though undoubtedly it often happens that the presence of an invading army brings great oppression and calamity upon the population in general. But the Rule of the Sea during war is entirely different. All nations have maintained and exercised, as one of the Rights of war, the Right of seizing the private property of citizens of the hostile State captured at sea (1086) in ships of that state. In the earlier and fiercer times of war, the belligerent went further than this. He seized the property of those who were not enemies, if he found it in an enemy's ship. He seized the property of his enemy, if he found it in the ship of a friend. He even went so far as to confiscate the friendly ship for carrying the enemy's property; and further still, he forbade all commerce of other nations with the enemy. These were the haughty and fierce pretensions of belligerents, bent upon injuring their enemy by all possible means, and requiring every thing else, the commerce of other nations and the interests of private persons, not only to give way to this purpose, but to conspire with it. In opposition to these pretensions, arose on the other side the assertion of the Rights of Commerce. In modern times there have been wars which have taken place between nations, but in which neighbouring powerful nations have not participated: and these Neutral Nations have insisted on controlling the harsh Rules which have just been mentioned; and have, in a considerable degree, succeeded.

4 The gradually ascending scale of mitigation, so far as captures at sea are concerned, may be stated as follows; with reference to the Rules regarding ships carrying goods which are private property*.

- 1 Neutral ships confiscated for carrying enemies' goods.
- 2 Enemies' ships captured with enemies' goods.
- 3 Enemies' ships condemn Neutral goods.

* That each belligerent forbids its own subjects to trade with the other belligerent, is understood, as part of received International Law. (Manning, B. III. c. iv. p. 122.)

We may notice that the Public Debt of each State, even such portions of it as are due to enemies, is always paid during war, by International Law. (Manning, p. 129.)

- 4 Neutral ships do not protect enemies' goods.
- 5 Enemies' ships do not condemn Neutral goods.
- 6 Neutral ships protect enemies' goods.

Of these Rules, the first has been abandoned by all belligerents, except when they have been tempted by the possession of great power, or inflamed by special excitement in the conduct of the war. The second is the ordinary Rule of war between belligerents in modern times, and does not affect neutrals. The fourth and fifth Rules are each of them a kind of compromise between the claims of belligerents and of neutrals. The third Rule, that *Enemies' ships make enemies' goods*, is the maxim of Belligerents; the sixth, that *Free ships make free goods*, is the maxim of Neutrals.

5 To combine these two, so that the ship shall determine the fate of the cargo, is perhaps the simplest rule: it spares the belligerent the trouble of entering into any inquiry respecting the proprietorship of the goods carried. This has been the course usually followed by France in naval warfare. England, on the contrary, has generally governed her seizures more by the goods than by the ships. She has asserted the fourth Rule, that neutral ships do not protect enemies' goods, and has condemned them when so taken; but, on the other hand, she has conceded the fifth Rule, that enemies' ships shall not condemn neutral goods, and has liberated neutral goods so taken.

6 An additional step in concession to the Rights of Commerce would be, to combine the mitigations of the Rights of Naval war hitherto adopted by the two countries, France and England;—to allow the Neutral maxim, *Free ships, free goods*, in its full extent; and to add to it the English limitation of the Belligerent maxim; so that enemies' ships shall not make enemies' goods, but that Neutral goods shall be free in Enemies' ships. This important advance in mitigating the severity of the Laws of Naval warfare has been announced, as the course which England and France intend to pursue in the present war with Russia (1854).

7 A still further step is conceivable in the same direction; namely, that private commerce should be altogether exempted from the attacks of naval warfare, as it has long, (as a general rule,) been exempted and protected in warfare by land;—that trading vessels should not be assailed by vessels of war belonging to the enemies' country, but should be allowed to proceed on their voyages of traffic unmolested; as carts and waggons proceed along

roads, and barges along canals, in a country occupied by contending armies. In this way, naval warfare would be confined to the ships of war of each country. Fleet would fight with fleet, as army fights with army; and while these violent proceedings shook and deformed the surface of things, the current of private industry and commerce would flow below uninterrupted in its beneficial course.

8 It is however perhaps hardly to be expected that belligerents should restrain themselves within these limits in naval warfare. In the case of land invasion, the invader, so far as he is successful, assumes, as we have said, the place of the governing power: and if the portion of his enemy's territories which he has thus seized prosper under his rule, he himself derives advantages from their prosperity. It is an advantage to him to be in a land of plenty, even if he pay for all that he consumes; and with his over-mastering power, he can at any time levy contributions out of the wealth which he has spared. Shops and warehouses, factories and palaces, remain where they are, and can be at any time subjected to military visitation, when the invader's law of alleged necessity* requires that they should. But with regard to commercial property at sea, the case is different. That, if once let slip, is, in general, quite out of the captor's reach, and lost to him altogether. Moreover external commerce is generally regarded as enriching the state which carries it on, and thus aiding it in carrying on the war; and to cripple its commerce is therefore, indirectly, to weaken its belligerent force, and is thus a proper object of war.

9 We may add, that the difficulty of distinguishing what kinds of goods have really no direct bearing on the conduct of the war, would be considerable; as also the difficulty of determining what lines of transit might be pursued by commercial vessels, without affecting the results of the war. But these difficulties, to a certain extent, the Code of International Law undertakes to solve, by the Rules which it lays down respecting goods which are *Contraband of War*, and passages which are *Breach of Blockade*. It does not appear, therefore, a matter to be absolutely despaired of, that the Rights of Commerce in the time of war, as they are affected by naval warfare, may be still further extended, and still more liberally defined, than they have yet been.

§ 2. *Privateers.*

10 There is another point in which maritime has generally differed from terrestrial warfare, as to its Rules and practices. It has been stated (1071) that in land-fighting, the inhabitants of the country which is the seat of war, must, in order to enjoy the advantages of civilized warfare, attend strictly to the distinction of Combatants and Non-combatants. Those who do not belong to the army must refrain from committing any hostilities against the enemy, otherwise they are punished by severe Laws of War. But in naval warfare (1069), private persons often own armed ships, and in them make war upon the enemy; and make this a gainful occupation, by the prizes which they capture. These persons and their ships are called *Privateers*. It is necessary, however, that such ships should have a commission from the Belligerent Power on whose side they act, otherwise they are liable to be condemned as Pirates.

11 The existence of Privateers in a war is likely to add greatly to the miseries which war inflicts, without contributing in a corresponding degree to the decision of the struggle. It is therefore a great step in the mitigation of the Laws of war, for the party which has the greatest naval power, to forbid its subjects to own Privateers. This also has been done by England and France, in the present war with Russia.

12 It has been proposed that there should be a general agreement among maritime nations, to abolish Privateering. But the answer made by American statesmen to such a suggestion, presents to us a view of the subject which it is necessary to take into account. The Americans of the United States have a commerce almost approaching in magnitude to that of England; but their public navy is so small as to render any warfare, fleet to fleet, impossible. In the event of a war between the two countries, the only resource of America would be to convert a number of her merchant-vessels into privateers, in order to retaliate upon England the losses which her navy might inflict. In such a case, American privateers would prevent England from domineering over the ocean without opposition; much as a guerilla warfare may check, and even repel, the invasion of a country, which cannot oppose an army to the invading army.

13 But though Privateering may in such a case be regarded as defensible and necessary, privateering pursued as a trade or

means of gain, and without any national necessity, is an odious and pernicious practice, unsuited to a code of International Law in which the usages of war are undergoing such mitigations as we have been considering. Privateering has been thus pursued, merely as a trade; and private persons, not at all by their nation concerned in the war, have, in many cases, armed Privateers, and received Commissions from one of the Belligerent Parties, and sought their spoil among the private ships of the opposite Party. It is time that this kind of Privateering be put an end to. The American government has condemned the practice of the ships of a neutral power receiving Letters of Marque from one of the belligerents; and it may be hoped that this practice will no longer be tolerated.

14 As we have already said, the completion of the triumph of the Rights of Commerce would be, that all attacks on private property, as such, by sea as well as by land, should be no longer justified by the Rights of war, and that war should be carried on by Navies only at sea, as it is by Armies only on land. But there are differences between land warfare and maritime warfare, some of which we have already noticed, which would make it difficult to carry it into effect. And in some respects, such a change, by making war less the act and concern of the whole Nation, would deprive it of that character which, though pregnant with sore inflictions, is its best justification, because it is the evidence of its necessity. If we suppose Nations thus to decide their quarrels by a contest between a selected body of military and naval representatives, we approach to the formal combats by which national questions were sometimes decided in the days of chivalry.

15 All mitigations of the Laws and Usages of war point to that noble Ideal of the lovers of mankind, a Perpetual Peace; as I have said in the Preface to my edition of Grotius. Grotius himself, as I have there noticed, looked to certain Congresses of Christian powers, held for the decision of international disputes, as the most likely road to such a consummation. Kant in Germany, Mr James Mill in England, have in like manner proposed the establishment of an International Tribunal, which shall take cognizance of all disputes between nations. Mr Manning (*Commentaries on the Law of Nations*, B. II. ch. v.) has discussed these and other plans having the same object. In the mean time, we may observe, that the world has not gone on without some approximations, even in fact, to the Idea of an International Tribunal. Such

approximations were the authority exercised by Imperial Rome in ancient times; by the Empire and the Church in the middle ages; and by Congresses and Alliances in modern times, which have had for their object the preservation or the restoration of the Balance of Power; or some other mode of repressing and preventing, even while at a distance, national injustice and aggression. May all such undertakings be successful and powerful in proportion to their justice; and may the willingness of nations to make war for such ends alone, lead us on the true road to a Perpetual Peace!

Since the last edition of this book, Dr Travers Twiss's valuable Treatise on International Law has been published. (*The Law of Nations considered as Independent Political Communities. In time of War, 1861. In time of Peace, 1863.*) In this work Dr Twiss states, in reference to the Rules concerning captures at sea, which I have classified, at pp. 606 and the following, that the systems of Maritime Law may be classified as four: namely,

The Natural System of the *Consolato del Mare*:

(Enemies' goods are prize, neutral, free:)

The French System:

(Neutral ship with enemies' goods, and neutral goods in enemies' ship are prize:)

The Dutch System:

(Neutral ship, goods are free, enemies' ship, goods are prize:)

The System of the Congress of 1856:

(Neutral ship, goods are free, enemies' ship, neutral goods are free: contraband excepted.)

The Declaration of the Congress contained also an article that Privateering is abolished. To this the United States of America declined to accede unless the other Powers would agree to adopt another provision, that the private property of citizens on each side shall be exempted from seizure by the public armed vessels of the other belligerent except it be contraband. And so the matter stands at present.

THE END.



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