

THE
P R I N C I P L E S

OF

NATURAL AND POLITIC

LAW,

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AND CIVIL LAW, AT GENEVA.

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PRELIMINARY.

ETHICS, or the doctrine of the duties of men, regard men in their four main relations, and thence derive those four parts, which constitute the system of Ethics.

I. The first of these relations is that of man in his natural state, previously to, and independently of, all civil institutions. From this relation is derived the first part of Ethics,—

THE LAW OF NATURE—

II. The second relation (after societies have been formed by the use of the faculties in the natural state,) is that of State to State. From this relation is derived the second part of Ethics,—

THE LAW OF NATIONS—

III. Societies being formed, and governments instituted, the next relation, in a natural order, is that of subject and sovereign, or of a citizen and the law by which he is governed. And as all the Codes of law in Europe, either immediately, or more remotely, were derived from the Roman, so the third part of Ethics is—

THE ROMAN AND CIVIL LAW.

IV. The fourth relation of man is that of private life, as an individual, and a member of a family. Hence the fourth part of Ethics is,—

THE MORAL DUTIES OF MEN.

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OF
NATURAL LAW.

PART I.

General PRINCIPLES of RIGHT.

CHAP. I.

Of the Nature of Man, considered with regard to Right: Of the Understanding, and whatever is relative to this Faculty.

I. MY design is to enquire into those rules which nature alone prescribes to man, in order to conduct him safely to the end which every one has, and indeed ought to have, in view, namely, true and solid happiness. The system or assemblage of these rules, considered as so many laws imposed by God on man, is generally distinguished by the name of *Natural Law*. This science includes the most important principles of morality, jurisprudence, and politics; that is, whatever is most interesting, as well to man as to society. There can be nothing therefore more deserving of the application of a rational being, of a being that has its perfection and felicity seriously at heart. A just knowledge of the maxims we ought to follow in the course of life, is the principal object of wisdom; and virtue consists in putting them constantly in practice, without being ever diverted from so noble a pursuit.

II. The idea of *Right*, and much more that of *Natural Right*, are undoubtedly relative to the nature of man. It is from this nature therefore, from the constitution and state of man, that we are to deduce the principles of this science.

The word *Right*, (*Droit**) in its original signification, comes from the verb *dirigo*, which implies, to conduct a person to some certain end by the shortest road. Right, therefore, in its proper and most general sense, and that to which all others must be reduced, is, whatever directs, or is properly directed. This being premised, the first thing we have to examine is, whether man is sus-

* The etymology given here by the author was intended only for the French word *Droit*.

ceptible of direction and rule, in respect to his actions. That we may attempt this with a greater probability of success, we are to trace matters to their very origin, and ascending as high as the nature and constitution of man; we must there unravel the principle of his actions, and the several states that properly belong to him, in order to demonstrate afterwards in what manner, and how far, he is susceptible of direction in his conduct. This is the only method of knowing what is *right*, and what is not.

III. Man is an animal endowed with understanding, and reason; a being composed of an organized body, and a rational soul.

With regard to his body, he is pretty similar to other animals; having the same properties, organs, and wants. This is a living body, organized and composed of several parts: a body that moves of itself, and, feeble in the commencement, increases gradually in its progress by the help of nourishment, till it arrives to a certain period, in which it appears in its flower and vigour, from whence it insensibly declines to old age, which conducts it at length to dissolution. This is the ordinary course of human life, unless it happens to be abridged by some malady or accident.

But man, besides this marvellous disposition of his body, has likewise a rational soul, which eminently discriminates him from brutes. It is by this noble part of himself that he thinks, and is capable of forming just ideas of the different objects that occur to him; of comparing them together: of inferring from known principles unknown truths: of passing a solid judgment on the mutual fitness or agreement of things, as well as on the relations they bear to us; of deliberating on what is proper or improper to be done: and of determining consequently to act one way or other. The mind recollects what is past, joins it with the present, and extends its views to futurity. It is capable of penetrating into the causes, progress, and consequence of things, and of discovering, as it were at one glance, the entire course of life, which enables it to lay in a store of such things as are necessary for making a happy career. Besides, in all this, it is not subject to a constant series of uniform and invariable operations, but finds itself at liberty to act or not to act, to suspend its actions and motions, to direct and manage them as it thinks proper.

IV. Such is the general idea we are to form of the nature of man. What results from hence is, that there are several sorts of human actions: some are purely spiritual, as to think, to reflect, to doubt, &c. others are merely corporeal, as to breathe, to grow, &c. and some there are that may be called mixt, in which the soul and body have both a share, being produced by their joint concurrence, in consequence of the union which God has esta-

blished between these two constituent parts of man ; such as to speak, to work, &c.

Those actions, which either in their origin or direction depend on the soul, are called human or voluntary ; all the rest are termed merely physical. The soul is therefore the principle of human actions : and these actions cannot be the object of rule, but inasmuch as they are produced and directed by those noble faculties with which man has been enriched by his Creator. Hence it is necessary to enter into a particular enquiry concerning this subject, and to examine closely into the faculties and operations of the soul, in order to discover in what manner they concur to the production of human actions. This will help us, at the same time, to unfold the nature of these actions, to assure ourselves whether they are really susceptible of rule, and how far they are subject to human command.

V. Let man reflect but ever so little on himself, sense and experience will soon inform him, that his soul is an agent, whose activity displays itself by a series of different operations ; which, having been distinguished by separate names, are likewise attributed to different faculties. The chief of these faculties are the understanding, will, and liberty. The soul is, indeed, a simple being ; but this does not hinder us, when we attend to its different ways of operating, from considering it as a subject in which different powers of acting reside, and from giving different denominations to these powers. If we consider the thing in this manner, we shall find it give a greater exactness and perspicuity to our ideas. Let us remember therefore, that these faculties are nothing else but the different powers of acting inherent in the mind, by means of which it performs all its operations.

VI. The principal faculty of the soul, that which constitutes the fundamental part of its being, and serves, as it were, for its intrinsic light, is the understanding. We may define it that faculty or power, by which the mind perceives, and forms ideas of things, in order to come at the knowledge of truth. Truth may be taken here in two significations ; either for the nature, state, and mutual relations of things ; or, for the ideas agreeable to this nature, state, and relations. To have a knowledge therefore of truth, is to perceive things such as they are in themselves, and to form ideas concerning them conformable to their nature.

VII. We must therefore set out with acknowledging, as a fixed and uncontestable principle, that the human understanding is naturally right, and has within itself a strength sufficient to arrive at the knowledge of truth, and to distinguish it from error ; espe-

cially in things wherein our respective duties are concerned, and which are requisite to form man for a virtuous, honourable, and quiet life; provided, however, he employs the care and attention that lies in his power.

Sense and experience concur to convince us of the truth of this principle; which is the hinge, as it were, whereon the whole system of humanity turns. It cannot be called in question, without sapping the foundation, and entirely subverting the whole structure of society; because this would be annulling all manner of distinction between truth and error, and between good and evil; and by a natural consequence of this subversion, we should find ourselves reduced to the necessity of doubting of every thing; which is the highest pitch of human extravagance.

Those who pretend that reason and its faculties are depraved in such a manner, as to be no longer capable of serving as a sure and faithful guide to man, either in respect to his duties, or particularly with regard to religion; do not reflect that they have adopted for the basis of their system, a principle destructive of all truth, and consequently of religion. Thus we see that the sacred scripture, far from establishing any such maxim, assures us*, that when the Gentiles which have not the law, do by nature the things contained in the law; these having not the law, are a law to themselves. Which shew the work of the law written in their hearts, their conscience also bearing witness.

True it is, that a bad education, vicious habits, and irregular passions, may obfuscate the mind; and that neglect, levity, and prejudices, precipitate men frequently into the grossest errors in point of religion and morals. But this proves only that men may make a bad use of their reason, and not that the natural rectitude of the faculties is subverted. What we have still to say, concerning this point, will help to set it in a clearer light.

VIII. Let us proceed now to a closer inquiry into the operations of the understanding. The perception, or view and knowledge of things, is commonly formed by the concurrence of two actions; one from the object, and is the impression which this object makes on us; the other from the mind, and is properly a glance, or simple view of the soul, on the object it is desirous of knowing. But as a first view is not always sufficient, it is necessary that the mind should apply itself for some time to a serious consideration of the object, to the end it may acquire a just knowledge of things, and form thereof exact ideas. This application, with which the soul continues to view the object in order to know it well, is

* Rom. ii. 14, 15.

called attention; and if it turns itself different ways, to consider the object on all sides, this is termed examen or enquiry. We may therefore affirm, that the perception or knowledge of things depends entirely, in respect to the mind, on its natural vigour and attention.

IX. It is by these helps, drawn from his own fund, that man attains at length a clear and distinct knowledge of things, and their relations; as also of ideas, and the conformity of those ideas to their originals; in short, that he acquires the knowledge of truth. We give the name of evidence, to this clear and distinct view of things, and of their mutual relations: a point to which we should be particularly attentive. For this evidence being the essential characteristic of truth, or the sure mark whereby one cannot help distinguishing it, the consequence is, that it necessarily produces such an internal conviction, as forms the highest degree of certainty. It is true that all objects do not present themselves with so strong a light, and that notwithstanding the great care and application a man may use, all that he is frequently able to attain, is only a glimmering light, which, according to its strength or weakness, produces different degrees of probability and seeming truth. But this must be absolutely the case of every being, whose faculties are limited: it is sufficient that man, in respect to his destination and state, is capable of knowing with certainty those things which concern his perfection and happiness: and moreover, that he is able to distinguish between probability and evidence, as also between the different degrees of probability, in order to proportion his assent to those differences. Now a person need but enter never so little into himself, and reflect on the operations of his mind, to be convinced, beyond any possibility of doubt, that man is really possessed of this discernment.

X. The senses, taken for the sensitive faculty, the imagination also, and the memory, must be all reduced to the understanding. In fact, the senses, considered in this manner, are nothing else but the understanding itself, as it makes use of the senses and organs of the body, to perceive corporeal objects. The imagination, likewise, is nothing but the understanding, as it perceives absent objects, not in themselves, but by their images formed in the brain. The memory, in fine, is no more than the understanding, considered as possessed of the faculty of retaining the ideas it forms of things, and capable of representing them to itself whenever there is occasion; advantages that principally depend on the care we take in repeating frequently those ideas.

XI. From what has been hitherto said with regard to the understanding, it follows, that the object of this faculty of the soul is truth, with all the acts and means that lead us to it. Upon this supposition, the perfection of the understanding consists in the knowledge of truth, this being the end for which it is designed.

There are two things, among others, opposite to this perfection, ignorance and error; which are two maladies, as it were, of the mind. Ignorance is no more than a privation of ideas or knowledge; but error is a non-conformity, or opposition of our ideas to the nature and state of things. Error being therefore the subversion of truth, is much more opposite to it than ignorance, which is a kind of medium between truth and error.

It is to be observed here, that we do not speak of the understanding, truth, ignorance, and error, purely to know what these things are in themselves; our main design is to consider them as principles of our actions. In this light, ignorance and error, though naturally distinct from one another, are generally mixed, as it were, and confounded; insomuch, that whatsoever is said of one, ought equally to be applied to the other. Ignorance is frequently the cause of error; but whether joined or separate, they follow the same rules, and produce the same effect by the influence they have over our actions or omissions. Perhaps, were we to examine into things exactly, error only, properly speaking, can be looked upon as a principle of action, and not simple ignorance, which being nothing more of itself than a privation of ideas, cannot be productive of any thing.

XII. There are several sorts of ignorance and error, whose different divisions it is proper for us to observe. 1. Error considered in respect to its object, is either of the law, or of the fact. 2. With regard to its origin, ignorance is voluntary or involuntary; error is vincible or invincible. 3. In relation to the influence of the error on a particular affair or action, it is esteemed essential or accidental.

Error is of the law or fact according as people are mistaken either in respect to the disposition of the law, or in regard to a fact that is not sufficiently known. For instance, it would be an error of law, were a prince to suppose himself entitled to declare war against a neighbouring state, only because it insensibly increases in strength and power. Such was likewise the error so common formerly among the Greeks and Romans, that it was allowable for parents to expose their children*. On the contrary,

* See another example in St. Matthew, chap. xv. 4. 5.

the idea Abimelech had of Sarah the wife of Abraham, by taking her for an unmarried person, was an error of the fact.

The ignorance a person lies under through his own fault, or an error contracted by neglect, and which might have been avoided by using all possible care and attention, is a voluntary ignorance, or a vincible and surmountable error. Thus the polytheism of the Pagans was a vincible error; for they had only to make a right use of their reason, in order to be convinced that there was no necessity for supposing a plurality of gods. The same may be said of an opinion established among most of the ancients, that piracy was lawful against those with whom there was no treaty subsisting, and that it was allowable to consider them as enemies. Ignorance is involuntary, and error invincible, when they are such as could neither have been prevented nor removed, even by all the care and endeavours that are morally possible; that is, judging of them according to the constitution of human things, and of common life. Thus the ignorance of the christian religion, under which the people in America laboured, before they had any communication with the Europeans, was an involuntary and invincible ignorance:

In fine, we understand by an essential error, that whose object is some necessary circumstance in the affair, and which for this very reason has a direct influence on the action done in consequence thereof; insomuch, that were it not for this error, the action would never have been done. Hence this is denominated likewise an efficacious error. By necessary circumstances, we are to understand those which are necessarily required, either by the very nature of the thing, or by the intention of the agent, formed at the proper time, and made known by suitable indications. It was thus, for instance, an essential error in the Trojans, at the taking of their town, to shoot their darts against their own people, mistaking them for enemies, because of their being armed after the Greek manner. Again: a person marries another man's wife, supposing her to be a maid, or not knowing that her husband is still living: this regards the very nature of the thing, and is of course an essential error.

On the contrary, accidental error is that which has no necessary connection of itself with the affair, and consequently cannot be considered as the real cause of the action. A person abuses or insults another, taking him for somebody else, or because he supposes the prince is dead, as it had been groundlessly reported, &c. These are errors merely accidental, which subsist indeed in the