

Henry Sidgwick

Methods of Ethics

Book 1 Chapters 1 and 2

Book 3 Chapter 5

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BOOK I

CHAPTER I

INTRODUCTION

§ 1. THE boundaries of the study called Ethics are variously and often vaguely conceived: but they will perhaps be sufficiently defined, at the outset, for the purposes of the present treatise, if a 'Method of Ethics' is explained to mean any rational procedure by which we determine what individual human beings 'ought'—or what it is 'right' for them—to do, or to seek to realise by voluntary action.¹ By using the word "individual" I provisionally distinguish the study of Ethics from that of Politics,² which seeks to determine the proper constitution and the right public conduct of governed societies: both Ethics and Politics being, in my view, distinguished from positive sciences by having as their special and primary object to determine what ought to be, and not to ascertain what merely is, has been, or will be.

The student of Ethics seeks to attain systematic and precise general knowledge of what ought to be, and in this sense his aims and methods may properly be termed 'scientific': but I have preferred to call Ethics a study rather than a science, because it is widely thought that a Science must necessarily

¹ The exact relation of the terms 'right' and 'what ought to be' is discussed in chap. iii. of this Book. I here assume that they may be used as convertible, for most purposes.

² I use 'Politics' in what I take to be its most ordinary signification, to denote the science or study of Right or Good Legislation and Government. There is a wider possible sense of the term, according to which it would include the greater part of Ethics: *i.e.* if understood to be the Theory of Right Social Relations. See chap. ii. § 2.

have some department of actual existence for its subject-matter. And in fact the term 'Ethical Science' might, without violation of usage, denote either the department of Psychology that deals with voluntary action and its springs, and with moral sentiments and judgments, as actual phenomena of individual human minds; or the department of Sociology dealing with similar phenomena, as manifested by normal members of the organised groups of human beings which we call societies. We observe, however, that most persons do not pursue either of these studies merely from curiosity, in order to ascertain what actually exists, has existed, or will exist in time. They commonly wish not only to understand human action, but also to regulate it; in this view they apply the ideas 'good' and 'bad,' 'right' and 'wrong,' to the conduct or institutions which they describe; and thus pass, as I should say, from the point of view of Psychology or Sociology to that of Ethics or Politics. My definition of Ethics is designed to mark clearly the fundamental importance of this transition. It is true that the mutual implication of the two kinds of study—the positive and the practical—is, on any theory, very close and complete. On any theory, our view of what ought to be must be largely derived, in details, from our apprehension of what is; the means of realising our ideal can only be thoroughly learnt by a careful study of actual phenomena; and to any individual asking himself 'What ought I to do or aim at?' it is important to examine the answers which his fellow-men have actually given to similar questions. Still it seems clear that an attempt to ascertain the general laws or uniformities by which the varieties of human conduct, and of men's sentiments and judgments respecting conduct, may be *explained*, is essentially different from an attempt to determine which among these varieties of conduct is *right* and which of these divergent judgments *valid*. It is, then, the systematic consideration of these latter questions which constitutes, in my view, the special and distinct aim of Ethics and Politics.

§ 2. In the language of the preceding section I could not avoid taking account of two different forms in which the fundamental problem of Ethics is stated; the difference between which leads, as we shall presently see, to rather important consequences. Ethics is sometimes considered as an investi-

gation of the true Moral laws or rational precepts of Conduct; sometimes as an inquiry into the nature of the Ultimate End of reasonable human action—the Good or ‘True Good’ of man—and the method of attaining it. Both these views are familiar, and will have to be carefully considered: but the former seems most prominent in modern ethical thought, and most easily applicable to modern ethical systems generally. For the Good investigated in Ethics is limited to Good in some degree attainable by human effort; accordingly knowledge of the end is sought in order to ascertain what actions are the right means to its attainment. Thus however prominent the notion of an Ultimate Good—other than voluntary action of any kind—may be in an ethical system, and whatever interpretation may be given to this notion, we must still arrive finally, if it is to be practically useful, at some determination of precepts or directive rules of conduct.

On the other hand, the conception of Ethics as essentially an investigation of the ‘Ultimate Good’ of Man and the means of attaining it is not universally applicable, without straining, to the view of Morality which we may conveniently distinguish as the Intuitional view; according to which conduct is held to be right when conformed to certain precepts or principles of Duty, intuitively known to be unconditionally binding. In this view the conception of Ultimate Good is not necessarily of fundamental importance in the determination of Right conduct except on the assumption that Right conduct itself—or the character realised in and developed through Right conduct—is the sole Ultimate Good for man. But this assumption is not implied in the Intuitional view of Ethics: nor would it, I conceive, accord with the moral common sense of modern Christian communities. For we commonly think that the complete notion of human Good or Well-being must include the attainment of Happiness as well as the performance of Duty; even if we hold with Butler that “the happiness of the world is the concern of Him who is the Lord and the Proprietor of it,” and that, accordingly, it is not right for men to make their performance of Duty conditional on their knowledge of its conduciveness to their Happiness. For those who hold this, what men ought to take as the *practically* ultimate end of their action and standard of Right conduct, may in some

cases have no logical connexion with the conception of Ultimate Good for man: so that, in such cases, however indispensable this latter conception may be to the completeness of an ethical system, it would still not be important for the methodical determination of Right conduct.

It is on account of the prevalence of the Intuitional view just mentioned, and the prominent place which it consequently occupies in my discussion, that in defining Ethics I have avoided the term 'Art of Conduct' which some would regard as its more appropriate designation. For the term 'Art'—when applied to the contents of a treatise—seems to signify systematic express knowledge (as distinguished from the implicit knowledge or organised habit which we call skill) of the right means to a given end. Now if we assume that the rightness of action depends on its conduciveness to some ulterior end, then no doubt—when this end has been clearly ascertained—the process of determining the right rules of conduct for human beings in different relations and circumstances would naturally come under the notion of Art. But on the view that the practically ultimate end of moral action is often the Rightness of the action itself—or the Virtue realised in and confirmed by such action—and that this is known intuitively in each case or class of cases, we can hardly regard the term 'Art' as properly applicable to the systematisation of such knowledge. Hence, as I do not wish to start with any assumption incompatible with this latter view, I prefer to consider Ethics as the science or study of what is right or what ought to be, so far as this depends upon the voluntary action of individuals.¹

§ 3. If, however, this view of the scope of Ethics is accepted, the question arises why it is commonly taken to consist, to a great extent, of psychological discussion as to the 'nature of the moral faculty'; especially as I have myself thought it right to include some discussion of this kind in the present treatise. For it does not at first appear why this should belong to Ethics, any more than discussions about the mathematical faculty or the faculty of sense-perception belong to mathematics and physics respectively. Why do we not simply

¹ The relation of the notion of 'Good' to that of 'Right' or 'what ought to be' will be further considered in a subsequent chapter of this Book (ix.)

start with certain premises, stating what ought to be done or sought, without considering the faculty by which we apprehend their truth?

One answer is that the moralist has a practical aim: we desire knowledge of right conduct in order to act on it. Now we cannot help believing what we see to be true, but we can help doing what we see to be right or wise, and in fact often do what we know to be wrong or unwise: thus we are forced to notice the existence in us of irrational springs of action, conflicting with our knowledge and preventing its practical realisation: and the very imperfectness of the connexion between our practical judgment and our will impels us to seek for more precise knowledge as to the nature of that connexion.

But this is not all. Men never ask, 'Why should I believe what I see to be true?' but they frequently ask, 'Why should I do what I see to be right?' It is easy to reply that the question is futile, since it could only be answered by a reference to some other recognised principle of right conduct, and the question might just as well be asked as regards that again, and so on. But still we do ask the question widely and continually, and therefore this demonstration of its futility is not completely satisfactory; we require besides some explanation of its persistency.

One explanation that may be offered is that, since we are moved to action not by moral judgment alone, but also by desires and inclinations that operate independently of moral judgment, the answer which we really want to the question 'Why should I do it?' is one which does not merely prove a certain action to be right, but also stirs in us a predominant inclination to do the action.

That this explanation is true for some minds in some moods I would not deny. Still I think that when a man seriously asks 'why he should do' anything, he commonly assumes in himself a determination to pursue whatever conduct may be shown by argument to be reasonable, even though it be very different from that to which his non-rational inclinations may prompt. And we are generally agreed that reasonable conduct in any case has to be determined on principles, in applying which the agent's inclination—as it

exists apart from such determination—is only one element among several that have to be considered, and commonly not the most important element. But when we ask what these principles are, the diversity of answers which we find manifestly declared in the systems and fundamental formulæ of professed moralists seems to be really present in the common practical reasoning of men generally; with this difference, that whereas the philosopher seeks unity of principle, and consistency of method at the risk of paradox, the unphilosophic man is apt to hold different principles at once, and to apply different methods in more or less confused combination. If this be so, we can offer another explanation of the persistent unsatisfied demand for an ultimate reason, above noticed. For if there are different views of the ultimate reasonableness of conduct, implicit in the thought of ordinary men, though not brought into clear relation to each other,—it is easy to see that any single answer to the question ‘why’ will not be completely satisfactory, as it will be given only from one of these points of view, and will always leave room to ask the question from some other.

I am myself convinced that this is the main explanation of the phenomenon: and it is on this conviction that the plan of the present treatise is based. We cannot, of course, regard as valid reasonings that lead to conflicting conclusions; and I therefore assume as a fundamental postulate of Ethics, that so far as two methods conflict, one or other of them must be modified or rejected. But I think it fundamentally important to recognise, at the outset of Ethical inquiry, that there is a diversity of methods applied in ordinary practical thought.

§ 4. What then are these different methods? what are the different practical principles which the common sense of mankind is *prima facie* prepared to accept as ultimate? Some care is needed in answering this question: because we frequently prescribe that this or that ‘ought’ to be done or aimed at without any express reference to an ulterior end, while yet such an end is tacitly presupposed. It is obvious that such prescriptions are merely, what Kant calls them, Hypothetical Imperatives; they are not addressed to any one who has not first accepted the end.

For instance: a teacher of any art assumes that his pupil

wants to produce the product of the art, or to produce it excellent in quality: he tells him that he *ought* to hold the awl, the hammer, the brush differently. A physician assumes that his patient wants health: he tells him that he *ought* to rise early, to live plainly, to take hard exercise. If the patient deliberately prefers ease and good living to health, the physician's precepts fall to the ground: they are no longer addressed to him. So, again, a man of the world assumes that his hearers wish to get on in society, when he lays down rules of dress, manner, conversation, habits of life. A similar view may be plausibly taken of many rules prescribing what are sometimes called "duties to oneself": it may be said that they are given on the assumption that a man regards his own Happiness as an ultimate end: that if any one should be so exceptional as to disregard it, he does not come within their scope: in short, that the '*ought*' in such formulæ is still implicitly relative to an *optional* end.

It does not, however, seem to me that this account of the matter is exhaustive. We do not all look with simple indifference on a man who declines to take the right means to attain his own happiness, on no other ground than that he does not care about happiness. Most men would regard such a refusal as irrational, with a certain disapprobation; they would thus implicitly assent to Butler's statement¹ that "interest, one's own happiness, is a manifest obligation." In other words, they would think that a man *ought* to care for his own happiness. The word '*ought*' thus used is no longer relative: happiness now appears as an ultimate end, the pursuit of which—at least within the limits imposed by other duties—appears to be prescribed by reason '*categorically*,' as Kant would say, *i.e.* without any tacit assumption of a still ulterior end. And it has been widely held by even orthodox moralists that all morality rests ultimately on the basis of "reasonable self-love";² *i.e.* that its rules are ultimately binding on any individual only so far as it is his interest on the whole to observe them.

Still, common moral opinion certainly regards the duty or virtue of Prudence as only a part—and not the most

¹ See the Preface to Butler's *Sermons on Human Nature*.

² The phrase is Butler's.

important part—of duty or virtue in general. Common moral opinion recognises and inculcates other fundamental rules—*e.g.* those of Justice, Good Faith, Veracity—which, in its ordinary judgments on particular cases, it is inclined to treat as binding without qualification and without regard to ulterior consequences. And, in the ordinary form of the Intuitional view of Ethics, the “categorical” prescription of such rules is maintained explicitly and definitely, as a result of philosophical reflection: and the realisation of Virtue in act—at least in the case of the virtues just mentioned—is held to consist in strict and unswerving conformity to such rules.

On the other hand it is contended by many Utilitarians that all the rules of conduct which men prescribe to one another as moral rules are really—though in part unconsciously—prescribed as means to the general happiness of mankind, or of the whole aggregate of sentient beings; and it is still more widely held by Utilitarian thinkers that such rules, however they may originate, are only valid so far as their observance is conducive to the general happiness. This contention I shall hereafter examine with due care. Here I wish only to point out that, if the duty of aiming at the general happiness is thus taken to include all other duties, as subordinate applications of it, we seem to be again led to the notion of Happiness as an ultimate end categorically prescribed,—only it is now General Happiness and not the private happiness of any individual. And this is the view that I myself take of the Utilitarian principle.

∴ At the same time, it is not necessary, in the methodical investigation of right conduct, considered relatively to the end either of private or of general happiness, to assume that the end itself is determined or prescribed by reason: we only require to assume, in reasoning to cogent practical conclusions, that it is adopted as ultimate and paramount. For if a man accepts any end as ultimate and paramount, he accepts implicitly as his “method of ethics” whatever process of reasoning enables him to determine the actions most conducive to this end.¹ Since, however, to every difference in the end accepted at least some difference in method will generally correspond: if all the ends which men are found practically to adopt as

¹ See the last paragraph of chap. iii. of this Book.

ultimate (subordinating everything else to the attainment of them under the influence of 'ruling passions'), were taken as principles for which the student of Ethics is called upon to construct rational methods, his task would be very complex and extensive. But if we confine ourselves to such ends as the common sense of mankind appears to accept as rational ultimate ends, the task is reduced, I think, within manageable limits; since this criterion will exclude at least many of the objects which men practically seem to regard as paramount. Thus many men sacrifice health, fortune, happiness, to Fame; but no one, so far as I know, has deliberately maintained that Fame is an object which it is reasonable for men to seek for its own sake. It only commends itself to reflective minds either (1) as a source of Happiness to the person who gains it, or (2) a sign of his Excellence, moral or intellectual, or (3) because it attests the achievement by him of some important benefit to society, and at the same time stimulates him and others to further achievement in the future: and the conception of "benefit" would, when examined in its turn, lead us again to Happiness or Excellence of human nature,—since a man is commonly thought to benefit others either by making them happier or by making them wiser and more virtuous.

Whether there are any ends besides these two, which can be reasonably regarded as ultimate, it will hereafter¹ be part of our business to investigate: but we may perhaps say that *prima facie* the only two ends which have a strongly and widely supported claim to be regarded as rational ultimate ends are the two just mentioned, Happiness and Perfection or Excellence of human nature—meaning here by 'Excellence' not primarily superiority to others, but a partial realisation of, or approximation to, an ideal type of human Perfection. And we must observe that the adoption of the former of these ends leads us to two *prima facie* distinct methods, according as it is sought to be realised universally, or by each individual for himself alone. For though doubtless a man may often best promote his own happiness by labouring and abstaining for the sake of others, it seems to be implied in our common notion of self-sacrifice that actions most conducive to the general happiness do not—in this world at least—always tend

¹ See chap. ix. of this Book, and Book iii. chap. xiv.

also to the greatest happiness of the agent.¹ And among those who hold that "happiness is our being's end and aim" we seem to find a fundamental difference of opinion as to whose happiness it is that it is ultimately reasonable to aim at. For to some it seems that "the constantly proper end of action on the part of any individual at the moment of action is his real greatest happiness from that moment to the end of his life";² whereas others hold that the view of reason is essentially universal, and that it cannot be reasonable to take as an ultimate and paramount end the happiness of any one individual rather than that of any other—at any rate if equally deserving and susceptible of it—so that general happiness must be the "true standard of right and wrong, in the field of morals" no less than of politics.³ It is, of course, possible to adopt an end intermediate between the two, and to aim at the happiness of some limited portion of mankind, such as one's family or nation or race: but any such limitation seems arbitrary, and probably few would maintain it to be reasonable *per se*, except as the most practicable way of aiming at the general happiness, or of indirectly securing one's own.

The case seems to be otherwise with Excellence or Perfection.⁴ At first sight, indeed, the same alternatives present themselves:⁵ it seems that the Excellence aimed at may be

¹ For a full discussion of this question, see Book ii. chap. v. and the concluding chapter of the work.

² Bentham, *Memoirs* (vol. x. of Bowring's edition), p. 560.

³ Bentham again, *Memoirs*, p. 79. See note at the end of Book i. chap. vi. The Utilitarians since Bentham have sometimes adopted one, sometimes the other, of these two principles as paramount.

⁴ I use the terms 'Excellence' and 'Perfection' to denote the same ultimate end regarded in somewhat different aspects: meaning by either an ideal complex of mental qualities, of which we admire and approve the manifestation in human life: but using 'Perfection' to denote the ideal as such, while 'Excellence' denotes such partial realisation of or approximation to the ideal as we actually find in human experience.

⁵ It may be said that even more divergent views of the reasonable end are possible here than in the case of happiness: for we are not necessarily limited (as in that case) to the consideration of sentient beings: inanimate things also seem to have a perfection and excellence of their own and to be capable of being made better or worse in their kind; and this perfection, or one species of it, appears to be the end of the Fine Arts. But reflection I think shows that neither beauty nor any other quality of inanimate objects can be regarded as good or desirable in itself, out of relation to the perfection or happiness of sentient beings. Cf. *post*, chap. ix. of this Book.

taken either individually or universally; and circumstances are conceivable in which a man is not unlikely to think that he could best promote the Excellence of others by sacrificing his own. But no moralist who takes Excellence as an ultimate end has ever approved of such sacrifice, at least so far as Moral Excellence is concerned; no one has ever directed an individual to promote the virtue of others except in so far as this promotion is compatible with, or rather involved in, the complete realisation of Virtue in himself.¹ So far, then, there seems to be no need of separating the method of determining right conduct which takes the Excellence or Perfection of the individual as the ultimate aim from that which aims at the Excellence or Perfection of the human community. And since Virtue is commonly conceived as the most valuable element of human Excellence—and an element essentially preferable to any other element that can come into competition with it as an alternative for rational choice—any method which takes Perfection or Excellence of human nature as ultimate End will *prima facie* coincide to a great extent with that based on what I called the Intuitional view: and I have accordingly decided to treat it as a special form of this latter.² The two methods which take happiness as an ultimate end it will be convenient to distinguish as Egoistic and Universalistic Hedonism: and as it is the latter of these, as taught by Bentham and his successors, that is more generally understood under the term 'Utilitarianism,' I shall always restrict that word to this signification. For Egoistic Hedonism it is somewhat hard to find a single perfectly appropriate term. I shall often call this simply Egoism: but it may sometimes be convenient to call it Epicureanism: for though this name more properly denotes a particular historical system, it has come to be commonly used in the wider sense in which I wish to employ it.

§ 5. The last sentence suggests one more explanation, which, for clearness' sake, it seems desirable to make: an explanation, however, rather of the plan and purpose of the

¹ Kant roundly denies that it can be my duty to take the Perfection of others for my end: but his argument is not, I think, valid. Cf. *post*, Book iii. chap. iv. § 1.

² See Book iii. chap. xiv., where I explain my reasons for only giving a subordinate place to the conception of Perfection as Ultimate End.

present treatise than of the nature and boundaries of the subject of Ethics as generally understood.

There are several recognised ways of treating this subject, none of which I have thought it desirable to adopt. We may start with existing systems, and either study them historically, tracing the changes in thought through the centuries, or compare and classify them according to relations of resemblance, or criticise their internal coherence. Or we may seek to add to the number of these systems: and claim after so many unsuccessful efforts to have at last attained the one true theory of the subject, by which all others may be tested. The present book contains neither the exposition of a system nor a natural or critical history of systems. I have attempted to define and unfold not one Method of Ethics, but several: at the same time these are not here studied historically, as methods that have actually been used or proposed for the regulation of practice; but rather as alternatives between which—so far as they cannot be reconciled—the human mind seems to me necessarily forced to choose, when it attempts to frame a complete synthesis of practical maxims and to act in a perfectly consistent manner. Thus, they might perhaps be called natural methods rationalised; because men commonly seem to guide themselves by a mixture of different methods, more or less disguised under ambiguities of language. The impulses or principles from which the different methods take their rise, the different claims of different ends to be rational, are admitted, to some extent, by all minds: and as along with these claims is felt the need of harmonising them—since it is, as was said, a postulate of the Practical Reason, that two conflicting rules of action cannot both be reasonable—the result is ordinarily either a confused blending, or a forced and premature reconciliation, of different principles and methods. Nor have the systems framed by professed moralists been free from similar defects. The writers have usually proceeded to synthesis without adequate analysis; the practical demand for the former being more urgently felt than the theoretical need of the latter. For here as in other points the development of the theory of Ethics would seem to be somewhat impeded by the preponderance of practical considerations; and perhaps a more complete detachment of the theoretical study

of right conduct from its practical application is to be desired for the sake even of the latter itself: since a treatment which is a compound between the scientific and the hortatory is apt to miss both the results that it would combine; the mixture is bewildering to the brain and not stimulating to the heart. So again, I am inclined to think that here, as in other sciences, it would be an advantage to draw as distinct a line as possible between the known and the unknown; as the clear indication of an unsolved problem is at any rate a step to its solution. In ethical treatises, however, there has been a continual tendency to ignore and keep out of sight the difficulties of the subject; either unconsciously, from a latent conviction that the questions which the writer cannot answer satisfactorily must be questions which ought not to be asked; or consciously, that he may not shake the sway of morality over the minds of his readers. This last well-meant precaution frequently defeats itself: the difficulties thus concealed in exposition are liable to reappear in controversy: and then they appear not carefully limited, but magnified for polemical purposes. Thus we get on the one hand vague and hazy reconciliation, on the other loose and random exaggeration of discrepancies; and neither process is effective to dispel the original vagueness and ambiguity which lurks in the fundamental notions of our common practical reasonings. To eliminate or reduce this indefiniteness and confusion is the sole immediate end that I have proposed to myself in the present work. In order better to execute this task, I have refrained from expressly attempting any such complete and final solution of the chief ethical difficulties and controversies as would convert this exposition of various methods into the development of a harmonious system. At the same time I hope to afford aid towards the construction of such a system; because it seems easier to judge of the mutual relations and conflicting claims of different modes of thought, after an impartial and rigorous investigation of the conclusions to which they logically lead. It is not uncommon to find in reflecting on practical principles, that—however unhesitatingly they seem to command our assent at first sight, and however familiar and apparently clear the notions of which they are composed—nevertheless when we have carefully examined the

consequences of adopting them they wear a changed and somewhat dubious aspect. The truth seems to be that most of the practical principles that have been seriously put forward are more or less satisfactory to the common sense of mankind, so long as they have the field to themselves. They all find a response in our nature: their fundamental assumptions are all such as we are disposed to accept, and such as we find to govern to a certain extent our habitual conduct. When I am asked, "Do you not consider it ultimately reasonable to seek pleasure and avoid pain for yourself?" "Have you not a moral sense?" "Do you not intuitively pronounce some actions to be right and others wrong?" "Do you not acknowledge the general happiness to be a paramount end?" I answer 'yes' to all these questions. My difficulty begins when I have to choose between the different principles or inferences drawn from them. We admit the necessity, when they conflict, of making this choice, and that it is irrational to let sometimes one principle prevail and sometimes another; but the necessity is a painful one. We cannot but hope that all methods may ultimately coincide: and at any rate, before making our election we may reasonably wish to have the completest possible knowledge of each.

My object, then, in the present work, is to expound as clearly and as fully as my limits will allow the different methods of Ethics that I find implicit in our common moral reasoning; to point out their mutual relations; and where they seem to conflict, to define the issue as much as possible. In the course of this endeavour I am led to discuss the considerations which should, in my opinion, be decisive in determining the adoption of ethical first principles: but it is not my primary aim to establish such principles; nor, again, is it my primary aim to supply a set of practical directions for conduct. I have wished to keep the reader's attention throughout directed to the processes rather than the results of ethical thought: and have therefore never stated as my own any positive practical conclusions unless by way of illustration: and have never ventured to decide dogmatically any controverted points, except where the controversy seemed to arise from want of precision or clearness in the definition of principles, or want of consistency in reasoning.

CHAPTER II

THE RELATION OF ETHICS TO POLITICS

§ 1. IN the last chapter I have spoken of Ethics and Politics as being both Practical Studies, including in the scope of their investigation somewhat that lies outside the sphere of positive sciences—viz. the determination of ends to be sought, or rules to be unconditionally obeyed. Before proceeding further, it would seem desirable to determine in outline the mutual relations of these cognate studies, regarded from the point of view of Ethics.

As I have defined them, Ethics aims at determining what ought to be done by individuals, while Politics aims at determining what the government of a state or political society ought to do and how it ought to be constituted,—including under the latter head all questions as to the control over government that should be exercised by the governed.

At first sight it may seem that Politics, so conceived, must be a branch of Ethics. For all the actions of government are actions of individuals, alone or in combination, and so are all the actions of those who, obeying, influencing, or perhaps occasionally resisting government, maintain and from time to time modify the constitution of their state: and it would seem that if properly performed such actions must be determined on ethical principles or be capable of justification by such principles. But this argument is not decisive; for by similar reasoning Ethics would have to comprehend all arts, liberal and industrial. *E.g.* it is a main part of the moral duty of a sea-captain and his subordinates to navigate their ship properly; but we do not take Ethics to include a

study of the rules of navigation. It may be replied that every man is not a sailor, but—at least in a country under popular government—every citizen has important political duties, which he ought to perform according to knowledge, so far as possible; but, similarly, it is an important part of every adult's moral duty to take care of his health, and it is proverbial that "every man at forty is a fool or his own physician"; yet we do not consider Ethics to include the art of medicine.

The specially important connexion between Ethics and Politics arises in a different way. It is the business of government, by laying down and enforcing laws, to regulate the outward conduct of the governed, not in one department only, but in all their social relations, so far as such conduct is a proper subject for coercive rules. And not only ought this regulation to be in harmony with morality—for obviously people ought not to be compelled to do what they ought not to do—but further, to an important extent the Law of a man's state will properly determine the details of his moral duty, even beyond the sphere of legal enforcement. Thus we commonly regard it as an individual's moral duty, under the head of Justice, to "give every man his own," even when—through some accident—the other party has not the power of legally enforcing his right; but still, in considering what is the other's "own," we assume him generally to be guided by the law of his state; if that were changed, his moral duty would change with it. Similarly, the mutual moral duties of husbands and wives, and of children and parents, will vary in detail with the variations in their legal relations.

But when we look closer at the relation thus constituted between Ethics and Politics, we see that a distinction has to be taken between actual or Positive Law and Ideal Law or Law as it ought to be. It is for the latter that Political Theory lays down principles; but it is Positive, not Ideal, Law that primarily determines right conduct for an individual here and now, in the manner just exemplified. No doubt if Positive and Ideal Law appear to me to diverge very widely—if (*e.g.*) I am convinced by political theory that a fundamental change in the law of property is desirable—this conviction is likely to influence my view of my moral duty under

the existing law ; but the extent of this influence is vague and uncertain. Suppose I am a slave-owner in a society in which slavery is established, and become convinced that private property in human beings should be abolished by law : it does not therefore follow that I shall regard it as my moral duty to set free my slaves at once. I may think immediate general abolition of slavery not only hopeless, but even inexpedient for the slaves themselves, who require a gradual education for freedom : so that it is better for the present to aim at legal changes that would cut off the worst evils of slavery, and meanwhile to set an example of humane and considerate treatment of bondsmen. Similar reasonings might be applied to the abolition of private property in the instruments of production, or in appointments to offices, civil or ecclesiastical. Speaking generally, the extent to which political ideals ought to influence moral duty would seem to depend partly on the apparent remoteness or nearness of the prospect of realising the ideal, partly on its imperativeness, or the expediency of immediate realisation : and the force attached to both these considerations is likely to vary with the political method adopted ; so that it belongs to Politics rather than Ethics to determine them more precisely.

To sum up : we have to distinguish clearly between two questions : (1) how far the determination of right conduct for an individual here and now ought to be influenced by Positive Laws, and other commands of Government as actually established ; and (2) how far it ought to be influenced by Political Theory, as to the functions and structure of Government as it ought to be. As regards the former, it clearly belongs to Ethics to determine the grounds and limits of obedience to Government ; and also the general conception of political duty, so far as it goes beyond mere obedience—with due recognition of the large variations due to the varying political conditions of different states. (A “good citizen” in the United States will reasonably form a conception of his actual political duty widely divergent from that reasonably formed by a good citizen in Russia.¹) And this will be the primary business of

¹ It may be doubted whether the latter ought properly to be termed a “good citizen,” and not rather a “faithful subject of the Czar of Russia.” But this doubt only illustrates the divergence to which I am drawing attention.

Ethics so far as it deals with the political side of life. The discussion of political ideals will only come within its purview in a more indefinite and indirect way, so far as such ideals cannot but have some influence on the determination of political duty under existing conditions.

§ 2. I have stated the Relation of Ethics to Politics—regarded from an ethical point of view—that seems to me to accord with the definition of the former subject adopted in the preceding chapter. Some thinkers, however, take a view of Ethical Theory which involves a relation to Political Theory quite different from that just set forth; regarding Theoretical or “Absolute” Ethics as properly an investigation not of what ought to be done here and now, but of what ought to be the rules of behaviour in a society of ideally perfect human beings. Thus the subject-matter of our study would be doubly ideal: as it would not only prescribe what ought to be done as distinct from what is, but what ought to be done in a society that itself *is* not, but only *ought* to be. In this view the conclusions of Theoretical or “Absolute” Ethics would have as indirect and uncertain a relation to the practical problems of actual life as those of Theoretical Politics:—or even more so, as in sober political theory it is commonly only the government and not the governed society that is conceived in an ideal condition. Still the two studies are not unlikely to blend in one theory of ideal social relations;—unless the ideal society is conceived as having no need of government, so that Politics, in the ordinary sense,¹ vanishes altogether.

Those who take this view² adduce the analogy of Geometry

¹ Sometimes, as before observed, Politics appears to be used in a wider sense, to denote the theory of ideal social relations, whether conceived to be established through governmental coercion or otherwise.

² In writing this section I had primarily in view the doctrine set forth in Mr. Spencer's *Social Statics*. As Mr. Spencer has restated his view and replied to my arguments in his *Data of Ethics*, it is necessary for me to point out that the first paragraph of this section is not directed against such a view of ‘Absolute’ and ‘Relative’ Ethics as is given in the later treatise—which seems to me to differ materially from the doctrine of *Social Statics*. In *Social Statics* it is maintained not merely—as in the *Data of Ethics*—that Absolute Ethics which “formulates normal conduct in an ideal society” ought to “take precedence of Relative Ethics”; but that Absolute Ethics is the only kind of Ethics with which a philosophical moralist can possibly concern himself. To quote Mr.

to show that Ethics ought to deal with ideally perfect human relations, just as Geometry treats of ideally straight lines and perfect circles. But the irregular lines which we meet with in experience have spatial relations which Geometry does not ignore altogether; it can and does ascertain them with a sufficient degree of accuracy for practical purposes: though of course they are more complex than those of perfectly straight lines. So in Astronomy, it would be more convenient for purposes of study if the stars moved in circles, as was once believed: but the fact that they move not in circles but in ellipses, and even in imperfect and perturbed ellipses, does not take them out of the sphere of scientific investigation: by patience and industry we have learnt how to reduce to principles and calculate even these more complicated motions. It may be useful for purposes of instruction to assume that the planets move in perfect ellipses: but what we want, as astronomers, to know is the actual motion of the stars, and its causes: and similarly as moralists we naturally inquire what ought to be done in the actual world in which we live. In neither case can we hope to represent in our general reasonings the full complexity of the actual considerations: but we endeavour to approximate to it as closely as possible. It is only so that we really grapple with the question to which mankind generally require an answer: 'What is a man's duty in his present condition?' For it is too paradoxical to say that the whole duty of man is summed up in the effort to attain an ideal state of social relations; and unless we say this, we must determine our duties to existing men in view of

Spencer's words:—"Any proposed system of morals which recognises existing defects, and countenances acts made needful by them, stands self-condemned. . . . Moral law . . . requires as its postulate that human beings be perfect. The philosophical moralist treats solely of the *straight* man . . . shows in what relationship he stands to other straight men . . . a problem in which a *crooked* man forms one of the elements, is insoluble by him." *Social Statics* (chap. i.). Still more definitely is Relative Ethics excluded in the following passage of the concluding chapter of the same treatise (the italics are mine):—"It will very likely be urged that, whereas the perfect moral code is confessedly beyond the fulfilment of imperfect men, some other code is needful for our present guidance . . . to say that the imperfect man requires a moral code which recognises his imperfection and allows for it, *seems at first sight reasonable. But it is not really so . . . a system of morals which shall recognise man's present imperfections and allow for them cannot be devised; and would be useless if it could be devised.*"

existing circumstances: and this is what the student of Ethics seeks to do in a systematic manner.

The inquiry into the morality of an ideal society can therefore be at best but a preliminary investigation, after which the step from the ideal to the actual, in accordance with reason, remains to be taken. We have to ask, then, how far such a preliminary construction seems desirable. And in answering this we must distinguish the different methods of Ethics. For it is generally held by Intuitionists that true morality prescribes absolutely what is in itself right, under all social conditions; at least as far as determinate duties are concerned: as (*e.g.*) that truth should always be spoken and promises kept, and 'Justice be done, though the sky should fall.' And so far as this is held it would seem that there can be no fundamental distinction drawn, in the determination of duty, between the actual state of society and an ideal state: at any rate the general definition of (*e.g.*) Justice will be the same for both, no less than its absolute stringency. Still even an extreme Intuitionist would admit that the details of Justice and other duties will vary with social institutions: and it is a plausible suggestion, that if we can clearly contemplate as a pattern the "absolute" Justice of an ideal community, we shall be better able to attain the merely "relative" Justice that is alone possible under existing conditions. How far this is so, we shall be in a better position to judge when we have examined the definition of Justice from an Intuitional point of view.

The question takes a simpler form in the case of the method which proposes as an ultimate end, and supreme standard, Universal Happiness.¹ Here we have merely to ask how far a systematic consideration of the social relations of an ideally happy group of human beings is likely to afford guidance in our efforts to promote human happiness here and now. I shall not at present deny that this task might usefully be included in an exhaustive study of this method.

¹ I omit, for the present, the consideration of the method which takes Perfection as an ultimate end: since, as has been before observed, it is hardly possible to discuss this satisfactorily, in relation to the present question, until it has been somewhat more clearly distinguished from the ordinary Intuitional Method.

But it can easily be shown that it is involved in serious difficulties.

For as in ordinary deliberation we have to consider what is best under certain conditions of human life, internal or external, so we must do this in contemplating the ideal society. We require to contemplate not so much the end supposed to be attained—which is simply the most pleasant consciousness conceivable, lasting as long and as uninterruptedly as possible—but rather some method of realising it, pursued by human beings; and these, again, must be conceived as existing under conditions not too remote from our own, so that we can at least endeavour to imitate them. And for this we must know how far our present circumstances are modifiable; a very difficult question, as the constructions which have actually been made of such ideal societies show. For example, the *Republic* of Plato seems in many respects sufficiently divergent from the reality, and yet he contemplates war as a permanent unalterable fact, to be provided for in the ideal state, and indeed such provision seems the predominant aim of his construction; whereas the soberest modern Utopia would certainly include the suppression of war. Indeed the ideal will often seem to diverge in diametrically opposite directions from the actual, according to the line of imagined change which we happen to adopt, in our visionary flight from present evils. For example, permanent marriage-unions now cause some unhappiness, because conjugal affection is not always permanent; but they are thought to be necessary, partly to protect men and women from vagaries of passion pernicious to themselves, but chiefly in order to the better rearing of children. Now it may seem to some that in an ideal state of society we could trust more to parental affections, and require less to control the natural play of emotion between the sexes, and that 'Free Love' is therefore the ideal; while others would maintain that permanence in conjugal affection is natural and normal, and that any exceptions to this rule must be supposed to disappear as we approximate to the ideal. Again, the happiness enjoyed in our actual society seems much diminished by the unequal distribution of the means of happiness, and the division of mankind into rich and poor. But we can conceive this evil removed in two quite different ways: either

by an increased disposition on the part of the rich to redistribute their share, or by such social arrangements as would enable the poor to secure more for themselves. In the one case the ideal involves a great extension and systematisation of the arbitrary and casual almsgiving that now goes on: in the other case, its extinction.

In short, it seems that when we abandon the firm ground of actual society we have an illimitable cloudland surrounding us on all sides, in which we may construct any variety of pattern states; but no definite ideal to which the actual undeniably approximates, as the straight lines and circles of the actual physical world approximate to those of scientific geometry.

It may be said, however, that we can reduce this variety by studying the past history of mankind, as this will enable us to predict to some extent their future manner of existence. But even so it does not appear that we shall gain much definite guidance for our present conduct. For let us make the most favourable suppositions that we can, and such as soar even above the confidence of the most dogmatic of scientific historians. Let us assume that the process of human history is a progress of mankind towards ever greater happiness. Let us assume further that we can not only fix certain limits within which the future social condition of mankind must lie, but even determine in detail the mutual relations of the different elements of the future community, so as to view in clear outline the rules of behaviour, by observing which they will attain the maximum of happiness. It still remains quite doubtful how far it would be desirable for us to imitate these rules in the circumstances in which we now live. For this foreknown social order is *ex hypothesi* only presented as a more advanced stage in our social progress, and not as a type or pattern which we ought to make a struggle to realise approximately at an earlier stage. How far it should be taken as such a pattern, is a question which would still have to be determined, and in the consideration of it the effects of our actions on the existing generation would after all be the most important element.¹

¹ Some further consideration of this question will be found in a subsequent chapter. Cf. Book iv. chap. iv. § 2.

CHAPTER V

JUSTICE

§ 1. WE have seen that in delineating the outline of duty, as intuitively recognised, we have to attempt to give to common terms a definite and precise meaning. This process of definition always requires some reflection and care, and is sometimes one of considerable difficulty. But there is no case where the difficulty is greater, or the result more disputed, than when we try to define Justice.

Before making the attempt, it may be as well to remind the reader what it is that we have to do. We have not to inquire into the derivation of the notion of Justice, as we are not now studying the history of our ethical thought, but its actual condition. Nor can we profess to furnish a definition which will correspond to every part of the common usage of the term; for many persons are undoubtedly vague and loose in their application of current moral notions. But it is an assumption of the Intuitionist method¹ that the term 'justice' denotes a quality which it is ultimately desirable to realise in the conduct and social relations of men; and that a definition may be given of this which will be accepted by all competent judges as presenting, in a clear and explicit form, what they have always meant by the term, though perhaps implicitly and vaguely. In seeking such a definition we may, so to speak, clip the ragged edge of common usage, but we must not make excision of any considerable portion.²

¹ How far an independent principle of Justice is required for the Utilitarian method will be hereafter considered. (Book iv. chap. i.)

² Aristotle, in expounding the virtue of *Δικαιοσύνη*, which corresponds to our Justice, notices that the word has two meanings; in the wider of which it

Perhaps the first point that strikes us when we reflect upon our notion of Justice is its connexion with Law. There is no doubt that just conduct is to a great extent determined by Law, and in certain applications the two terms seem interchangeable. Thus we speak indifferently of 'Law Courts' and 'Courts of Justice,' and when a private citizen demands Justice, or his just rights, he commonly means to demand that Law should be carried into effect. Still reflection shows that we do not mean by Justice merely conformity to Law. For, first, we do not always call the violators of law unjust, but only of some Laws: not, for example, duellists or gamblers. And secondly, we often judge that Law as it exists does not completely realise Justice; our notion of Justice furnishes a standard with which we compare actual laws, and pronounce them just or unjust. And, thirdly, there is a part of just conduct which lies outside the sphere even of Law as it ought to be; for example, we think that a father may be just or unjust to his children in matters where the law leaves (and ought to leave) him free.

We must then distinguish Justice from what has been called the virtue or duty of Order, or Law-observance: and perhaps, if we examine the points of divergence just mentioned, we shall be led to the true definition of Justice.

Let us therefore first ask, Of what kind of laws is the observance generally thought to be a realisation of Justice? In most cases they might be described as laws which define and secure the interests of assignable individuals. But this description is not complete, as Justice is admittedly concerned in the apportionment of adequate punishment to each offender; though we should not say that a man had an interest in the adequacy of his punishment. Let us say, then, that the laws in which Justice is or ought to be realised, are laws which distribute and allot to individuals either objects of desire,

includes in a manner all Virtue, or at any rate the social side or aspect of Virtue generally. The word 'Justice' does not appear to be used in English in this comprehensive manner (except occasionally in religious writings, from the influence of the Greek word as used in the New Testament): although the verb "to justify" seems to have this width of meaning; for when I say that one is "justified" in doing so and so, I mean no more than that such conduct is right for him. In the present discussion, at any rate, I have confined myself to the more precise signification of the term.

liberties and privileges, or burdens and restraints, or even pains as such. These latter, however, are only allotted by law to persons who have broken other laws. And as all law is enforced by penalties, we see how the administration of law generally may be viewed as the administration of Justice, in accordance with this definition: not because all laws are primarily and in their first intention distributive, but because the execution of law generally involves the due allotment of pains and losses and restraints to the persons who violate it. Or, more precisely, we should say that this legal distribution *ought* to realise Justice, for we have seen that it may fail to do so. We have next to ask, therefore, What conditions must laws fulfil in order that they may be just in their distributive effects?

Here, however, it may seem that we are transgressing the limit which divides Ethics from Politics: for Ethics is primarily concerned with the rules which ought to govern the private conduct of individuals; and it is commonly thought that private persons ought to obey even laws that they regard as unjust, if established by lawful authority. Still, this is doubted in the case of laws that seem extremely unjust: as (*e.g.*) the Fugitive Slave law in the United States before the rebellion. At any rate it seems desirable that we should here digress somewhat into political discussion; partly in order to elucidate the notion of Justice, which seems to be essentially the same in both regions, and partly because it is of great practical importance to individuals, in regulating private conduct beyond the range of Law-observance, to know whether the laws and established order of the society in which they live are just or unjust.

Now perhaps the most obvious and commonly recognised characteristic of just laws is that they are Equal: and in some departments of legislation, at least, the common notion of Justice seems to be exhaustively expressed by that of Equality. It is commonly thought, for example, that a system of taxation would be perfectly just if it imposed exactly equal burdens upon all:¹ and though this notion of 'equal burden' is itself somewhat difficult to define with the precision required for

¹ I ought to say that, in my view, this only applies to taxes in the narrower sense in which they are distinguished from payments for services received by individuals from Government. In the case of these latter, I conceive that Justice

practical application, still we may say that Justice here is thought to resolve itself into a kind of equality. However, we cannot affirm generally that all laws ought to affect all persons equally, for this would leave no place for any laws allotting special privileges and burdens to special classes of the community; but we do not think all such laws necessarily unjust: *e.g.* we think it not unjust that only persons appointed in a certain way should share in legislation, and that men should be forced to fight for their country but not women. Hence some have said that the only sense in which justice requires a law to be equal is that its execution must affect equally all the individuals belonging to any of the classes specified in the law. And no doubt this rule excludes a very real kind of injustice: it is of the highest importance that judges and administrators should never be persuaded by money or otherwise to show 'respect of persons.' So much equality, however, is involved in the very notion of a law, if it be couched in general terms: and it is plain that laws may be equally executed and yet unjust: for example, we should consider a law unjust which compelled only red-haired men to serve in the army, even though it were applied with the strictest impartiality to all red-haired men. We must therefore conclude, that, in laying down the law no less than in carrying it out, all inequality¹ affecting the interests of individuals which appears arbitrary, and for which no sufficient

is rather held to lie in duly proportioning payment to amount of service received. Some persons have held that all payments made to Government ought to be determined on this principle: and this view seems to me to be consistent with the individualistic ideal of political order, which I shall presently examine: but, as I have elsewhere tried to show (*Princ. of Pol. Econ.* Book iii. chap. viii.), there is an important department of Governmental expenditure to which this principle is not applicable.

¹ It may be well to notice a case in which the very equality of application, which is, as has been said, implied in the mere idea of a law couched in general terms, is felt to be unjust. This is the case where the words of a statute, either from being carelessly drawn, or on account of the inevitable defects of even the most precise terminology, include (or exclude) persons and circumstances which are clearly not included in (or excluded from) the real intent and purpose of the law. In this case a particular decision, strictly in accordance with a law which generally considered is just, may cause extreme injustice: and so the difference between actual Law and Justice is sharply brought out. Still we cannot in this way obtain principles for judging generally of the justice of laws.

reason can be given, is held to be unjust. But we have still to ask, what kind of reasons for inequality Justice admits and from what general principle (or principles) all such reasons are to be deduced?

§ 2. Perhaps we shall find it easier to answer this question, if we examine the notion of Justice as applied to that part of private conduct which lies beyond the sphere of law. Here, again, we may observe that the notion of Justice always involves allotment of something considered as advantageous or disadvantageous: whether it be money or other material means of happiness; or praise, or affection, or other immaterial good, or some merited pain or loss. Hence I should answer the question raised in the preceding chapter (§ 3), as to the classification of the duties there discussed under the heads of Justice and Benevolence respectively, by saying that the fulfilment of any duty of the affections, considered by itself, does not exemplify Justice: but that when we come to compare the obligations arising out of different affectionate relations, and to consider the right allotment of love and kind services, the notion of Justice becomes applicable. In order to arrange this allotment properly we have to inquire what is Just. What then do we mean by a just man in matters where law-observance does not enter? It is natural to reply that we mean an impartial man, one who seeks with equal care to satisfy all claims which he recognises as valid and does not let himself be unduly influenced by personal preferences. And this seems an adequate account of the virtue of justice so far as we consider it merely subjectively, and independently of the intellectual insight required for the realisation of objective justice in action: if we neglect to give due consideration to any claim which we regard as reasonable, our action cannot be just in intention. This definition suffices to exclude wilful injustice: but it is obvious that it does not give us a sufficient criterion of just acts, any more than the absence of arbitrary inequality was found to be a sufficient criterion of just laws.¹ We want to know what are reasonable claims.

¹ It should be observed that we cannot even say, in treating of the private conduct of individuals, that *all* arbitrary inequality is recognised as unjust: it would not be commonly thought unjust in a rich bachelor with no near relatives to leave the bulk of his property in providing pensions exclusively for indigent red-haired men, however unreasonable and capricious the choice might appear.

Well, of these the most important—apart from the claims discussed in the preceding chapter—seems to be that resulting from contract. This is to a certain extent enforced by law: but it is clear to us that a just man will keep engagements generally, even when there may be no legal penalty attached to their violation. The exact definition of this duty, and its commonly admitted qualifications, will be discussed in the next chapter: but of its general bindingness Common Sense has no doubt.

Further, we include under the idea of binding engagements not merely verbal promises, but also what are called 'implied contracts' or 'tacit understandings.' But this latter term is a difficult one to keep precise: and, in fact, is often used to include not only the case where *A* has in some way positively implied a pledge to *B*, but also the case where *B* has certain expectations of which *A* is aware. Here, however, the obligation is not so clear: for it would hardly be said that a man is bound to dispel all erroneous expectations that he may know to be formed respecting his conduct, at the risk of being required to fulfil them. Still, if the expectation was such as most persons would form under the circumstances, there seems to be some sort of moral obligation to fulfil it, if it does not conflict with other duties, though the obligation seems less definite and stringent than that arising out of contract. Indeed I think we may say that Justice is generally, though somewhat vaguely, held to prescribe the fulfilment of all such expectations (of services, etc.) as arise naturally and normally out of the relations, voluntary or involuntary, in which we stand towards other human beings. But the discussions in the preceding chapter have shown the difficulty of defining even those duties of this kind which, in an indefinite form, seemed certain and indisputable: while others are only defined by customs which to reflection appear arbitrary. And though while these customs persist, the expectations springing from them are in a certain sense natural, so that a just man seems to be under a kind of obligation to fulfil them, this obligation cannot be regarded as clear or complete, for two reasons that were given in the last chapter; first, because customs are continually varying, and as long as any one is in a state of variation, growing or decaying, the validity of the customary claim is obviously doubtful; and secondly, because it does not seem right that an irrational and

inexpedient custom should last for ever, and yet it can only be abolished by being "more honoured in the breach than in the observance."

X This line of reflection therefore has landed us in a real perplexity respecting the department of duty which we are at present examining. Justice is something that we conceive to be intrinsically capable of perfectly definite determination: a scrupulously just man, we think, must be very exact and precise in his conduct. But when we consider that part of Justice which consists in satisfying such natural and customary claims as arise independently of contract, it seems impossible to estimate these claims with any exactness. The attempt to map out the region of Justice reveals to us a sort of margin or dim borderland, tenanted by expectations which are not quite claims and with regard to which we do not feel sure whether Justice does or does not require us to satisfy them. For the ordinary actions of men proceed on the expectation that the future will resemble the past: hence it seems natural to expect that any particular man will do as others do in similar circumstances, and, still more, that he will continue to do whatever he has hitherto been in the habit of doing; accordingly his fellow-men are inclined to think themselves wronged by his suddenly omitting any customary or habitual act, if the omission causes them loss or inconvenience.¹ On the other hand, if a man has given no pledge to maintain a custom or habit, it seems hard that he should be bound by the unwarranted expectations of others. In this perplexity, common sense often appears to decide differently cases similar in all respects, except in the quantity of disappointment caused by the change. For instance, if a poor man were to leave one tradesman and deal with another because the first had turned Quaker, we should hardly call it an act of injustice, however unreasonable we might think it: but if a rich country gentleman were to act similarly towards a poor neighbour, many persons would say that it was unjust persecution.

The difficulty just pointed out extends equally to the duties of kindness—even to the specially stringent and sacred duties

¹ It may be observed that sometimes claims generated in this way have legal validity; as when a right of way is established without express permission of the landowner, merely by his continued indulgence.

of the domestic affections and gratitude—discussed in the previous chapter. We cannot get any new principle for settling any conflict that may present itself among such duties, by asking ‘what Justice requires of us’: the application of the notion of Justice only leads us to view the problem in a new aspect—as a question of the right *distribution* of kind services—it does not help us to solve it. Had we clear and precise intuitive principles for determining the claims (*e.g.*) of parents on children, children on parents, benefactors on the recipients of their benefits, we might say exactly at what point or to what extent the satisfaction of one of these claims ought in justice to be postponed to the satisfaction of another, or to any worthy aim of a different kind: but I know no method of determining a problem of this kind which is not either implicitly utilitarian, or arbitrarily dogmatic, and unsupported by Common Sense.

§ 3. If now we turn again to the political question, from which we diverged, we see that we have obtained from the preceding discussion one of the criteria of the justice of laws which we were seeking—viz. that they must avoid running counter to natural and normal expectations—: but we see at the same time that the criterion cannot be made definite in its application to private conduct, and it is easy to show that there is the same indefiniteness and consequent difficulty in applying it to legislation. For Law itself is a main source of natural expectations; and, since in ordinary times the alterations in law are very small in proportion to the amount unaltered, there is always a natural expectation that the existing laws will be maintained: and although this is, of course, an indefinite and uncertain expectation in a society like ours, where laws are continually being altered by lawful authority, it is sufficient for people in general to rely upon in arranging their concerns, investing their money, choosing their place of abode, their trade and profession, etc. Hence when such expectations are disappointed by a change in the law, the disappointed persons complain of injustice, and it is to some extent admitted that justice requires that they should be compensated for the loss thus incurred. But such expectations are of all degrees of definiteness and importance, and generally extend more widely as they decrease in value, like the ripples made by throwing a stone into a pond, so that it is practically impossible to

compensate them all: at the same time, I know no intuitive principle by which we could separate valid claims from invalid, and distinguish injustice from simple hardship.¹

But even if this difficulty were overcome further reflection must, I think, show that the criterion above given is incomplete or imperfectly stated: otherwise it would appear that no old law could be unjust, since laws that have existed for a long time must create corresponding expectations. But this is contrary to Common Sense: as we are continually becoming convinced that old laws are unjust (*e.g.* laws establishing slavery): indeed, this continually recurring conviction seems to be one of the great sources of change in the laws of a progressive society.

Perhaps we may say that there are natural expectations which grow up from other elements of the social order, independent of and so possibly conflicting with laws: and that we call rules unjust which go counter to these. Thus *e.g.* primogeniture appears to many unjust, because all the landowner's children are brought up in equally luxurious habits, and share equally the paternal care and expenditure, and so the inequality of inheritance seems paradoxical and harsh. Still, we cannot explain every case in this way: for example, the conviction that slavery is unjust can hardly be traced to anything in the established order of the slave-holding society, but seems to arise in a different way.

The truth is, this notion of 'natural expectations' is worse than indefinite: the ambiguity of the term conceals a fundamental conflict of ideas, which appears more profound and far-reaching in its consequences the more we examine it. For the word 'natural,' as used in this connexion, covers and conceals the whole chasm between the actual and the ideal—what is and what ought to be. As we before noticed,² the term seems, as ordinarily used, to contain the distinct ideas of (1) the common as opposed to the exceptional, and (2) the original or primitive as contrasted with the result of later

¹ This is the case even, as I say, when laws are altered lawfully: still more after any exceptional crisis at which there has occurred a rupture of political order: for then the legal claims arising out of the new order which is thus rooted in disorder conflict with those previously established in a manner which admits of no theoretical solution: it can only be settled by a rough practical compromise. See next chapter, § 3.

² Book i. chap. vi. § 2

conventions and institutions. But it is also used to signify, in more or less indefinite combination with one or other of these meanings, 'what would exist in an ideal state of society.' And it is easy to see how these different meanings have been blended and confounded. For since by 'Nature' men have really meant God, or God viewed in a particular aspect—God, we may say, as known to us in experience—when they have come to conceive a better state of things than that which actually exists, they have not only regarded this ideal state as really exhibiting the Divine purposes more than the actual, and as being so far more 'natural': but they have gone further, and supposed more or less definitely that this ideal state of things must be what God originally created, and that the defects recognisable in what now exists must be due to the deteriorating action of men. But if we dismiss this latter view, as unsupported by historical evidence, we recognise more plainly the contrast and conflict between the other two meanings of 'natural,' and the corresponding discrepancy between the two elements of the common notion of Justice. For, from one point of view, we are disposed to think that the *customary* distribution of rights, goods, and privileges, as well as burdens and pains, is natural and just, and that this ought to be maintained by law, as it usually is: while, from another point of view, we seem to recognise an ideal system of rules of distribution which ought to exist, but perhaps have never yet existed, and we consider laws to be just in proportion as they conform to this ideal. It is the reconciliation between these two views which is the chief problem of political Justice.¹

On what principles, then, is the ideal to be determined? This is, in fact, the question which has been chiefly in view from the outset of the chapter; but we could not satisfactorily discuss it until we had distinguished the two elements of Justice, as commonly conceived—one conservative of law and custom, and the other tending to reform them. It is on this latter that we shall now concentrate our attention.

When, however, we examine this ideal, as it seems to show

¹ It is characteristic of an unprogressive society that in it these two points of view are indistinguishable; the Jural Ideal absolutely coincides with the Customary, and social perfection is imagined to consist in the perfect observance of a traditional system of rules.

itself in the minds of different men in different ages and countries, we observe various forms of it, which it is important to distinguish.

In the first place, it must be noticed that an ideal constitution of society may be conceived and sought with many other ends in view besides the right distribution of good and evil among the individuals that compose it: as (*e.g.*) with a view to conquest and success in war, or to the development of industry and commerce, or to the highest possible cultivation of the arts and sciences. But any such political ideal as this is beyond the range of our present consideration, as it is not constructed on the basis of our common notion of Justice. Our present question is, Are there any clear principles from which we may work out an ideally just distribution of rights and privileges, burdens and pains, among human beings as such? There is a wide-spread view, that in order to make society just certain Natural Rights should be conceded to all members of the community, and that positive law should at least embody and protect these, whatever other regulations it may contain: but it is difficult to find in Common Sense any definite agreement in the enumeration of these Natural Rights, still less any clear principles from which they can be systematically deduced.

§ 4. There is, however, one mode of systematising these Rights and bringing them under one principle, which has been maintained by influential thinkers; and which, though now perhaps somewhat antiquated, is still sufficiently current to deserve careful examination. It has been held that Freedom from interference is really the whole of what human beings, originally and apart from contracts, can be strictly said to *owe* to each other: at any rate, that the protection of this Freedom (including the enforcement of Free Contract) is the sole proper aim of Law, *i.e.* of those rules of mutual behaviour which are maintained by penalties inflicted under the authority of Government. All natural Rights, on this view, may be summed up in the Right to Freedom; so that the complete and universal establishment of this Right would be the complete realisation of Justice,—the Equality at which Justice is thought to aim being interpreted as Equality of Freedom.

Now when I contemplate this as an abstract formula, though I cannot say that it is self-evident to me as the true

fundamental principle of Ideal Law, I admit that it commends itself much to my mind; and I might perhaps persuade myself that it is owing to the defect of my faculty of moral (or jural) intuition that I fail to see its self-evidence. But when I endeavour to bring it into closer relation to the actual circumstances of human society, it soon comes to wear a different aspect.

In the first place, it seems obviously needful to limit the extent of its application. For it involves the negative principle that no one should be coerced for his own good alone; but no one would gravely argue that this ought to be applied to the case of children, or of idiots, or insane persons. But if so, can we know *a priori* that it ought to be applied to all sane adults? since the above-mentioned exceptions are commonly justified on the ground that children, etc., will manifestly be better off if they are forced to do and abstain as others think best for them; and it is, at least, not intuitively certain that the same argument does not apply to the majority of mankind in the present state of their intellectual progress. Indeed, it is often conceded by the advocates of this principle that it does not hold even in respect of adults in a low state of civilisation. But if so, what criterion can be given for its application, except that it must be applied wherever human beings are sufficiently intelligent to provide for themselves better than others would provide for them? and thus the principle would present itself not as absolute, but merely a subordinate application of the wider principle of aiming at the general happiness or well-being of mankind.

But, again, the term Freedom is ambiguous. If we interpret it strictly, as meaning Freedom of Action alone, the principle seems to allow any amount of mutual annoyance except constraint. But obviously no one would be satisfied with such Freedom as this. If, however, we include in the idea absence of pain and annoyance inflicted by others, it becomes at once evident that we cannot prohibit all such annoyances without restraining freedom of action to a degree that would be intolerable; since there is scarcely any gratification of a man's natural impulses which may not cause some annoyance to others. Hence in distinguishing the mutual annoyances that ought to be allowed from those that must be

prohibited we seem forced to balance the evils of constraint against pain and loss of a different kind: while if we admit the Utilitarian criterion so far, it is difficult to maintain that annoyance to individuals is never to be permitted in order to attain any positive good result, but only to prevent more serious annoyance.

Thirdly, in order to render a social construction possible on this basis, we must assume that the right to Freedom includes the right to limit one's freedom by contract; and that such contracts, if they are really voluntary and not obtained by fraud or force, and if they do not violate the freedom of others, are to be enforced by legal penalties. But I cannot see that enforcement of Contracts is strictly included in the notion of realising Freedom; for a man seems to be most completely free when no one of his volitions is allowed to have any effect in causing the *external* coercion of any other. If, again, this right of limiting Freedom is itself unlimited, a man might thus freely contract himself out of freedom into slavery, so that the principle of freedom would turn out suicidal; and yet to deduce from this principle a limited right of limiting freedom by contract seems clearly impossible.¹

But if it be difficult to define freedom as an ideal to be realised in the merely personal relations of human beings, the difficulty is increased when we consider the relation of men to the material means of life and happiness.

For it is commonly thought that the individual's right to Freedom includes the right of appropriating material things. But, if Freedom be understood strictly, I do not see that it implies more than his right to non-interference while actually using such things as can only be used by one person at once: the right to prevent others from using at any future time anything that an individual has once seized seems an interference with the free action of others beyond what is needed to secure the freedom, strictly speaking, of the appropriator. It may perhaps be said that a man, in appropriating a particular thing, does not interfere with the freedom of others, because the rest

¹ This question, how far the conception of Freedom involves unlimited right to limit Freedom by free contract, will meet us again in the next chapter, when we consider the general duty of obedience to Law.

of the world is still open to them. But others may want just what he has appropriated: and they may not be able to find anything so good at all, or at least without much labour and search; for many of the instruments and materials of comfortable living are limited in quantity. This argument applies especially to property in land: and it is to be observed that, in this case, there is a further difficulty in determining how much a man is to be allowed to appropriate by 'first occupation.' If it be said that a man is to be understood to occupy what he is able to use, the answer is obvious that the use of land by any individual may vary almost indefinitely in extent, while diminishing proportionally in intensity. For instance, it would surely be a paradoxical deduction from the principle of Freedom to maintain that an individual had a right to exclude others from pasturing sheep on any part of the land over which his hunting expeditions could extend.¹ But if so can it be clear that a shepherd has such a right against one who wishes to till the land, or that one who is using the surface has a right to exclude a would-be miner? I do not see how the deduction is to be made out. Again, it may be disputed whether the right of Property, as thus derived, is to include the right of controlling the disposal of one's possessions after death. For this to most persons seems naturally bound up with ownership: yet it is paradoxical to say that we interfere with a man's freedom of action by anything that we may do after his death to what he owned during his life: and jurists have often treated this right as purely conventional and not therefore included in 'natural law.'

Other difficulties might be raised: but we need not pursue them, for if Freedom be taken simply to mean that one man's actions are to be as little as possible restrained by others, it is obviously more fully realised without appropriation. And if it be said that it includes, beside this, facility and security in the gratification of desires, and that it is Freedom in this sense that we think should be equally distributed, and that this cannot be realised without appropriation; then it may be replied, that in a society where nearly all material things are already appro-

¹ It has often been urged as a justification for expropriating savages from the land of new colonies that tribes of hunters have really no moral right to property in the soil over which they hunt.

priated, this kind of Freedom is not and cannot be equally distributed. A man born into such a society, without inheritance, is not only far less free than those who possess property, but he is less free than if there had been no appropriation. It may be said¹ that, having freedom of contract, he will give his services in exchange for the means of satisfying his wants; and that this exchange must necessarily give him more than he could have got if he had been placed in the world by himself; that, in fact, any human society always renders the part of the earth that it inhabits more capable of affording gratification of desires to each and all of its later-born members than it would otherwise be. But however true this may be as a general rule, it is obviously not so in all cases: as men are sometimes unable to sell their services at all, and often can only obtain in exchange for them an insufficient subsistence. And, even granting it to be true, it does not prove that society, by appropriation, has not interfered with the natural freedom of its poorer members: but only that it compensates them for such interference, and that the compensation is adequate: and it must be evident that if compensation in the form of material commodities can be justly given for an encroachment on Freedom, the realisation of Freedom cannot be the one ultimate end of distributive Justice.

§ 5. It seems, then, that though Freedom is an object of keen and general desire, and an important source of happiness, both in itself and indirectly from the satisfaction of natural impulses which it allows, the attempt to make it the fundamental notion of theoretical Jurisprudence is attended with insuperable difficulties: and that even the Natural Rights which it claims to cover cannot be brought under it except in a very forced and arbitrary manner.² But further, even if this were otherwise, an equal distribution of Freedom does not seem to exhaust our notion of Justice. Ideal Justice, as we commonly conceive it, seems to demand that not only Freedom but all other benefits and burdens should be distributed, if not

¹ This is the argument used by optimistic political economists such as Bastiat.

² The further consideration of Political Freedom, with which we shall be occupied in the next chapter, will afford additional illustrations of the difficulties involved in the notion.

equally, at any rate justly,—Justice in distribution being regarded as not identical with Equality, but merely exclusive of arbitrary inequality.

How, then, shall we find the principle of this highest and most comprehensive ideal?

We shall be led to it, I think, by referring again to one of the grounds of obligation to render services, which was noticed in the last chapter: the claim of Gratitude. It there appeared that we have not only a natural impulse to requite benefits, but also a conviction that such requital is a duty, and its omission blameworthy, to some extent at least; though we find it difficult to define the extent. Now it seems that when we, so to say, *universalise* this impulse and conviction, we get the element in the common view of Justice, which we are now trying to define. For if we take the proposition 'that good done to any individual ought to be requited by him,' and leave out the relation to the individual in either term of the proposition, we seem to have an equally strong conviction of the truth of the more general statement 'that good deeds ought to be requited.'¹ And if we take into consideration all the different kinds and degrees of services, upon the mutual exchange of which society is based, we get the proposition 'that men ought to be rewarded in proportion to their deserts.' And this would be commonly held to be the true and simple principle of distribution in any case where there are no claims arising from Contract or Custom to modify its operation.

For example, it would be admitted that—if there has been no previous arrangement—the profits of any work or enterprise should be divided among those who have contributed to its success in proportion to the worth of their services. And it may be observed, that some thinkers maintain the proposition discussed in the previous section—that Law ought to aim at securing the greatest possible Freedom for each individual—not as absolute and axiomatic, but as derivative from the

¹ If the view given in the text be sound, it illustrates very strikingly the difference between natural instincts and moral intuitions. For the impulse to requite a service is, on its emotional side, quite different from that which prompts us to claim the fruits of our labour, or "a fair day's wages for a fair day's work." Still, our apprehension of the *duty* of Gratitude seems capable of being subsumed under the more general intuition 'that desert ought to be requited.'

principle that Desert ought to be requited; on the ground that the best way of providing for the requital of Desert is to leave men as free as possible to exert themselves for the satisfaction of their own desires, and so to win each his own requital. And this seems to be really the principle upon which the Right of Property is rested, when it is justified by the proposition that 'every one has an exclusive right to the produce of his labour.' For on reflection it is seen that no labour really 'produces' any material thing, but only adds to its value: and we do not think that a man can acquire a right to a material thing belonging to another, by spending his labour on it—even if he does so in the *bona fide* belief that it is his own property—but only to adequate *compensation* for his labour; this, therefore, is what the proposition just quoted must mean. The principle is, indeed, sometimes stretched to explain the original right of property in materials, as being in a sense 'produced' (*i.e.* found) by their first discoverer;¹ but here again, reflection shows that Common Sense does not grant this (as a *moral right*) absolutely, but only in so far as it appears to be not more than adequate compensation for the discoverer's trouble. For example, we should not consider that the first finder of a large uninhabited region had a moral right to appropriate the whole of it. Hence this justification of the right of property refers us ultimately to the principle 'that every man ought to receive adequate requital for his labour.' So, again, when we speak of the world as justly governed by God, we seem to mean that, if we could know the whole of human existence, we should find that happiness is distributed among men according to their deserts. And Divine Justice is thought to be a pattern which Human Justice is to imitate as far as the conditions of human society allow.

This kind of Justice, as has been said, seems like Gratitude universalised: and the same principle applied to punishment

¹ It certainly requires a considerable strain to bring the 'right of First Discovery' under the notion of 'right to the produce of one's labour.' Hence Locke and others have found it necessary to suppose, as the ultimate justification of the former right, 'a tacit consent' of mankind in general that all things previously unappropriated shall belong to the first appropriator. But this must be admitted to be a rather desperate device of ethico-political construction: on account of the fatal facility with which it may be used to justify almost any arbitrariness in positive law.

may similarly be regarded as Resentment universalised; though the parallel is incomplete, if we are considering the present state of our moral conceptions. History shows us a time in which it was thought not only as natural, but as clearly right and incumbent on a man, to requite injuries as to repay benefits: but as moral reflection developed in Europe this notion was repudiated, so that Plato taught that it could never be right really to harm any one, however he may have harmed us. And this is the accepted doctrine in Christian societies, as regards requital by individuals of personal wrongs. But in its universalised form the old conviction still lingers in the popular view of Criminal Justice: it seems still to be widely held that Justice requires pain to be inflicted on a man who has done wrong, even if no benefit result either to him or to others from the pain. Personally, I am so far from holding this view that I have an instinctive and strong moral aversion to it: and I hesitate to attribute it to Common Sense, since I think that it is gradually passing away from the moral consciousness of educated persons in the most advanced communities: but I think it is still perhaps the more ordinary view.

This, then, is one element of what Aristotle calls Corrective Justice, which is embodied in criminal law. It must not be confounded with the principle of Reparation, on which legal awards of damages are based. We have already noticed this as a simple deduction from the maxim of general Benevolence, which forbids us to do harm to our fellow-creatures: for if we have harmed them, we can yet approximately obey the maxim by giving compensation for the harm. Though here the question arises whether we are bound to make reparation for harm that has been quite blamelessly caused: and it is not easy to answer it decisively.¹ On the whole, I

¹ The reader will find an interesting illustration of the perplexity of Common Sense on this point in Mr. O. W. Holmes, Junior's, book on *The Common Law*, chap. iii., where the author gives a penetrating discussion of the struggle, in the development of the doctrine of torts in English Law, between two opposing views: (1) that "the risk of a man's conduct is thrown upon him as the result of some moral short-coming," and (2) that "a man acts at his peril always, and wholly irrespective of the state of his consciousness upon the matter." The former is the view that has in the main prevailed in English Law; and this seems to me certainly in harmony with the Common Sense of mankind, so far

think we should condemn a man who did not offer some reparation for any serious injury caused by him to another—even if quite involuntarily caused, and without negligence: but perhaps we regard this rather as a duty of Benevolence—arising out of the general sympathy that each ought to have for others, intensified by this special occasion—than as a duty of strict Justice. If, however, we limit the requirement of Reparation, under the head of strict Justice, to cases in which the mischief repaired is due to acts or omissions in some degree culpable, a difficulty arises from the divergence between the moral view of culpability, and that which social security requires. Of this I will speak presently.¹ In any case there is now² no danger of confusion or collision between the principle of Reparative and that of Retributive Justice, as the one is manifestly concerned with the claims of the injured party, and the other with the deserts of the wrongdoer: though in the actual administration of Law the obligation of paying compensation for wrong may sometimes be treated as a sufficient punishment for the wrongdoer.

When, however, we turn again to the other branch of Retributive Justice, which is concerned with the reward of services, we find another notion, which I will call Fitness, often blended indistinguishably³ with the notion of Desert, and so needing to be carefully separated from it; and when the distinction has been made, we see that the two are liable to come into collision. I do not feel sure that the principle of 'distribution according to Fitness' is found, strictly speaking, in the analysis of the ordinary notion of Justice: but it certainly enters into our common conception of the ideal or

as legal liability is concerned; but I do not think that the case is equally clear as regards moral obligation.

¹ Cf. *post*, pp. 292-3. It may be added that there is often a further difficulty in ascertaining the amount of compensation due: for this frequently involves a comparison of things essentially disparate, and there are some kinds of harm which it seems impossible to compensate.

² In the earlier stage of moral development, referred to in the preceding paragraph, retribution inflicted on the wrongdoer was regarded as the normal mode of reparation to the person injured. But this view is contrary to the moral Common Sense of Christian Societies.

³ I think the term "merit" often blends the two notions, as when we speak of "promotion by merit." By moralists, however, "merit" is generally used as exactly equivalent to what I have called "desert."

perfectly rational order of society, as regards the distribution both of instruments and functions, and (to some extent at least) of other sources of happiness. We certainly think it reasonable that instruments should be given to those who can use them best, and functions allotted to those who are most competent to perform them: but these may not be those who have rendered most services in the past. And again, we think it reasonable that particular material means of enjoyment should fall to the lot of those who are susceptible of the respective kinds of pleasure; as no one would think of allotting pictures to a blind man, or rare wines to one who had no taste: hence we should probably think it fitting that artists should have larger shares than mechanics in the social distribution of wealth, though they may be by no means more deserving. Thus the notions of Desert and Fitness appear at least occasionally conflicting; but perhaps, as I have suggested, Fitness should rather be regarded as a utilitarian principle of distribution, inevitably limiting the realisation of what is abstractly just, than as a part of the interpretation of Justice proper: and it is with the latter that we are at present concerned. At any rate it is the Requital of Desert that constitutes the chief element of Ideal Justice, in so far as this imports something more than mere Equality and Impartiality. Let us then examine more closely wherein Desert consists; and we will begin with Good Desert or Merit, as being of the most fundamental and permanent importance; for we may hope that crime and its punishment will decrease and gradually disappear as the world improves, but the right or best distribution of the means of wellbeing is an object that we must always be striving to realise.

§ 6. And first, the question which we had to consider in defining Gratitude again recurs: whether, namely, we are to apportion the reward to the effort made, or to the results attained. For it may be said that the actual utility of any service must depend much upon favourable circumstances and fortunate accidents, not due to any desert of the agent: or again, may be due to powers and skills which were connate, or have been developed by favourable conditions of life, or by good education, and why should we reward him for these? (for the last-mentioned we ought rather to reward those who have

educated him). And certainly it is only in so far as *moral* excellences are exhibited in human achievements that they are commonly thought to be such as God will reward. But by drawing this line we do not yet get rid of the difficulty. For it may still be said that good actions are due entirely, or to a great extent, to good dispositions and habits, and that these are partly inherited and partly due to the care of parents and teachers; so that in rewarding these we are rewarding the results of natural and accidental advantages, and it is unreasonable to distinguish these from others, such as skill and knowledge, and to say that it is even ideally just to reward the one and not the other. Shall we say, then, that the reward should be proportionate to the amount of voluntary effort for a good end? But Determinists will say that even this is ultimately the effect of causes extraneous to the man's self. On the Determinist view, then, it would seem to be ideally just (if anything is so) that all men should enjoy equal amounts of happiness: for there seems to be no justice in making *A* happier than *B*, merely because circumstances beyond his own control have first made him better. But why should we not, instead of 'all men,' say 'all sentient beings'? for why should men have more happiness than any other animal? But thus the pursuit of ideal justice seems to conduct us to such a precipice of paradox that Common Sense is likely to abandon it. At any rate the ordinary idea of Desert has thus altogether vanished.¹ And thus we seem to be led to the conclusion which I anticipated in Book i. chap. v.: that in this one department of our moral consciousness the idea of Free Will seems involved in a peculiar way in the moral ideas of Common Sense, since if it is eliminated the important notions of Desert or Merit and Justice require material modification.²

¹ The only tenable Determinist interpretation of Desert is, in my opinion, the Utilitarian: according to which, when a man is said to deserve reward for any services to society, the meaning is that it is expedient to reward him, in order that he and others may be induced to render similar services by the expectation of similar rewards. Cf. *post*, Book iv. chap. iii. § 4.

² Perhaps we may partly attribute to the difficulties above discussed, that the notion of Desert has sometimes dropped out of the ideal of Utopian reconstructors of society, and 'Equality of Happiness' has seemed to be the only end. Justice, it has been thought, prescribes simply that each should have an equal share of happiness, as far as happiness depends on the action of others. But there seems to be much difficulty in working this out: for (apart

At the same time, the difference between Determinist and Libertarian Justice can hardly have any practical effect. For in any case it does not seem possible to separate in practice that part of a man's achievement which is due strictly to his free choice from that part which is due to the original gift of nature and to favouring circumstances:¹ so that we must necessarily leave to providence the realisation of what we conceive as the theoretical ideal of Justice, and content ourselves with trying to reward voluntary actions in proportion to the worth of the services intentionally rendered by them.

If, then, we take as the principle of ideal justice, so far as this can be practically aimed at in human society, the requital of voluntary services in proportion to their worth, it remains to consider on what principle or principles the comparative worth of different services is to be rationally estimated. There is no doubt that we commonly assume such an estimate to be possible; for we continually speak of the 'fair' or 'proper' price of any kind of services as something generally known, and condemn the demand for more than this as extortionate. It may be said that the notion of Fairness or Equity which we ordinarily apply in such judgments is to be distinguished from that of Justice; Equity being in fact often contrasted with strict Justice, and conceived as capable of coming into collision with it. And this is partly true: but I think the wider and no less usual sense of the term Justice, in which it includes Equity or Fairness, is the only one that can be conveniently

from the considerations of Fitness above mentioned) equal happiness is not to be attained by equal distribution of objects of desire. For some require more and some less to be equally happy. Hence, it seems, we must take differences of *needs* into consideration. But if merely mental needs are included (as seems reasonable) we should have to give less to cheerful, contented, self-sacrificing people than to those who are naturally moody and *exigent*, as the former can be made happy with less. And this is too paradoxical to recommend itself to Common Sense.

¹ No doubt, it would be possible to remove, to some extent, the inequalities that are attributable to circumstances, by bringing the best education within the reach of all classes, so that all children might have an equal opportunity of being selected and trained for any functions for which they seemed to be fit: and this seems to be prescribed by ideal justice, in so far as it removes or mitigates arbitrary inequality. Accordingly in those ideal reconstructions of society, in which we may expect to find men's notions of abstract justice exhibited, such an institution as this has generally found a place. Still, there will be much natural inequality which we cannot remove or even estimate.

adopted in an ethical treatise: for in any case where Equity comes into conflict with strict justice, its dictates are held to be in a higher sense just, and what ought to be ultimately carried into effect in the case considered—though not, perhaps, by the administrators of law. I treat Equity, therefore, as a species of Justice; though noting that the former term is more ordinarily used in cases where the definiteness attainable is recognised as somewhat less than in ordinary cases of rightful claims arising out of law or contract. On what principle, then, can we determine the “fair” or “equitable” price of services? When we examine the common judgments of practical persons in which this judgment occurs, we find, I think, that the ‘fair’ in such cases is ascertained by a reference to analogy and custom, and that any service is considered to be ‘fairly worth’ what is usually given for services of the kind. Hence this element of the notion of Justice may seem, after all, to resolve itself into that discussed in § 2: and in some states of society it certainly appears that the payment to be given for services is as completely fixed by usage as any other customary duty, so that it would be a clear disappointment of normal expectation to deviate from this usage. But probably no one in a modern civilised community would maintain in its full breadth this identification of the Just with the Usual price of services: and so far as the judgments of practical persons may seem to imply this, I think it must be admitted that they are superficial or merely inadvertent, and ignore the established mode of determining the market prices of commodities by free competition of producers and traders. For where such competition operates the market value rises and falls, and is different at different places and times; so that no properly instructed person can expect any fixity in it, or complain of injustice merely on account of the variations in it.

Can we then say that ‘market value’ (as determined by free competition) corresponds to our notion of what is ideally just?

This is a question of much interest, because this is obviously the mode of determining the remuneration of services that would be universal in a society constructed on the principle previously discussed, of securing the greatest possible Freedom to all members of the community. It should be observed that

this, which we may call the Individualistic Ideal, is the type to which modern civilised communities have, until lately, been tending to approximate: and it is therefore very important to know whether it is one which completely satisfies the demands of morality; and whether Freedom, if not an absolute end or First Principle of abstract Justice, is still to be sought as the best means to the realisation of a just social order by the general requital of Desert.

At first sight it seems plausible to urge that the 'market value' represents the estimate set upon anything by mankind generally, and therefore gives us exactly that 'common sense' judgment respecting value which we are now trying to find. But on examination it seems likely that the majority of men are not properly qualified to decide on the value of many important kinds of services, from imperfect knowledge of their nature and effects; so that, as far as these are concerned, the true judgment will not be represented in the market-place. Even in the case of things which a man is generally able to estimate, it may be manifest in a particular case that he is ignorant of the real utility of what he exchanges; and in this case the 'free' contract hardly seems to be fair: though if the ignorance was not caused by the other party to the exchange, Common Sense is hardly prepared to condemn the latter as unjust for taking advantage of it. For instance, if a man has discovered by a legitimate use of geological knowledge and skill that there is probably a valuable mine on land owned by a stranger, reasonable persons would not blame him for concealing his discovery until he had bought the mine at its market value: yet it could not be said that the seller got what it was really worth. In fact Common Sense is rather perplexed on this point: and the *rationale* of the conclusion at which it arrives, must, I conceive, be sought in economic considerations, which take us quite beyond the analysis of the common notion of Justice.¹

Again, there are social services recognised as highly important which generally speaking have no price in any market, on account of the indirectness and uncertainty of their practical utility: as, for instance, scientific discoveries. The extent to which any given discovery will aid industrial invention is so

¹ Cf. *post*, Book iv. chap. iii. § 4.

uncertain, that even if the secret of it could be conveniently kept, it would not usually be profitable to buy it.

But even if we confine our attention to products and services generally marketable, and to bargains thoroughly understood on both sides, there are still serious difficulties in the way of identifying the notions of 'free' and 'fair' exchange. Thus, where an individual, or combination of individuals, has the monopoly of a certain kind of services, the market-price of the aggregate of such services can under certain conditions be increased by diminishing their total amount; but it would seem absurd to say that the social Desert of those rendering the services is thereby increased, and a plain man has grave doubts whether the price thus attained is fair. Still less is it thought fair to take advantage of the transient monopoly produced by emergency: thus, if I saw Cræsus drowning and no one near, it would not be held fair in me to refuse to save him except at the price of half his wealth. But if so, can it be fair for any class of persons to gain competitively by the unfavourable economic situation of another class with which they deal? And if we admit that it would be unfair, where are we to draw the line? For any increase of the numbers of a class renders its situation for bargaining less favourable: since the market price of different services depends partly upon the ease or difficulty of procuring them—as Political Economists say, 'on the relation between the supply of services and the demand for them'—and it does not seem that any individual's social Desert can properly be lessened merely by the increased number or willingness of others rendering the same services. Nor, indeed, does it seem that it can be decreased by his own willingness, for it is strange to reward a man less because he is zealous and eager in the performance of his function; yet in bargaining the less willing always has the advantage. And, finally, it hardly appears that the social worth of a man's service is necessarily increased by the fact that his service is rendered to those who can pay lavishly; but his reward is certainly likely to be greater from this cause.

Such considerations as these have led some political thinkers to hold that Justice requires a mode of distributing payment for services, entirely different from that at present effected by free competition: and that all labourers ought to

be paid according to the intrinsic value of their labour as estimated by enlightened and competent judges. If the Socialistic Ideal—as we may perhaps call it—could be realised without counter-balancing evils, it would certainly seem to give a nearer approximation to what we conceive as Divine Justice than the present state of society affords. But this supposes that we have found the rational method of determining value: which, however, is still to seek. Shall we say that these judges are to take the value of a service as proportionate to the amount of happiness produced by it? If so, the calculation is, of course, exposed to all the difficulties of the hedonistic method discussed in Book ii.: but supposing these can be overcome, it is still hard to say how we are to compare the value of different services that must necessarily be combined to produce happy life. For example, how shall we compare the respective values of necessities and luxuries? for we may be more sensible of the enjoyment derived from the latter, but we could not have this at all without the former. And, again, when different kinds of labour co-operate in the same production, how are we to estimate their relative values? for even if all mere unskilled labour may be brought to a common standard, this seems almost impossible in the case of different kinds of skill. For how shall we compare the labour of design with that of achievement? or the supervision of the whole with the execution of details? or the labour of actually producing with that of educating producers? or the service of the *savant* who discovers a new principle, with that of the inventor who applies it?

I do not see how these questions, or the difficulties noticed in the preceding paragraph, can be met by any analysis of our common notion of Justice. To deal with such points at all satisfactorily we have, I conceive, to adopt quite a different line of reasoning: we have to ask, not what services of a certain kind are intrinsically worth, but what reward can procure them and whether the rest of society gain by the services more than the equivalent reward. We have, in short, to give up as impracticable the construction of an ideally just social order,¹ in which all services are rewarded in exact pro-

¹ It is not perhaps necessary that I should here enlarge on the *practical* obstacles in the way of any attempt to realise such an ideal system.

portion to their intrinsic value. And, for similar reasons, we seem forced to conclude, more generally, that it is impossible to obtain clear premises for a reasoned method of determining exactly different amounts of Good Desert. Indeed, perhaps, Common Sense scarcely holds such a method to be possible: for though it considers Ideal Justice to consist in rewarding Desert, it regards as Utopian any general attempt to realise this ideal in the social distribution of the means of happiness. In the actual state of society it is only within a very limited range that any endeavour is made to reward Good Desert. Parents attempt this to some extent in dealing with their children, and the State in rewarding remarkable public services rendered by statesmen, soldiers, etc.: but reflection on these cases will show how very rough and imperfect are the standards used in deciding the amount due. And ordinarily the only kind of Justice which we try to realise is that which consists in the fulfilment of contracts and definite expectations; leaving the general fairness of Distribution by Bargaining to take care of itself.

§ 7. When we pass to consider the case of Criminal Justice, we find, in the first place, difficulties corresponding to those which we have already noticed. We find, to begin, a similar implication and partial confusion of the ideas of Law and Justice. For, as was said, by 'bringing a man to Justice' we commonly mean 'inflicting legal punishment' on him: and we think it right that neither more nor less than the penalty prescribed by law should be executed, even though we may regard the legal scale of punishment as unjust. At the same time, we have no such perplexity in respect of changes in the law as occurs in the case of Civil Justice; for we do not think that a man can acquire, by custom, prescriptive rights to over-lenient punishment, as he is thought to do to an unequal distribution of liberties and privileges. If now we investigate the ideal of Criminal Justice, as intuitively determined, we certainly find that in so far as punishment is not regarded as merely preventive,¹ it is commonly thought that it ought to be proportioned to the

¹ I have already expressed my opinion that this Utilitarian view of punishment is gradually tending to prevail; but I do not think that it has yet prevailed.

gravity of crime.¹ Still, when we endeavour to make the method of apportionment perfectly rational and precise, the difficulties seem at least as great as in the case of Good Desert. For, first, the assumption of Free Will seems necessarily to come in here also; since if a man's bad deeds are entirely caused by nature and circumstances, it certainly appears, as Robert Owen urged, that he does not properly deserve to be punished for them; Justice would rather seem to require us to try to alter the conditions under which he acts. And we actually do punish deliberate offences more than impulsive, perhaps as implying a more free choice of evil. Again, we think that offences committed by persons who have had no moral training, or a perverted training, are really less criminal; at the same time it is commonly agreed that men can hardly remit punishment on this account. Again the gravity—from a moral point of view—of a crime seems to be at least much reduced, if the motive be laudable, as when a man kills a villain whose crimes elude legal punishment, or heads a hopeless rebellion for the good of his country: still it would be paradoxical to affirm that we ought to reduce punishment proportionally: Common Sense would hold that—whatever God may do—men must, generally speaking, inflict severe punishment for any gravely mischievous act forbidden by law which has been intentionally done, even though it may have been prompted by a good motive.

But even if we neglect the motive, and take the intention only into account, it is not easy to state clear principles for determining the gravity of crimes. For sometimes, as in the case of the patriotic rebel, the intention of the criminal is to do what is right and good: and in many cases, though he knows that he is doing wrong, he does not intend to cause any actual harm to any sentient being; as when a thief takes what he thinks will not be missed. Again, we do not commonly think that a crime is rendered less grave by being

¹ Of course those who hold that the essence of Justice consists in securing external Freedom among the members of a community, and that punishment is only justified as a means to this end, naturally think that in awarding punishment we ought to consider merely its efficacy as such means. But this can scarcely be put forward as an interpretation of the common notion of Just Punishment.

kept perfectly secret; and yet a great part of the harm done by a crime is the 'secondary evil' (as Bentham calls it) of the alarm and insecurity which it causes; and this part is cut off by complete secrecy. It may be replied that this latter difficulty is not a practical one; because we are not called upon to punish a crime until it has been discovered, and then the secondary evil has been caused, and is all the greater because of the previous secrecy. But it remains true that it was not designed for discovery; and therefore that this part of the evil caused by the crime was not intended by the criminal. And if we say that the heinousness of the crime depends on the loss of happiness that would generally be caused by such acts if they were allowed to go unpunished, and that we must suppose the criminal to be aware of this; we seem to be endeavouring to force a utilitarian theory into an intuitional form by means of a legal fiction.

We have hitherto spoken of intentional wrong-doing: but positive law awards punishment also for harm that is due to rashness or negligence; and the justification of this involves us in further difficulties. Some jurists seem to regard rashness and negligence as positive states of mind, in which the agent consciously refuses the attention or reflection which he knows he ought to give; and no doubt this sort of wilful recklessness does sometimes occur, and seems as properly punishable as if the resulting harm had been positively intended. But the law as actually administered does not require evidence that this was the agent's state of mind (which indeed in most cases it would be impossible to give): but is content with proof that the harm might have been prevented by such care as an average man would have shown under the circumstances. And most commonly by 'carelessness' we simply mean a purely negative psychological fact, *i.e.* that the agent did not perform certain processes of observation or reflection; it is therefore at the time strictly involuntary, and so scarcely seems to involve ill-desert. It may be said perhaps that though the present carelessness is not blameworthy, the past neglect to cultivate habits of care is so. But in many individual instances we cannot reasonably infer even this past neglect; and in such cases the utilitarian theory of

punishment, which regards it as a means of preventing similar harmful acts in the future, seems alone applicable. Similar difficulties arise, as was before hinted (p. 282), in determining the limits within which Reparation is due; that is, on the view that it is not incumbent on us to make compensation for all harm caused by our muscular actions, but only for harm which—if not intentional—was due to our rashness or negligence.

The results of this examination of Justice may be summed up as follows. The prominent element in Justice as ordinarily conceived is a kind of Equality: that is, Impartiality in the observance or enforcement of certain general rules allotting good or evil to individuals. But when we have clearly distinguished this element, we see that the definition of the virtue required for practical guidance is left obviously incomplete. Inquiring further for the right general principles of distribution, we find that our common notion of Justice includes—besides the principle of Reparation for injury—two quite distinct and divergent elements. The one, which we may call Conservative Justice, is realised (1) in the observance of Law and Contracts and definite understandings, and in the enforcement of such penalties for the violation of these as have been legally determined and announced; and (2) in the fulfilment of natural and normal expectations. This latter obligation, however, is of a somewhat indefinite kind. But the other element, which we have called Ideal Justice, is still more difficult to define; for there seem to be two quite distinct conceptions of it, embodied respectively in what we have called the Individualistic and the Socialistic Ideals of a political community. The first of these takes the realisation of Freedom as the ultimate end and standard of right social relations: but on examining it closer we find that the notion of Freedom will not give a practicable basis for social construction without certain arbitrary¹ definitions and limitations: and even if we admit these, still a society in which Freedom is realised as far as is feasible does not completely suit our sense of Justice. *Prima facie*, this is more satisfied

¹ By 'arbitrary' I mean such definitions and limitations as destroy the self-evidence of the principle; and, when closely examined, lead us to regard it as subordinate.

by the Socialistic Ideal of Distribution, founded on the principle of requiting Desert: but when we try to make this principle precise, we find ourselves again involved in grave difficulties; and similar perplexities beset the working out of rules of Criminal Justice on the same principle.

Henry Sidgwick

Principles of Political Economy

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CHAPTER I

SCOPE AND METHOD OF POLITICS

§ 1. ON moral questions, in our age and country, most persons are accustomed from comparatively early years to pronounce confident decisions; sometimes arrived at intuitively, or at least without conscious processes of reasoning, sometimes the result of rational processes of more or less length. The citizens of a modern state—at least if it is under government in any degree popular—are similarly accustomed to decide unhesitatingly many, if not all, of the political questions which the course of their national life brings before them: but in this case, to a greater extent than in the former, the decisions are arrived at as the result of conscious reasoning from certain general principles or assumptions. Now, the primary aim of the Political Theory that is here to be expounded is not to supply any entirely new method of obtaining reasoned answers to political questions; but rather, by careful reflection, to introduce greater clearness and consistency into the kind of thought and reasoning with which we are all more or less familiar. In order to arrive at sound conclusions on practical questions—I do not mean *infallible* conclusions, but conclusions as free from error as human beings, in the present stage of their development, can hope to reach—much detailed knowledge is needed which the general theory of politics cannot profess to give: it can only point out the nature and sources of this further

relations. Is its primary aim to establish certain general propositions, either positively or hypothetically true, respecting the coexistence and sequence of facts, or to give practical rules for the attainment of certain ends? Is it, in short—to use an old distinction recently revived in this connexion—a Science or an Art? The former view is that now generally adopted by writers on economic theory in England. Their treatises no doubt include topics belonging admittedly to Art rather than to Science; namely, the discussion of the principles on which Taxation should be managed and of the general nature and limits of Governmental interference, so far as it affects the amount or the distribution of the national wealth. But these matters are generally handled by the writers in question under the head not of Political Economy strictly speaking, but of its application to Politics or the Art of Government. They hold that the precepts or rules of this department of practice are properly based, in a great measure, on the generalisations or deductions of Economic Science; but they do not mean these rules of Art when they speak of the 'laws of Political Economy'; and they have frequently censured as a vulgar error the habit of thinking and speaking of economic 'laws' as liable to 'violation,' and as needing to be realised by voluntary conformity or even enforced by public opinion. Still this habit has been found very difficult to eradicate¹; and indeed, the sharp distinction which English economists have drawn between economic theory and its application to practice has not worked itself into the common thought even of cultivated Englishmen, and it has not been generally accepted by Continental writers. When, in discussing the same matters, one set of disputants blend the consideration of 'what exists' or 'tends to exist' with the consideration of 'what ought to be done,' while another set emphatically distinguish the two questions, the gravest misunderstanding is likely to result: hence it seems very important to examine carefully the causes and the justification, if there be any, of this widespread confusion—or at least fusion—of distinct inquiries.

¹ I think it may be said that, at least in nine cases out of ten, when reference is made by public speakers or journalists to the laws of Political Economy, it is implied that Political Economy *prescribes* "freedom of contract," and does not merely assume it as a condition of the applicability of its conclusions.

§ 2. The causes are partly historical or linguistic; partly, again, they lie deep in the nature of the subject and the normal conditions of the application of the human intellect to practice. To begin with the former, we may observe that the generic term Economy has always denoted an Art or method of attaining a practical end rather than a Science, and that it has naturally been found difficult to alter its meaning altogether in prefixing to it the epithet Political; especially since, the compound 'politico-economical' having been found unendurable, the simple 'economical' has been used to do adjectival duty both for 'economy' and 'political economy.' Recent writers, it is true, have generally used 'economic' as the adjective corresponding to 'political economy': but though they have thereby to some extent obviated an ambiguity of language¹, they have not done away with the general impression that Political Economy is one branch of a larger subject which includes Domestic Economy as another branch. This, of course, was the relation of the two studies as originally conceived: otherwise the term Political Economy would never have come into use. "Economy" originally meant, in Greek, the management of the affairs of a household, especially the provision and administration of its income; and it was because a monarch or

¹ It is worth observing that, in its current use, the adjective "economic" retains its relation to "economy" in the department of Production, where—as will be pointed out subsequently—the line between Science and Art is particularly difficult to draw. Thus when the word "economic" is used either along with such terms as "gain," "loss," "advantage," "drawback," or as a term of approval implying gain or advantage, it always refers to the relation of cost or expenditure to the quantity of some result attained by it. An arrangement "economically" preferable to some other is one that produces either a given result at a less cost or a greater amount of a certain kind of result at no greater cost: there is an "economic gain" when either *cost* is saved or *produce* increased, and an "economic loss" when the reverse of either process occurs. There is no similar use of the term to imply an ideal system of distributing wealth; we should not, for instance, speak of laws relating to property as *economically* advantageous or desirable, meaning that they led to a right division of property. We might no doubt speak of an "economic" distribution of wealth, no less than of labour; but this is really a confirmation of the view just stated; since in so speaking we should be understood to be assuming that the end of the distribution was to *produce* the greatest possible amount of happiness or satisfaction, and affirming that the arrangement spoken of as "economic" was well adapted to this end. This peculiar use of the adjective "economic" should be carefully noticed; as it is almost indispensable, while at the same time it is a little liable to confuse the reader.

statesman was conceived to have the function of arranging the industry of the country somewhat as the father of a family arranges the industry of his household, that the Art which offered him guidance in the performance of this function was called Political Economy. The term is used to denote the financial branch of the art or business of government in a treatise translated as Aristotle's in the thirteenth century; and so when, in the transition from mediæval to modern history, the question of ways and means obtrusively claimed the attention of statesmen, "political economy" was the name naturally given to that part of the art of government which had for its aim the replenishment of the public treasury, and—as a means to this—the enrichment of the community by a provident regulation of industry and trade. The term retained this meaning for a considerable time, the enrichment of the people coming, however, to be less exclusively regarded from the point of view of public finance, and more sought as a condition of social wellbeing. If we turn, for example, to Sir James Steuart, the first of our systematic writers, we find that his *Inquiry into the Principles of Political Economy* (published in 1767, nine years before the *Wealth of Nations*) commences with the following account of the subject:

"Economy in general is the art of providing for all the wants of a family with prudence and frugality.....The whole economy must be directed by the head, who is both lord and steward;.....as lord he establishes the laws of his economy, as steward he puts them into execution....."

"What economy is in a family, Political Economy is in a state,.....but the statesman is not master to establish what form of economy he pleases;.....the great art, therefore, of Political Economy is first to adapt the different operations of it to the spirit, manners, habits, and customs of the people, and afterwards to model these circumstances so as to be able to introduce a set of new and more useful institutions.

"The principal object of this science is to secure a certain fund of subsistence for all the inhabitants, to obviate every circumstance which may render it precarious; to provide everything necessary for supplying the wants of the society, and to employ the inhabitants (supposing them to be freemen) in such a manner as naturally to create reciprocal relations

“and dependencies between them, so as to make their several
“interests lead them to supply one another with their reciprocal
“wants.....Political Economy in each country must necessarily
“be different;.....it is the business of a statesman to judge
“of the expediency of different schemes of economy, and by
“degrees to model the minds of his subjects so as to induce
“them, from the allurements of private interest, to concur in the
“execution of his plan.”

Before the close, indeed, of the eighteenth century, an essentially different view of a statesman's duties, in relation to industry and trade, had begun to be widely taken, under the influence first of the Physiocrats and afterwards of Adam Smith. Still, notwithstanding the gulf that separates Adam Smith's economic doctrine from Steuart's, he is equally decided in regarding Political Economy as a study with an immediate practical end¹. “Political Economy,” he says, in the introduction to the fourth book of the *Wealth of Nations*, “proposes
“two distinct objects: first, to provide a plentiful revenue
“or subsistence for the people, or, more properly, to enable
“them to provide such a revenue or subsistence for them-
“selves; and secondly, to supply the state or commonwealth
“with a revenue sufficient for the public services. It proposes
“to enrich both the people and the sovereign.” Accordingly by the “systems of Political Economy” of which he treats in this book he seems at the outset to mean not systems in the scientific sense, that is, connected sets of general statements of fact; but modes of organised governmental interference with a view to “enriching the people and the sovereign.” But each of these systems was of course based upon certain quasi-scientific principles, a certain view of economic facts; for instance, the “mercantile” system of restraints on importation, encouragements of exportation, &c., rested on the supposition that the balance of gold and silver procured by any branch of national industry and commerce was a trustworthy criterion of its advan-

¹ No importance is to be attached to the fact that Steuart, Adam Smith, and others call Political Economy a Science while defining it as (what we should now call) an Art. The present general recognition of the distinction between the two terms, in its application to economic matters, is due, I think, to the combined influence of Senior and J. S. Mill, and cannot be traced further back. McCulloch, for instance, altogether ignores it.

tage to the country. Hence in his discussion of the mercantile system Adam Smith naturally expounds and refutes this quasi-scientific doctrine (and the confusions and errors on which it was founded) along with the practical deductions drawn from it; though he is chiefly occupied in describing these latter and tracing their consequences. So far there is no particular disadvantage in the ambiguity of the term 'system'; as it might legitimately denote either a body of scientific doctrines or a set of practical precepts, there is no serious confusion caused by using it for a combination of the two.

But when Adam Smith passes in the ninth chapter to treat of "Agricultural Systems," the ambiguous term becomes a manifestly awkward instrument for the conveyance of his meaning, and is certainly liable to cause a confusion in the reader's mind. For we naturally expect to find in an agricultural 'system' the same kind of organised governmental interference in the interest of agricultural producers that we found in the mercantile system in the interest of manufacturers and merchants; and in fact Adam Smith's own language expressly suggests this antithesis. He introduces his account of the views of Quesnay and the other French Physiocrats, which occupies two-thirds of this chapter, by a reference to Colbert's protective policy; remarking that "as in the plan of Mr Colbert the industry of the towns was certainly overvalued "in comparison with that of the country, so in their system it "seems to be as certainly undervalued." He passes on from his discussion of the Physiocrats to speak of the policy of China, Indostan, and ancient Egypt, which, as he says, "favours "agriculture more than all other employments"; he also refers to the ancient republics of Greece and Rome, whose policy "honoured agriculture more than manufactures (though it "seems rather to have discouraged the latter employments than "to have given any direct or intentional encouragement to the "former)." And he concludes by arguing that "those agricultural systems...which preferring agriculture to all other employments, in order to promote it, impose restraints upon "manufactures and foreign trade...really and in the end discourage their own favourite species of industry...and are "therefore more inconsistent than the mercantile system"; and that, therefore, "all systems of preference and restraint

“should be completely taken away.” Hence the careless reader might excusably carry away the impression that Quesnay’s doctrine, which was certainly a “system of preference” for agriculture, was like the “plan of Mr Colbert,” a system of legal regulation and restraint: and even the careful reader, if not previously informed on the subject, must be startled when he suddenly learns that in Quesnay’s view “perfect liberty” was “the only effectual expedient” for encouraging agriculture; and that the only positive governmental interference proposed by the Physiocrats, as a deduction from their speculative preference for agriculturists, was the raising of all revenue by an “impôt unique” on rent.

The truth is that Adam Smith has really not seen the extent to which, in the hands of the Physiocrats as well as his own, the method of Political Economy has changed its fundamental character and become the method of a science rather than an art: since the change is due not to any difference in the question primarily asked by the economic inquirer, but to the entirely different answer now given to it. The question is still the same, “How to make the nation as rich “as possible”: but as the answer now is “By letting each “member of it make himself as rich as he can in his own way,” that portion of the old art of Political Economy which professed to teach a statesman how to “provide a plentiful revenue or “subsistence for the people” becomes almost evanescent: since the only service of this kind which the sovereign can render—besides protecting his subjects from the violence of foreigners and from mutual oppression and injustice—is to “erect and “maintain certain public works and certain public institutions, “which it can never be for the interest of any individual, or any “small number of individuals, to erect and maintain.” What remains for Political Economy to teach the statesman is merely how to provide himself with a “revenue sufficient for the public “services” in the best possible way: and accordingly such teaching, since Adam Smith’s time, has constituted the sole or chief part of Political Economy considered as an art. As regards the “plentiful revenue or subsistence of the people,” Adam Smith, instead of shewing the statesman how to provide it, has to shew him how Nature herself would make ample provision if only the statesman would abstain from

interfering with her processes: instead of recommending laws (in the jurist's sense) by which the national production and distribution of wealth *ought to be* governed, he has to trace the laws (in the naturalist's sense) by which these processes actually *are* governed. In short, the substance of his economic doctrine naturally leads him to expound it in the form of the science to which later writers have applied the name of Political Economy; before entering (in Book v.) on the discussion of the principles of the Art of Political Economy, of which the legitimate sphere is, in his view, reduced to the principles of governmental expenditure and taxation.

§ 3. But however great the change that was thus made, through the teaching of the Physiocrats and Adam Smith combined, in the current conception of Political Economy, it is important to observe that the transition thus effected from Art to Science was, in the nature of the case, incomplete. Political Economy became primarily a study of 'what is' rather than of 'what ought to be done': but this was because the two notions were, at least to a considerable extent, identified in the political economist's contemplation of the existing processes of the production and distribution of wealth. He described and analysed these processes, not only to shew what they were, but also to shew that they were not likely to be improved by human restraints and regulations. This is true not only of Adam Smith, but of almost all his disciples and successors for more than half a century. It should be noted, however, that they have maintained this identity of the actual with the ideal in very different degrees and on very different grounds; and that a considerable amount of mutual misunderstanding and mistaken inference has resulted from not observing these differences. Such misunderstanding has been a good deal aided by the ambiguity of the term 'natural,' applied by Adam Smith, Ricardo, and others, to the shares of different producers as determined by the economic laws which these writers expound. For by the term 'natural' as commonly used, the notion of 'what generally is,' or 'what would be apart from human interference,' is suggested in vague combination with that of 'what ought to be' or 'what is intended by a benevolent Providence': and it is not always easy to say in what proportions the two meanings are mixed by any particular writer. Indeed it is somewhat difficult to

determine this even in the case of Adam Smith himself. There is no doubt that—as Mr Cliffe Leslie¹ has pointed out—Adam Smith's advocacy of the "obvious and simple system of natural liberty" is connected with his strongly marked theistic and optimistic view of the order of the physical and social world. He is convinced that "all the inhabitants of the universe are under the immediate care and protection of that great, benevolent, and all-wise Being, who directs all the movements of nature, and who is determined, by his own unalterable perfections, to maintain in it, at all times, the greatest possible quantity of happiness"²: and this conviction gives him a peculiar satisfaction in tracing the various ways in which the public interest is "naturally" promoted by the spontaneous co-operation of individuals seeking each the greatest pecuniary gain to himself. At the same time he is too cool an observer of social facts to carry this optimism to an extravagant pitch. He takes care to point out, for instance, that the "interest of the employers of stock" has "not the same connexion with the general interest of society" as that of landlords and labourers: and even that "the interest of the dealers in any particular branch of trade or manufactures is always in some respect different from and even opposite to that of the public"³. So again when he speaks of "hands naturally multiplying beyond their employment" in the stationary state of a country's wealth, and describes the "starving condition of the labouring poor as a *natural* symptom of the declining state," we can hardly suppose that the term "natural" is intended directly to imply the design of a benevolent Providence. The Natural is here what actually exists or what tends to exist according to general laws, apart from casual disturbances and deliberate human interference. In consideration of these and similar passages we should, I think, refrain from attributing to Adam Smith a speculative belief in the excellence of the existing arrangements for producing and distributing wealth, to any further extent than is required to support his practical conclusion that they are not likely to be bettered by the

¹ In an Essay on the Political Economy of Adam Smith, reprinted in *Essays in Political and Moral Philosophy*.

² *Theory of Moral Sentiments*, Part VI. § II. c. iii.

³ *Wealth of Nations*, Book I. c. xi.

interference of government. Still less should we attribute to him any intention of demonstrating that these arrangements realise distributive justice, in the sense that each man's remuneration is an exact measure of the service that he renders to society. On the contrary, he expressly affirms the opposite of this in the case of the landlord, whose rent "costs him neither "labour nor care" and is "not at all proportional to what the "landlord may have laid out upon the improvement of the land, "or to what he can afford to take; but to what the farmer can "afford to give." If at the same time, as a Moralist and Natural Theologian, he holds that there is nothing unjust in the established order of distribution, and that each individual is duly provided for by a beneficent Providence, it is not because he considers that each enjoys wealth in proportion to his deserts, but rather because he sincerely believes in the delusiveness—so far as the individual is concerned—of the common struggle to get rich, and holds that happiness is equally distributed among the different ranks of society in spite of their vast inequalities in wealth¹.

There is, therefore, a great interval between the position of Adam Smith and that, for instance, of Bastiat. In Bastiat's conception of the fundamental problem of Political Economy the questions of Science and Art are completely fused; his aim being, as his biographer says, "to prove that that which is"—or rather *would* be, if government would only keep its hands off—"is conformable to that which ought to be": and that every one tends to get exactly his deserts in the economic order of unmodified competition. None of the English followers of Adam Smith has ever gone so far in this direction as Bastiat; and the most eminent of them, Ricardo, represents, we may say, the opposite pole in the development of Adam Smith's doctrine. When Ricardo, using Adam Smith's term to denote a somewhat different fact, speaks of the "natural" price of labour, his phrase carries with it no optimistic or theistic suggestions whatsoever; he means simply the price which certain supposed permanent causes are continually tending to produce. Indeed he explains that "in an improving society" the market-price of labour may remain an indefinite time above the "natural" price; and he

¹ Cf. *Theory of Moral Sentiments*, Part IV. c. i.

contemplates with anything but satisfaction the result of the "natural advance of society," which in his view tends to the benefit of landlords alone. He remains true, no doubt, to Adam Smith's "system of natural liberty" as regards the distribution of produce no less than the direction of industry; but he is further even than Adam Smith from any attempt to demonstrate a necessary harmony of interests among the producers, whom he would leave to settle their shares by free contract. In fact, two of his most characteristic doctrines are diametrically opposed to any such harmony; his demonstrations, namely, that marked improvements in agriculture have a tendency to diminish rent, and that the substitution of machinery for human labour is often very injurious to the interests of the class of labourers. And though he is averse to any direct legislative interference with the natural determination of wages, he is disposed to encourage "some effort on the part of the legislature" to secure the comfort and well-being of the poor by regulating the increase of their numbers. This last suggestion indicates a main source of the difference between Ricardo's teaching and that of his great predecessor. It was the Malthusian view of Population which rendered the optimism of the eighteenth century impossible to English economists of the nineteenth. If the tendency of Nature left alone was to produce, as the ultimate outcome of social progress, a multitude of labourers on the verge of starvation, it was difficult to contemplate her processes with anything like enthusiasm. A less "jaundiced" mind than that of the hero of *Locksley Hall* might well feel depressed at the prospect,

"Slowly comes a hungry people, as a lion creeping nigher

"Glares at one that nods and winks beside a slowly dying fire."

Hence in England, the more thoughtful even of those economists, who have adhered in the main to Adam Smith's limitations of the sphere of government, have enforced these limitations sadly rather than triumphantly; not as admirers of the social order at present resulting from "natural liberty," but as convinced that it is at least preferable to any artificial order that government might be able to substitute for it.

Still it remains true that "orthodox" Political Economy, in England no less than on the Continent, has generally included an advocacy of *Laissez Faire*; and that not only in treating of

the attempts to regulate Production, with which Adam Smith was practically most concerned, but also in dealing with the questions of Distribution, which the movement of nineteenth century thought has brought into continually greater prominence. If our orthodox economists have not gone the length of maintaining that distribution by free competition is perfectly *just*, as proportioning reward to service, they have still generally maintained it to be practically the best mode of dividing the produce of the organised labour of human beings; they have held that through the stimulus it gives to exertion, the self-reliance and forethought that it fosters, the free play of intellect that it allows, it must produce more happiness on the whole than any other system, in spite of the waste of the material means of happiness caused by the luxurious expenditure of the rich. Or if they have not even gone so far as this, they have at any rate taught that it is inevitable, and that any attempt to deviate from it will be merely throwing effort away. Thus, by one road or another, they have been led to the same practical conclusion in favour of non-interference; and it is hardly surprising that practical persons have connected this conclusion with the economic doctrines with which it was found in company, and have regarded it as an established "law of political economy" that all contracts should be free and that every one should be paid exactly the market-price of his services.

It must be obvious, however, as soon as it is pointed out, that the investigation of the laws that determine actual prices, wages, and profits, so far as these depend on the free competition of individuals, is essentially distinct from the inquiry how far it is desirable that the action of free competition should be restrained or modified—whether by the steadying force of custom, the remedial intervention of philanthropy, the legislative or administrative control of government, or the voluntary combination of masters or workmen. So far as the purely scientific economist studies primarily the results that tend to be produced by perfectly free competition, it is not because he has any predilection for this order of things—for science knows nothing of such preferences—but merely because its greater simplicity renders it easier to grasp. He holds that a knowledge of these simpler relations precedes, in the order

of study, the investigation of the more complex economic problems that result from competition modified by disturbing causes¹. But the adoption of competition perfectly free and perfectly active as a *scientific* ideal—as a means of simplifying the economic facts which actual society presents, for the convenience of general reasoning—does not imply its adoption as a *practical* ideal, which the statesman or philanthropist ought to aim at realising as completely as possible. Even if we conclude with Bastiat that unrestricted competition would give every man his deserts and otherwise bring about the best of all possible economic worlds, we must, in order to reach this conclusion, adopt some principle for determining what a man's deserts are, some criterion of social wellbeing which carries us beyond the merely scientific determination of wages, profits, and prices. In short, as regards the whole department of distribution and exchange, the Art of Political Economy—if we admit the notion of art at all—is easily and completely distinguishable from the scientific study of economic facts and laws.

§ 4. The case is different with Production: and it is to be observed that in the original treatment of Political Economy as a directly practical inquiry it was the improvement of Production rather than Distribution that was taken as its practical end. Thus Adam Smith's opening paragraphs represent as his main object the investigation of the conditions which determine a nation's annual supply of the necessaries and conveniences of life to be abundant or scanty. His first book begins with a discussion of "the causes of the improvement in the productive powers of labour"; in his second book he is occupied in considering the fundamental importance of "stock" to production, and "the different quantities of labour which it puts in motion, according to the different ways in which it is employed." In the third he describes the diverse plans that nations have followed in the general direction of labour, with the aim of making

¹ The statement in the text represents, I think, the general view of economists, which I am here trying to give; but it does not exactly represent my own view as regards one of these disturbing causes, namely, voluntary combination. For combination among the sellers of any commodity places the persons combining in a position economically similar to that of a monopolist; and though the laws that govern prices under the condition of monopoly are different from those that result from free competition, they do not appear to be necessarily more complex. Cf. *post*, Book II. c. ii. and c. x.

its produce as great as possible; and, as we have seen, the "systems of political economy" discussed in his fourth book were systems framed with a view to the same end. On the other hand he hardly considers Distribution as a practical problem; and so far as he does raise the question, how a more "liberal reward of labour" may be attained, his answer seems to be that it can only be attained by "increasing the national wealth," or in other words by solving the practical problem of Production. So again, in the brief but pregnant treatise on the Elements of Political Economy written a generation later by James Mill, it is noticeable that in describing the scope of his chapter on Production he puts prominently forward its directly practical aim: its object is, he says, to "ascertain by what means the objects of desire may be produced with the greatest ease and in greatest abundance, and upon these discoveries, when made, to form a system of rules skilfully adapted to the end." Whereas, when he comes to speak of the laws of Distribution, it never occurs to him even to hint that the process investigated admits of being improved, and that the student ought to keep this improvement in view. And in the account of the objects of Political Economy given ten years later by McCulloch, this difference in the treatment of the different inquiries is equally marked.

Nor is it difficult to understand how this difference comes to be maintained. In dealing with questions of Production, the obvious and uncontroverted aim of all rational effort—public or private—is, other things being equal, to produce as much as possible in proportion to the cost. The extent to which this aim is realised is the most interesting point to observe in examining the actual process of production in different ages and countries; and this is also the criterion which we adopt naturally and without reflection when we judge different methods of production to be better or worse. Hence the transition from the point of view of Science to that of Art is, in this part of the subject, easy and almost imperceptible; the conclusions of the former are almost immediately convertible into the precepts of the latter. Accordingly we find that even the most careful of the writers who, like J. S. Mill, have taken special pains to present Political Economy as primarily a Science, give a prominent place in this part of their work to the dis-

cussion of the good and bad results of different modes of production. They analyse the gain derived from the Division of Labour, and note the counterbalancing drawbacks; they compare the advantages and disadvantages of the "grande" and "petite culture" in farming; they consider what kinds of business are adapted to management by joint-stock companies—all topics which clearly belong to the discussion of Production regarded as an Art. I do not myself think that these practical questions should be treated decisively in a general treatise on Economic Science; since any adequate discussion of them must involve an amount of technical detail unsuitable to such a treatise. But it does not seem possible to draw a sharp line between the "technical" and the "economic" aspects of these questions; and in any case it is the admitted business of an economist, in studying social production, to investigate the causes by which the labour of any society is rendered more or less productive of wealth: and such an investigation necessarily goes far to supply an answer to the question "how the produce of labour may be made as great as possible."

§ 5. At the same time, although in discussing the conditions more or less favourable to Production we inevitably approach the margin which divides Art from Science, I have thought it expedient to reserve as much as possible for a separate inquiry the discussion of the principles of governmental interference with industry: whether with a view to a better organised Production or a more satisfactory Distribution of wealth: since I conform so far to the older and more popular view of my subject as to consider the discussion of these principles an integral part of the theory of Political Economy.

N. W. Senior was one of the first economists who definitely proposed to confine the name Political Economy to the theoretical branch of the subject, leaving the practical branch to be absorbed in the general art of government; and as this view of the scope of the study has since been the prevalent view among English economists, it may be convenient to examine briefly the arguments by which Senior justifies the innovation. He begins by fully recognising the importance of the questions which the practical branch of Political Economy, as previously conceived, attempts to answer. Inquiries, he says, as to the means by which the industry of man may be rendered more

productive by the action of government, as to the distribution of wealth most desirable in a given state of society, and as to the means by which any given country may facilitate such a distribution—such inquiries are undoubtedly of great interest. But “they no more form part of the science of political economy than navigation forms part of the science of astronomy. The principles supplied by political economy are indeed necessary elements in their solution but they are not the only or even the most important elements....They involve, as their general premisses, the consideration of the whole theory of morals, of government, and of civil and criminal legislation; and for their particular premisses, a knowledge of all the facts which affect the community which the economist proposes to influence.” The statesman, he explains, who has practically to solve these questions, must consider all the causes which may promote or impede the general welfare of the society for which he proposes to legislate; the political economist, whose systematic attention has been concentrated on wealth, “has considered only one, though the most important, of those causes”: accordingly his scientific conclusions, however true, “do not authorise him in adding a single syllable of advice.” His business as a political economist “is neither to recommend nor to dissuade, but to state general principles which it is fatal to neglect, but neither advisable nor perhaps practicable to use as the sole or even the principal guides in the conduct of affairs.” Substantially the same view was expressly adopted by J. S. Mill, though the plan of his popular and influential *Principles of Political Economy* is not framed in accordance with it. With characteristic eclecticism, while he includes in his treatise a discussion of the questions of the old art of Political Economy—even with some startling enlargements—he does not introduce these discussions as belonging to Political Economy strictly: but as mingling Political Economy with social philosophy. The same view was also effectively expounded, some years later, by J. E. Cairnes in his *Lectures on the Character and Logical Method of Political Economy*, with still more pronounced antagonism to the older view than even Senior had shewn. “Political Economy,” says Cairnes, “stands neutral between competing social schemes, as the science of mechanics stands neutral between competing plans of railway construction,

“as chemistry stands neutral between competing plans of sanitary “improvement”: it has, accordingly, “nothing to do with *laisser faire*.” And since Cairnes, the majority of English writers who have regarded Political Economy as a scientific study have taken substantially the same view of its scope.

There is no doubt much force in the arguments of these writers, so far as they tend to the conclusion that the art of Political Economy, according to Adam Smith’s use of the term, cannot be completely separated from the general art of government. It is certainly true that in deciding practical questions of public finance—or of governmental action, in matters of industry and trade, on other than financial grounds—it is often necessary to take into account other considerations besides the effects of the proposed measures on the production and distribution of wealth; and that sometimes these other considerations are more important than those with which Political Economy is concerned. But to refuse therefore to recognise an art of Political Economy at all, even as a partially distinct branch of a larger whole, was a more drastic measure than these arguments justified; and it was certainly exposed to the drawbacks involved in any attempt to change the long-established meaning of a familiar term. To tell the readers of Adam Smith—for the *Wealth of Nations* has never ceased to be widely read—that “Political Economy has nothing to do with *laissez faire*,” was too daring a paradox; and it certainly has not been very successful in dispelling the popular confusion between theory and practice which it was intended to clear away. The “laws of Political Economy” are still liable to be “disobeyed” in the ordinary discourse even of well-educated persons; and there can be no doubt that the interest of Adam Smith’s book for ordinary readers is largely due to the decisiveness with which he offers to statesmen the kind of practical counsels which, according to Senior and Cairnes, he ought carefully to have abstained from giving; perhaps, therefore, in view of long-established usage, it will be found more easy to avoid any confusion between “laws of nature” and “laws of human legislation” in relation to the production and distribution of wealth, if we grant the study of both a place within the pale of Political Economy, while carefully distinguishing the Science or theoretical branch of the subject from the Art or practical branch.

§ 6. And this conclusion will receive further support if we see reason to regard the science of Political Economy as only a partially distinct branch of the general science of Society, just as the art is only a partially distinct branch of the general art of Government. This, no doubt, was not the view taken by Senior, Cairnes, and their followers. According to the former, while the sciences which supply the rational basis for the art of Government have premisses drawn from an infinite variety of phenomena, the premisses of the science of Political Economy consist of a very few general propositions; from which, as he holds, the political economist can draw conclusions universally true in respect of the production of wealth, and as regards its distribution, can at any rate "lay down the natural state of "things as a general rule," without turning his attention to any elements of social life beyond the processes of producing and exchanging wealth. The scientific value of such deductive reasonings will be considered later; what we have now to observe—a point apparently overlooked by Senior and Cairnes—is that the practical arguments in favour of the "system of "natural liberty," urged by Adam Smith and his successors, may similarly be presented as deductions from a few premisses, representing familiar facts of human experience and not requiring any wide study of social phenomena. Thus it may be argued, first, that from the universality of the desire for wealth, from the superior opportunities that each individual has, as compared with any other person, of learning what conduces best to the satisfaction of his wants, and from the keener concern he has for such satisfaction, any sane adult may be expected to discover and aim at his own economic interests better than government will do this for him. Then, this being granted, it may be argued, secondly, that consumers in general—that is, the members of the community generally in the character of consumers—seeking each his own interest intelligently, will cause an effectual demand for different kinds of products and services, in proportion to their utility to society; while producers, generally seeking each his own interest intelligently, will be led to supply this demand in the most economic way, each one training himself or being trained by his parents for the best rewarded, and therefore most useful, services for which he is adapted. Then, keeping within the same narrow lines of analysis and deduction,

we may shew how in certain cases, such as that of industrial monopoly, the general argument for the coincidence of private interest with the interest of the community fails. All these arguments may be worked out in considerable detail, without touching on any social facts beyond those considered in the science delineated by Senior—the nature of wealth, the general causes of changes in the value of purchaseable commodities, the universal desire to obtain such commodities at the least possible sacrifice, and the rational activities to which this desire may be assumed to prompt intelligent persons under various conditions.

It will be replied that this kind of general reasoning cannot by itself enable us to solve any of the practical problems of economic legislation; because such problems, as Cairnes says, often “present other aspects than the purely economical—“political, moral, educational, artistic aspects;—and these may “involve consequences so weighty as to turn the scale against “purely economic solutions.” In saying, however, that there are “few” practical problems which do not present extra-economical aspects, Cairnes seems to go too far; since there are certainly some important departments of economic legislation, *e.g.*, banking and currency, in which a statesman would usually come to his conclusions on purely economic grounds. Still no doubt his statement is largely true; even in matters of taxation and public finance, other than strictly economic aims have often to be taken into account,—for instance, the actual plan of taxation in England is partly determined by the general conviction that alcoholic drinking is dangerous to health and morals.

But, granting that *effects* not strictly economic have to be taken into account in some of the concrete problems belonging to the practical branch of Political Economy, it is no less true that in some of the concrete problems of economic science *causes* not strictly economic cannot be overlooked. Suppose, for instance,—to take the leading question of the *Wealth of Nations*—we compare the productiveness of the labour of one country at the present time with that of another, or with the productiveness of its own labour at an earlier period, there is no one of the extra-economical elements of social life mentioned by Cairnes which may not come into consideration; political systems, moral opinions and habits, educational methods, artistic faculties and tastes, each in turn may become important. And

no general rule can be laid down as to the extent to which these other elements are to be taken into account; since their relations to industry and trade vary indefinitely in closeness and importance in different economic inquiries. Thus, in considering generally the causes of the improvement in the productive powers of labour, the importance of a healthy condition of social morality must not be overlooked; but it is not therefore the economist's duty to study in detail the doctrine or discipline of the different Christian churches: if, however, we are studying historically the causes that have affected the interest of capital, the views of Christian theologians with regard to usury will require careful attention. So, again, the conditions and development of the Fine Arts will not generally demand more than a very brief and summary treatment from the economist: if, however, we are investigating the share taken by a particular community in the international organisation of industry, the special artistic faculties and sensibilities of its members may become a consideration of much importance. Similarly the influence exercised on industry by government has often been an economic factor of the first magnitude: still it is obvious that, in modern European communities, at the existing stage of social development, changes in the industrial organisation of the civilised part of mankind are largely independent of changes in their political organisation. For instance, in the nineteenth century, France passed from Absolute Monarchy to Limited Monarchy, from Limited Monarchy to Republic, from Republic to Empire, and from Empire to Republic again; and yet none of these changes—except the third during a transient crisis—appreciably affected its industrial system; whereas this latter was materially modified during the same period by causes unconnected with politics, such as the invention of railways and of electric telegraphs. At the same time, I should quite admit that most English economists a generation ago hardly foresaw the extent to which political conditions would continue to affect industry up to the present date: and, similarly, the relations between the development of industry and other factors of social life, such as the progress and diffusion of knowledge, and the changes in national character or in the habits and sentiments of special classes, have hardly met with due consideration.

Granting, however, that the phenomena with which Political Economy is concerned cannot be satisfactorily studied in complete separation from other social phenomena, it must be admitted, on the other hand, that the general science of Society is only in a rudimentary condition. We can hardly say more than that it is slowly struggling into existence, and what relation it may bear to Political Economy when it comes to be established, it would be rash to prophesy. There can be no doubt that the general science of Society will include economic science as one of its branches; and it is probable that the development of the general science will bring into increasing prominence the interdependence of social facts of various kinds. But that is no reason why the economic aspects of social facts should not continue to be made the subject of special study. The analogy of other sciences may be appealed to: for although the progress of science continually impresses upon us the coherence and interdependence of the laws of the physical world, still the steady increase of knowledge and the severe limitation of the human faculties forces on us a continually greater specialisation of physical study.

§ 7. To sum up: Political Economy, as commonly studied, has included a theoretical and a practical branch, which it is important to distinguish clearly, since there is a popular disposition to confound their respective premisses and conclusions. For brevity, it seems convenient to refer to them as the Science and the Art of Political Economy; the latter being historically the subject to which the term was mainly applied in its earlier use, whereas among English political economists from the beginning of the nineteenth century there has been a tendency to restrict it to the former. The science of Political Economy deals with a certain class of social activities and relations, the study of which can with advantage be partially separated from the study of the rest; but the separation is only partial, most other social activities having an economic aspect, as well as more or less influence on the activities with which Political Economy is more specially concerned. The degree of separation between the science of Political Economy and the general science of Society it is well to leave somewhat indefinite, partly because it differs considerably in different inquiries, partly because the general science of Society is at present in a rudi-

mentary condition and struggling towards a fuller development;—each step in which is not unlikely to alter somewhat its actual relations to the special sciences which are, ideally speaking, its branches.

Similarly the Art of Political Economy, which deals with a special department of governmental interference, designed to improve either the social production of wealth or its distribution, may be partially, but only partially, separated from the general art of legislation or government. Here, again, the degree of separation varies considerably according to the nature of the problems considered; but on the whole the connexion of the art with the more comprehensive art of which it is a part is closer than the corresponding connexion in the case of the science. This is partly due to the fact that the general art of Government, though its development is not very advanced, has hitherto received considerably more attention than the general science of Society.

In the present treatise, the Art of Political Economy is, in accordance with the view expressed above, made the subject of a separate and final book¹; whilst the Science of Political Economy, as it is ordinarily conceived in England, forms the subject of the first two books, on (1) Production and (2) Distribution and Exchange, respectively. The precise manner in which I distinguish and connect these three topics, and the grounds on which I have combined the theory of Exchange with that of Distribution, will be better explained somewhat later.

Besides the subjects above mentioned, economists since Say

¹ I have already explained why I do not hold with one of my reviewers that "the art of political economy considered as a study of what ought to be is "contained in the science." It is of course true that the examination of the effects of any kind of governmental interference, either on production or on distribution and exchange, may be treated as a problem of economic science: but in the case of distribution and exchange, as I have before said, it is clearly not enough for practical purposes to determine what kind of effects on incomes and prices will be produced by any measure: we have further to consider whether these effects are desirable or the reverse. On this latter point very different views are explicitly or implicitly maintained by thinkers, statesmen, reformers, philanthropists of different schools: a careful, thorough, and impartial examination of these different views appeared to me, when I wrote my book, to be a great *desideratum*: and it is this *desideratum* which I have mainly endeavoured to supply in that part of my third book which deals with Distribution.

have often introduced, as a separate department, a discussion of the laws of Consumption; and the indispensability of such a discussion has been strongly urged by Jevons, who goes the length of saying that "the whole theory of Economy depends upon a correct theory of Consumption." I quite agree with Jevons as to the fundamental importance of certain propositions relating to Consumption; and I also think that their importance has not been adequately apprehended by many recent writers. Still, it has appeared to me most convenient, in such a treatise as the present, to introduce these propositions in discussing the questions relating to Production, Distribution, and Exchange which they help to elucidate; and I have, therefore, not thought it necessary to bring them together under a separate head.

CHAPTER I.

THE ART OF POLITICAL ECONOMY.

IN this third book of my treatise I propose to discuss briefly the principles of Political Economy considered as an Art or department of the general Theory of Practice. It has been already observed¹, in the introductory portion of this work, that the "principles of Political Economy" are still most commonly understood, even in England, and in spite of many protests to the contrary, to be *practical* principles—rules of conduct public or private; and that, this being so, confusion of thought on the subject is likely to be most effectually prevented, not by confining the Theory of Political Economy to economic *science* in the strictest sense—the study, whether by a positive or a hypothetical treatment, of the actually existing production and distribution of valuable commodities—but by marking and maintaining as clearly as possible the distinction between the points of view of the Science and the Art respectively, and the methods of reasoning appropriate to each.

How then shall we define the scope of Political Economy considered as an Art?

If we follow the indications of language, it would seem to be a branch or application of a more general art called "Economy" without qualification. Another branch of this more comprehensive art is commonly recognised as "Domestic Economy" or "economy in household matters." Here the object with which the economist is concerned is wealth or money; but we equally speak of "economy of force" in a mechanical arrangement without regard to its utility, and of "economy of time" in any employment whether productive

¹ Introduction, c. II. § 1.

of wealth or not. Comparing these different uses, we may define "Economy" generally as the art or method of attaining the greatest possible amount of some desirable result for a given cost, or a given result for the least possible cost; "cost" being of two kinds, either (1) the endurance of pain, discomfort, or something else undesirable, or (2) the sacrifice of something desirable, either as an end or a means¹.

The Art of Political Economy, then, would seem to be Economy applied to the attainment of some desirable result not for an individual but for a political community (or aggregate of such communities).

So far we may hope to avoid controversy. But when we go on to ask what the desirable result is which Political Economy seeks to realise, we find the question less easy to answer. It has already been noticed² that Adam Smith and his earlier successors, so far as they treated political economy as an art, conceived its end to be that the national *production* of wealth should be as great as possible; and hardly appear to have entertained the notion of aiming at the best possible distribution. But this limitation of view is not in accordance with the ordinary use of the wider term "economy." The idea of an economic *expenditure* of wealth, of which the aim is to make a given amount of wealth as useful as possible, is even more familiar than that of economic *production* of wealth: in fact domestic economy, as ordinarily understood, is simply the art or faculty of "making wealth go as far as possible." And it seems most in harmony with the received division of economic science, adopted in the present treatise, to recognise at least a possible Art of Distribution, of which the aim is to apportion the produce among the members of the community so that the greatest amount of utility or satisfaction may be derived from it.

It may be said that this latter inquiry takes us beyond the limits that properly separate Political Economy from the

¹ I have before urged that labour is not necessarily to be regarded as something disagreeable; all that we can infer from the fact that any kind of labour has to be paid for is that some, out of the whole number of persons required to furnish all the labour that society is prepared to purchase, *either* dislike this labour *or* prefer some other kind of labour either for its own sake or for its results.

² Introduction, c. II. § 4.

more comprehensive and more difficult art of general Politics; since it inevitably carries us into a region of investigation in which we can no longer use the comparatively exact measurements of economic science, but only those more vague and uncertain balancings of different quantities of happiness with which the politician has to content himself. But the discussions in Book I. on the definitions of wealth and value seemed to lead to the conclusion that the real exactness of economic as compared with ordinary political estimates is generally overrated. For it there appeared that, though we could measure all wealth at the same time and place by the ordinary standard of exchange value,—*i.e.*, money,—still in comparing amounts of wealth at different times and places neither this nor any equally exact standard was available; and we were accordingly obliged to some extent to fall back on a necessarily more indefinite comparison of utilities. Since, then, even in the reasonings of economic science, an estimate of the utility of wealth is to some extent indispensable, no fundamental change of method is introduced by adopting this estimate more systematically in the present part of our investigation.

It may, however, be questioned whether, so far as we regulate the distribution of produce, we should do so on the principle that I have laid down as “economic.” Many would urge that we ought to aim at realising Justice or Equity in our distribution. Hence it seems desirable to examine the principles of Justice or Equity that have been proposed as supreme rules of distribution: and, so far as any such principles approve themselves on examination, to consider how far their application would coincide with, and how far it would diverge from, the pursuit of the “economic” ideal.

Meanwhile we may take the subject of Political Economy considered as an Art to include, besides the theory of provision for governmental expenditure, (1) the art of making the proportion of produce to population a maximum, taking generally as a measure the ordinary standard of exchange value, so far as it can be applied: and (2) the art of rightly distributing produce among members of the community, whether on any principle of equity or justice, or on the economic principle of making the whole produce as useful as possible.

Here, however, it may be asked, whose conduct the Art is

supposed to direct; and some further explanation on this point seems certainly to be required. First, as regards production,—the term “art of production” might be fairly understood to denote a systematic exposition of the rules, by conforming to which individuals engaged in industry may produce the maximum of commodity with the minimum of cost. But political economy is not usually supposed to include such an exposition; and it appears to me that it would be difficult to give any general instruction of this kind, if it is to be more than a collection of common-places, without entering more fully than would be convenient into the details of particular kinds of industry. At any rate I do not propose to attempt this in the present Book; I shall follow tradition in treating as the main subject of Political Economy, regarded as an Art of Production, the action of government for the improvement of the national production: but it seems desirable, for completeness, to include in our consideration the action of private persons for the same end, so far as it is not prompted by the ordinary motives of pecuniary self-interest or regulated on commercial principles. This extension of view is still more clearly called for in dealing with the Art of Distribution; where gratuitous labour and expenditure have, especially in modern times, largely supplemented the efforts of governments to mitigate the distressing inequalities in the distribution of produce, that are incidental to the existing competitive organisation of society.

Finally, I have to observe that, in defining the scope of the art of production, I have implied that the mere increase of population is not an end at which it aims. This is, I think, now the generally accepted view of political economists. A statesman, however, will generally desire, *ceteris paribus*, a large population for his country: and we shall find that some important kinds of governmental interference with industry—such as the regulation of land-tenure—have been partly advocated with a view to increase of population rather than of wealth. I propose, therefore, in one or two cases to consider the effects of governmental interference in relation to this end.

CHAPTER II.

THE SYSTEM OF NATURAL LIBERTY CONSIDERED IN RELATION TO PRODUCTION.

§ 1. ON the very threshold of the subject of inquiry defined in the preceding chapter we find ourselves confronted by the sweeping doctrine that the sole function of an ideal government in relation to industry is simply to leave it alone. This view seems to be partly supported in some minds by a curious confusion of thought; the absence of governmental interference being assumed for simplicity's sake in the hypothetical reasonings, by which the values of products and services are deductively determined, is at the same time vaguely regarded as a conclusion established by such reasonings. Still when modern Political Economy—according to the common view of its commencement as a special science or study—was founded by the “Physiocrats” in the middle of the eighteenth century, it was an essential part of its teaching that a statesman's business was not to make laws for industry, but merely to ascertain and protect from encroachment the simple, eternal, and immutable laws of nature, under which production would regulate itself in the best possible way, if governments would abstain from meddling. And from this time forward, under the more enduring influence of Adam Smith, the accredited expositors of political economy—at least until the comparatively recent movement against individualism in Germany—have commonly been advocates of *Laissez Faire*. Hence since this doctrine, so far as it is sound, is evidently the most important conclusion of Political Economy considered as

an Art, it will be convenient to begin this department of our investigation by examining carefully the grounds on which it is advocated.

Throughout this examination it is desirable, for clearness' sake, to keep distinct the two points of view which we have taken separately in the two preceding books. For the proposition that what, after Adam Smith, I shall call "natural liberty" tends to the most economic production of wealth, by no means necessarily implies the further proposition that it also tends to the most economic or equitable distribution of the aggregate produce. It was no doubt held by the Physiocrats that Natural Liberty tends to realise Natural Justice: and the same view has been commonly maintained by the more thoroughgoing followers of Adam Smith¹ in France and Germany,—of whom Bastiat may be taken as a type,—and has been frequently expressed or implied in the utterances of subordinate members of the "Manchester School" in England. But I am not aware that it has been expressly affirmed by any leading economic writer in England from Ricardo downwards; and since the influence of J. S. Mill has been predominant, I do not think it has been the prevailing opinion even among the rank and file of the "orthodox" school of political economy. Many, at any rate, of those, who in England have held most strongly that it is expedient for government to interfere as little as possible with the distribution of wealth resulting from free competition, have not maintained this on the ground that the existing inequalities are satisfactory; but rather in the belief that any such interference must tend to impair aggregate production more than it could increase the utility of the produce by a better distribution.

It will be convenient, therefore, to commence with an examination of the arguments by which the system of Natural Liberty is justified in its relation to Production. The following is a concise statement of the reasoning to this conclusion which is more or less definitely implied, and partly expressed, in numberless passages of the works of Adam Smith and his successors.

¹ For Adam Smith's own view, see Introduction, pp. 20, 21.

Assuming as universal a fairly intelligent and alert pursuit of the interest of self and family, it is argued that wealth and other purchasable commodities will be produced in the most economic way, if every member of society is left free to produce and transfer to others whatever utilities he can, on any terms that may be freely arranged.

For (1) the regard for self-interest on the part of consumers will lead always to the effectual demand for the things that are most useful to society; and (2) regard for self-interest on the part of producers will lead to their production at the least cost. That is, firstly, if any material part of the ordinary supply of any commodity *A* were generally estimated as less useful for the satisfaction of social needs than the quantity of another commodity *B* that could be produced at the same cost, the demand of consumers would be diverted from *A* to *B*, so that *A* would fall in market value and *B* rise; and this change in values would cause a diversion of the efforts of producers from *A* to *B* to the extent required. And, secondly, the self-interest of producers will tend to the production of everything at the least cost: for the self-interest of *entrepreneurs* will lead them to purchase services most cheaply, taking account of quality; and the self-interest of labourers—including its expansion, through parental affection, into *domestic interest*—will cause them to be trained to the performance of the best-paid, and therefore most useful, services for which they are, or are capable of becoming, adapted; so far as the cost of the training does not outweigh the increment of efficiency given by it. Any excess of labourers of any kind will be rapidly corrected by a fall in the payment made for their services; and, in the same way, any deficiency will be rapidly made up. And the more keenly and persistently each individual—whether as consumer or as producer—pursues his private interest, the more certain will be the natural punishment of inertia or misdirected effort anywhere, and therefore the more completely will the adaptation of social labour to the satisfaction of social wants be attained. What has been said applies primarily to ordinary buying and selling; but it may obviously be extended to borrowing and lending, hiring and letting—and, in short, to all contracts in which any exchange of utilities takes place: the only thing required of government in any

such case is to secure—by the protection of person and property from force and fraud, and by the enforcement of freely made contracts—that everyone shall be really free to purchase the utility he most wants, and to transfer what he can best furnish.

This conception of the single force of self-interest, creating and keeping in true economic order the vast and complex fabric of social industry, is very fascinating; and it is not surprising that, in the first glow of the enthusiasm excited by its revelation, it should have been unhesitatingly accepted as presenting the ideal condition of social relations, and the final goal of political progress. And I believe that the conception contains a very large element of truth: the motive of self-interest does work powerfully and continually in the manner above indicated; and the difficulty of finding any adequate substitute for it, either as an impulsive or as a regulating force, is an almost invincible obstacle in the way of reconstructing society on any but its present individualistic basis. At the same time, before we accept the system of natural liberty as supplying the type to which a practical politician should seek to approximate, it is important to obtain a clear view of the general qualifications with which the argument above given has to be accepted, and of the particular cases in which its optimistic conclusion is inadmissible.

§ 2. I propose, therefore, in the present chapter, to concentrate attention on these qualifications and exceptions. And, in so doing, I think it will be most instructive to adhere, in the main, to the abstract deductive method of treatment which has been chiefly employed in the preceding Book; since many persons who are willing to admit that the principle of *laissez faire* ought not to be applied unreservedly in the actual condition of human societies, yet seem to suppose it to be demonstrably right in the hypothetical community contemplated in the general reasonings of political economy. This supposition appears to me seriously erroneous; hence in the present chapter I am specially concerned to shew that, even in a society composed—solely or mainly¹—of “economic men,” the system of natural liberty would have, in certain respects and under

¹ The difference between “solely” and “mainly” is important in a part of the argument that follows. See p. 410.

certain conditions, no tendency to realise the beneficent results claimed for it¹.

I may begin by pointing out that the argument for *laissez faire* does not tend to shew that the spontaneous combination of individuals pursuing their private interests will lead to the production of a maximum of *material* wealth, except so far as the individuals in question prefer material wealth to utilities not embodied in matter. So far as their choice falls on the latter—so far (*e.g.*) as the wealthier among them prefer the opera and the drama to the arts of painting and sculpture, and a greater abundance of servants to a greater elaborateness in food, clothing, and ornaments—the result of their free action will be to render the production of material wealth less than it would otherwise be. And even taking “produce,” as I propose to do, in the wider sense in which it has been taken in the preceding Books, to include immaterial utilities as well as material, we have still to observe that men may prefer repose, leisure, reputation, &c., to any utilities whatever that they could obtain by labouring. Thus the freeing of a servile population may cause a large diminution of production (in the widest sense of the term); because the freedmen are content with what they can get by a much smaller amount of labour than their masters forced them to perform. In short “natural liberty” can only tend to the production of maximum wealth, so far as this gives more satisfaction on the whole than any other employment of time.

The importance of both these qualifications becomes more

¹ It is from this point of view that Cairnes’s interesting and persuasive essay on “Political Economy and Laissez Faire” (in his *Essays in Political Economy Theoretical and Applied*) appears to me most defective. Cairnes reaches the conclusion that *laissez faire*, though the safest “practical rule,” yet “falls to the ground as a scientific doctrine,” by pointing to actual shortcomings in the production and distribution of social utility, and tracing these to the mistaken notions that men form of their interests. But this reasoning seems to me palpably inconclusive, according to the view of political economy as a hypothetical science, which Cairnes elsewhere expounds (*Logical Method of Political Economy*, Lect. II.). What on this view he has to prove is that there is any less reason for regarding *laissez faire* as a doctrine of this hypothetical science than there is for so regarding those deductive determinations of the values of products and services which might equally well be shewn not to correspond exactly—nor, in all cases, even approximately—to the actual facts of existing societies. This, then, is the point to which I chiefly direct attention in the present chapter.

clear when they are viewed in connexion with a third. In the abstract argument, by which the system of natural liberty is shewn to lead to the most economic production, it has to be implicitly assumed that all the different parts of produce are to be measured, at any one time and place, by their exchange value¹. That is, we have to assume, that utilities valued highly by the rich are useful to the community in proportion either to their market price, or to the pecuniary gain foregone in order to obtain them. And among these utilities, as we have just seen, we must include the gratification of the love of power, the love of ease, and all the whims and fancies that are wont to take possession of the minds of persons whose income is far more than sufficient to satisfy ordinary human desires. It is only by this strained extension of the idea of social utility that the production of such utility under the system of natural liberty can be said to have even a general tendency to reach the maximum production possible. Thus, for instance, there is no reason why, even in a community of most perfectly economic men, a few wealthy landowners, fond of solitude, scenery, or sport, should not find their interest in keeping from cultivation large tracts of land naturally fit for the plough or for pasture; or why large capitalists generally should not prefer to live on the interest of their capital, without producing personally any utilities whatsoever.

The waste of social resources that might result in this way is likely to be greater the nearer a man approaches the close of life, so far as we suppose self-interest to be his governing principle of action. Unless he is sympathetic enough to find his greatest happiness in beneficence, it may clearly be his interest, as his end draws near, to spend larger and larger sums on smaller and smaller enjoyments. Or if we may legitimately assume, as political economists generally do, that a man will generally wish at least to keep his capital intact for the sake of his descendants, we still have no ground for making any similar general assumption in the case of persons unmarried or childless. Such persons, again, even if they do not spend their accumulations on themselves, may (and not unfrequently

¹ A certain margin of uncertainty is introduced, so far as the interference of government has any effect in altering exchange-value. But this, for our present purposes, may be neglected.

do) make an almost equally uneconomical disposal of them by whimsical or ill-judged bequests. And this leads me to another difficulty that stands in the way of the consistent realisation of the system of natural liberty, if extended to include freedom of bequest. Granting that men in general will extract most satisfaction out of their wealth for themselves, if they are allowed to choose freely the manner of spending it; it does not in any way follow that they will render it most productive of utility for those who are to come after them, if they are allowed to bequeath it under any conditions that they choose. On the contrary, it rather follows that any such posthumous restraint on the use of bequeathed wealth will tend to make it less useful to the living, as it will interfere with their freedom in dealing with it. How far it would, therefore, be generally useful to impose restrictions on bequest is a question which can only be decided by a balance of conflicting considerations; we have to weigh the gain of utility that may be expected from the greater freedom of the heirs against the loss of utility that may be feared, not so much through the diminution in the satisfactions of the testator—which perhaps need not be highly estimated—but from his diminished inducement to produce and preserve wealth. But however this question may be decided, the theoretical dilemma in which the system of natural liberty is placed is none the less clear. The free play of self-interest can only be supposed to lead to a socially advantageous employment of wealth in old age, if we assume that the old are keenly interested in the utilities that their wealth may furnish to those who succeed them: but if they have this keen interest, they will probably wish to regulate the employment of their wealth; while again in proportion as they attempt this regulation by will, they will diminish the freedom of their successors in dealing with the wealth that they bequeath; and, therefore, according to the fundamental assumption of the system of natural liberty, will diminish the utility of this wealth to those successors. Of this difficulty there is, I think, no theoretical solution; it can only be settled by a rough practical compromise.

A somewhat similar difficulty arises in respect of the enforcement of contracts. If all contracts freely made are to be enforced, it is conceivable that a man may freely contract

himself into slavery; it is even conceivable that a large mass of the population of a country might do this, in the poverty and distress caused by some wide-spreading calamity. In such a case Freedom of Contract would have produced a social state in which Freedom of Contract would be no longer allowed to large numbers; and, therefore, its effect in keeping production economic would be correspondingly restricted. It may be said that such contracts would not really be in the interest of the enslavers; and it is no doubt true that, according to the fundamental hypothesis that we are now considering, it cannot be *A*'s interest to make a contract with *B* which will tend to diminish *B*'s prospective utility to *A*, taking everything into account. It is, however, possible that the most valued utility which *B* can provide for *A* is the gratification of the love of power or superiority which *A* will obtain by a more complete control over *B*; so that it will be *A*'s interest to obtain this control at the cost of rendering *B*'s labour less productive—in any ordinary sense of the term. And, again, it may be possible for *A* to make a contract which, though it will tend to diminish *B*'s productive efficiency on the whole, will tend in a greater degree to increase *A*'s prospect of securing to himself the results of this efficiency: and, if so, *A*'s self-interest will clearly prompt to such a contract.

§ 3. This last possibility brings us in view of another fundamental assumption of the system of natural liberty, the limited applicability of which it is both theoretically and practically important to notice. In the general argument above given it was implicitly assumed that the individual can always obtain through free exchange adequate remuneration for the services which he is capable of rendering to society. But there is no general reason for supposing that this will always be possible; and in fact there is a large and varied class of cases in which the supposition would be manifestly erroneous. In the first place, there are some utilities which, from their nature, are practically incapable of being appropriated by those who produce them or who would otherwise be willing to purchase them. For instance, it may easily happen that the benefits of a well-placed lighthouse must be largely enjoyed by ships on which no toll could be conveniently imposed. So, again, if it is economically advantageous to a nation to keep up forests, on account of

their beneficial effects in moderating and equalising rainfall¹, the advantage is one which private enterprise has no tendency to provide; since no one could appropriate and sell improvements in climate. For a somewhat different reason scientific discoveries, again, however ultimately profitable to industry, have not generally speaking a market value: the inventions in which the discoveries are applied can, indeed, be protected by patents; but the extent to which any given discovery will aid invention is mostly so uncertain, that, even if the secret of a law of nature could be conveniently kept, it would not be worth an inventor's while to buy it, in the hope of being able to make something of it.

Here I may notice a specially important way in which the inequalities in distribution—which natural liberty has no manifest tendency to diminish—may react unfavourably on production. So far as the most economic production involves present outlay for remote results, it may be prevented by the fact that the persons concerned do not possess and cannot procure the requisite capital; while for others who do possess it, such outlay would not be remunerative, owing to the difficulty of appropriating an adequate share of the resulting increment of utility. In the preceding Book we have been led to observe how the services of the higher grades of skilled labour, including the labour of large employers, tend to be *paid* more highly than would be the case if wealth were more equally distributed. But this result is also *prima facie* evidence that such services are *rendered* less abundantly than would be the case if the labour and capital of the community were most productively employed: since it may be inferred that society would purchase an additional increment of such services at a price more than sufficient to repay the outlay necessary to provide them; while at the same time it would not be profitable for any capitalist to provide the money, with the view of being repaid out of the salary of the labourer educated, owing to the trouble and risk involved in the deferred payments. In this way it may be profitable for the community to provide technical and professional education at a cheap rate, even when it could not be remuneratively undertaken by private enterprise. And thus, too, the low wages of a depressed class of labourers may cause

¹ Cf. Ran-Wagner, *Finanzwissenschaft*, 1^{ter} Theil, § 193.

a loss of wealth to the community, from the low standard of efficiency which they tend to perpetuate in the class, even when it would not be the interest of any private employer of the labourers in question to pay higher wages.

§ 4. On the other hand, private enterprise may sometimes be socially uneconomical because the undertaker is able to appropriate not *less* but *more* than the whole net gain to the community of his enterprise; for he may be able to appropriate the main part of the gain of a change causing both gain and loss, while the concomitant loss falls entirely upon others. Thus a company *A* having made an expensive permanent instrument—say a railway—to the advantage both of themselves and of their fellow-citizens, it may be the interest of another company *B* to make a new railway somewhat more convenient for the majority of travellers—and so likely to draw the lion's share of traffic from *A*—even if the increment of utility to the community is outweighed by the extra cost of the new railway; since *B* will get paid not merely for this increment of utility, but also for a large part of the utility that *A* before supplied.

* A still more marked divergence between private interest and public interest is liable to occur in the case of monopoly: since, as we have seen, a monopolist may increase his maximum net profit or make an equal profit more easily, by giving a smaller supply of the commodity in which he deals at a higher price rather than a larger supply at a lower price, and so rendering less service to the community in return for his profit. At the same time, though a monopoly in private hands is thus liable to be economically disadvantageous from a social point of view, there is in certain cases a decided economic gain to be obtained by that organisation of a whole department of production under a single management, which inevitably leads to monopoly; either because the qualities required in the product are such as unity of management is peculiarly qualified to provide—as in the case of the medium of exchange—or merely from the saving of labour and capital that it renders possible. And it may be observed that cases of this kind tend to increase in number and importance, as civilisation progresses and the arts of industry become more elaborate. Thus the aggregation of human beings into large towns has rendered it economically important that

* *Laissez-faire defended monopolies?*

the provision of water for the aggregate should be under one management; and the substitution of gas for candles and oil-lamps has had a similar economic effect on the provision of light.

The practical importance of the conflict of private and social interests just mentioned is much increased by the extent to which total or partial monopoly may be affected by combination¹—especially when we consider that it may be the interest of the combining producers not only to limit the amount of the utilities that they produce, in order to raise their price, but also to resist any economies in methods of production which may tend to decrease the demand for those special utilities². It should be observed that wherever payment is not by results, it may easily be the interest of any individual labourer *in any particular job* to extend uneconomically the amount of labour required, or to give as little work as he can in the time (supposing that harder work would be more irksome). But it is only where some combination of labourers exists, or custom partially sustained by combination, that it can be any one's interest *on the whole* to do this; since if the price of his services were settled by open competition, a labourer so acting would lower the market value of his services. And it is to be observed that the same progress of civilisation which tends to make competition more real and effective, when the circumstances of industry favour competition, also increases the facilities and tendencies to combination.

§ 5. So far we have considered combination as a possible source of economic loss to the community. But in some cases combined action or abstinence on the part of a whole class of producers is required to realise a certain utility, either at all or in the most economical way—as (*e.g.*) where land below the sea-level has to be protected against floods, or useful animals and plants against infectious diseases. In a perfectly ideal

¹ Combination is no doubt often tacitly excluded in the reasoning by which it is argued that the most economic production tends to result from the play of individual self-interests. But I do not see how it is legitimately to be excluded.

² It is one of the most serious of economic objections alleged against Trades-Unions, from the point of view of the community, that the regulations of some of them are partly framed to carry out this anti-social method of increasing the remuneration of a particular class. Cf. Thornton on *Labour*, Part iii. c. 5. See, however, Howell, *Capital and Labour*, c. viii.

*Competition inevitably tends to give birth
to monopoly.*

community of economic men all the persons concerned would doubtless voluntarily agree to take the measures required to ward off such common dangers: but in any community of human beings that we can hope to see, the most that we can reasonably expect is that the great majority of any industrial class will be adequately enlightened, vigilant, and careful in protecting their own interests; and where the efforts and sacrifices of a great majority are liable to be rendered almost useless by the neglect of one or two individuals, it will always be dangerous to trust to voluntary association. And the ground for compulsion becomes still stronger when the very fact of a combination among the great majority of any industrial class to attain a certain result materially increases the inducement for individuals to stand aloof from the combination. Take, for instance, the case of certain fisheries, where it is clearly for the general interest that the fish should not be caught at certain times, or in certain places, or with certain instruments, because the increase of actual supply obtained by such captures is much overbalanced by the detriment it causes to prospective supply. Here—however clear the common interest might be—it would be palpably rash to trust to voluntary association for the observance of the required rules of abstinence; since the larger the number that thus voluntarily abstain, the stronger becomes the inducement offered to those who remain outside the association to pursue their fishing in the objectionable times, places, and ways, so long as they are not prevented by legal coercion.

§ 6. I have spoken above of the manner in which individuals may, through combination, avowed or tacit, make their labour less useful in order that more of it may be required. We have now to observe that, where there is no such combination, open competition may cause a similar uneconomical effect, even while fulfilling its normal function of equalising the remuneration of producers. For suppose that the services of any particular class of labourers receive on the average a disproportionately high remuneration as compared with those of other classes; there are two ways in which this excess can be reduced, either (1) by lowering the price of a given quantum of the utilities, produced by the workers in question, or (2) by increasing the number of persons competing to produce such

utilities, without augmenting their aggregate produce, owing to the increased difficulty that each has in finding customers. So far as this latter result takes place, the effect of competition on production is positively disadvantageous. In actual experience this effect seems to occur most conspicuously in the case of services of which the purchasers are somewhat deficient in commercial keenness and activity; so that each producer thinks himself likely to gain more on the whole by keeping up the price of his services, rather than by lowering it to attract custom. An example of this kind is furnished by retail trade, especially the retail trade of the smaller shops to which the poorer class chiefly resorts; since the remarkable success of the co-operative stores of artisans implies a considerable waste of shopkeepers' time and labour under the system previously universal. Still even in a community of thoroughly intelligent and alert persons, the practical advantages of established goodwill or business connexion would still remain: the economic man would find it his interest in ordinary circumstances, for the saving of time and trouble, to form and maintain fixed habits of dealing with certain persons. There would always be many dealers who would be trying to form, and had as yet imperfectly succeeded in forming, such connexions. Thus it appears that a considerable percentage of unemployed or half-employed labour is a necessary concomitant of that active competition for business by which industry is self-organised under the system of natural liberty: and the greater the fluctuations of demand and supply, the greater is likely to be this percentage of waste.

A somewhat similar waste of labour and capital employed in manufactures, &c., due to the difficulty of adapting supply to an imperfectly known and varying demand, has been noticed in the last chapter but one of the preceding Book, in discussing the phenomenon of (so-called) "over-production."

But again; the importance to each individual of finding purchasers for his commodity also leads to a further waste, socially speaking, in the expenditure incurred for the sole purpose of attaining this result. A large part of the cost of advertisements, of agents and "travellers," of attractive shop-fronts, &c., comes under this head. A similar waste, similarly incident to the individualistic organisation of industry, is

involved in the initial expenses of forming joint-stock companies, in the case of undertakings too large for ordinary private capitalists—expenses which could not be avoided, even in a community of economic men, though the skilled labour required for launching such companies would not be remunerated quite so largely as it is here and now.

In other cases again, the mere process of appropriating and selling a commodity involves such a waste of time, trouble, and expense as to render it on the whole a more economical arrangement for the community to provide the commodity out of public funds. Thus (*e.g.*) it is an advance in industrial civilisation to get rid of tolls on roads and bridges.

§ 7. Hitherto we have not made any distinction between the interests of living men and those of remote generations. But if we are examining the merits and demerits of the purely individualistic or competitive organisation of society from the point of view of universal humanity, it should be observed that it does not necessarily provide to an adequate extent for utilities distant in time. It was shewn before that an outlay of capital that would be useful to the community may not be made because it would be unremunerative to individuals at the only rate at which they could (owing to poverty, &c.) borrow the money. But we may go further and urge that an outlay which would be on the whole advantageous, if the interests of future generations are considered¹ as much as those of the present, may not be profitable for any individual at the current rate at which wealth can be commercially borrowed.

This may be merely because the return is too distant; since an average man's interest in his heirs is not sufficient to make him buy a very long deferred annuity, even if its price be calculated strictly according to the market rate of interest. But, speaking more generally, I do not see how it can be argued from the point of view of the community that the current interest, the current price that individuals have to be paid for postponing consumption, is the exact condition that has to be fulfilled to make such postponement desir-

¹ There is no abstract reason why the interest of future generations should be less considered than that of the now existing human beings; allowance being made for the greater uncertainty that the benefits intended for the former will actually reach them and actually be benefits.

able; though of course it is a condition inevitably exacted in a society of economic men organised on a purely individualistic basis.

§ 8. So far I have left unquestioned the assumption—fundamental in the system of natural liberty—that individuals are the best judges of the commodities that they require, and of the sources from which they should be obtained, provided that no wilful deception¹ is practised; as I have thought it important to make quite clear that, *even if this assumption be granted*, what I have called the “scientific ideal” of economists—the political conditions of industry which they assume in abstract reasoning with a view to the explanation of economic phenomena—cannot legitimately be taken as the practical ideal of the Art of Political Economy; since it is shewn by the same kind of abstract reasoning to be liable to fail in various ways to realise the most economical and effective organisation of industry. It may perhaps seem that these results are of merely speculative interest; since all but a few fanatics admit that the beings for whom complete *laissez faire* is adapted are at any rate not the members of any existing community. But I venture to think that the theoretical conclusion above reached has considerable, though indirect, practical importance. If it were demonstrably only from blind adhesion to custom and habit, or from want of adequate enlightenment, that the concurrence of self-interests could not actually be relied upon to produce the best aggregate result for the community, at any rate the direction of social progress would seem to be fixed and the goal clearly in view; the pace at which we ought to try to advance towards complete *laissez faire* would still be open to dispute, but the sense that every diminution of governmental interference was a step in the right direction would be a strong inducement to take the step, if the immediate effects of taking it appeared to be mixed, and the balance of good and evil doubtful; while optimistic persons would be continually urging society to suffer a little present loss for the sake of the progress gained towards the

¹ The prevention of such deception is included in the functions attributed to government by the extremest advocates of *laissez faire*; though, as we shall see in the next chapter, it is a disputed question how far government should be allowed to interfere even for this preventive purpose.

individualistic ideal. But if, as I have tried to shew, this is not the case; if on the contrary in a community where the members generally were as enlightened and alert in the pursuit of their interests as we can ever expect human beings to become, it might still be in various cases and on various grounds desirable to supplement or correct the defects of private enterprise by the action of the community in its collective capacity,—we shall view in a somewhat different light the practical questions of the present time as to the nature and limits of governmental interference. That is, in any case where the present inadequacy of *laissez faire* is admitted or strongly maintained, we shall examine carefully whether its defects are due to want of general enlightenment, or rather to one or other of the causes discussed in this chapter; and in the latter case shall regard governmental interference as not merely a temporary resource, but not improbably a normal element of the organisation of industry.

It does not of course follow that wherever *laissez faire* falls short governmental interference is expedient; since the inevitable drawbacks and disadvantages of the latter may, in any particular case, be worse than the shortcomings of private enterprise. These drawbacks depend in part on such political considerations as lie beyond the scope of the present discussion, and vary very much with the constitution of the government in question, and the state of political morality in the country governed. Of this kind are (1) the danger of increasing the power and influence capable of being used by government for corrupt purposes, if we add to the valuable appointments at its disposal; (2) the danger, on the other hand, that the exercise of its economic functions will be hampered and perverted by the desire to gratify influential sections of the community—certain manufacturers, certain landlords, certain classes of manual labourers, or the inhabitants of certain localities; (3) the danger, again, of wasteful expenditure under the influence of popular sentiment—since the mass of a people, however impatient of taxation, are liable to be insufficiently conscious of the importance of thrift in all the details of national expenditure. Then, further, there is the danger of overburdening the governmental machinery with work—which can hardly be altogether removed, though it may be partly

obviated, by careful organisation; since the central and supreme organ of government must exercise a certain supervision over all subordinate departments, and every increase in the variety and complexity of the latter must make this supervision somewhat more laborious and difficult.

Other disadvantages, in part economic, in part purely political, attach to particular modes of governmental interference. Thus when the action of government requires funds raised by taxation, we have to reckon—besides the financial cost of collection and any loss to production caused by particular taxes—the political danger of adding to a burden already impatiently borne; where, again, it requires the prohibition of private industry, we must regard as an item on the wrong side of the account not only the immediate irksomeness of restraint, but the repression of energy and self-help that tends to follow from it; where, on the other hand, the interference takes the form of regulations imposed on private businesses, in addition to any detrimental effects on industrial processes that may inevitably accompany the observance of such regulations we may often have to calculate on a certain amount of economic and political evils due to successful or unsuccessful attempts to evade them.

And, lastly, in all cases, the work of government has to be done by persons who—even with the best arrangements for effective supervision and promotion by merit—can have only a part of the stimulus to energetic industry that the independent worker feels, who may reasonably hope to gain by any well-directed extra exertion, intellectual or muscular, and must fear to lose by any indolence or neglect. The same, however, may be said of the hired labour used by private employers, to an extent which the development of industry has hitherto continually tended to increase; including even the specially important labour of management, in the case of businesses conducted by joint-stock companies. And, on the other hand, government can apply certain kinds of stimulus which private employers have either not at their command at all, or only in a less degree; it can reward conspicuous merit by honours and distinctions, and offer to faithful service a more complete security of continuous employment and provision for old age. Still the loss, in governmental service, of the enterprise and effort that is stimulated

and sustained by a fuller sense of self-dependence must be set down as very serious; and, on the whole, there seems no doubt that even where the defects of *laissez faire* are palpable and grave, they may still be outweighed by the various disadvantages incident to governmental management of industry.

But, even so, it is important to observe, first, that these disadvantages are largely such as moral and political progress may be expected to diminish; so that even where we do not regard the intervention of government as at present desirable, we may yet look forward to it, and perhaps prepare the way for it. And, secondly, even where we reject governmental interference, we may yet recognise the expediency of supplementing or limiting in some way or other the results of private enterprise: we may point out a place for philanthropic effort—as in the case of educational foundations; or for associations of consumers to supply their needs otherwise than by the competition of independent producers—as in the case of the highly successful co-operative stores managed by artisans.

§ 9. What has been said above would be true, however fully it is granted that social progress is carrying us towards a condition in which the assumption, that the consumer is a better judge than government of the commodities that he requires and of the source from which they may be best obtained, will be sufficiently true for all practical purposes. But it seems to me very doubtful whether this can be granted; since in some important respects the tendencies of social development seem to be rather in an opposite direction. As the appliances of life become more elaborate and complicated through the progress of invention, it is only according to the general law of division of labour to suppose that an average man's ability to judge of the adaptation of means to ends, even as regards the satisfaction of his everyday needs, is likely to become continually less. No doubt an ideally intelligent person would under these circumstances be always duly aware of his own ignorance, and would take the advice of experts. But it seems not unlikely that the need of such advice, and the difficulty of finding the right advisers, may increase more markedly than the average consciousness of such need and difficulty, at any rate where the benefits to be obtained or the evils to be warded off are somewhat remote and uncertain; especially when we consider that the self-interest of

producers will in many cases lead them to offer commodities that *seem* rather than *are* useful, if the difference between seeming and reality is likely to escape notice.

How far government can usefully attempt to remedy these shortcomings of self-help is a question that does not admit of a confident general answer, for the reasons discussed in the preceding section. We may, however, notice certain kinds of utility—which are or may be economically very important to individuals—which government, in a well-organised modern community, is peculiarly adapted to provide. Complete security for savings is one of these. I do not of course claim that it is an attribute of governments, always and everywhere, that they are less likely to go bankrupt, or defraud their creditors, than private individuals or companies: but merely that this is likely to be an attribute of governments in the ideal society that orthodox political economy contemplates; of which we may find evidence in the fact that even now, though loaded with war debts and in danger of increasing the load, the English government can borrow more cheaply than the most prosperous private company. So again—without at present entering dangerously into the burning question of currency—we may at least say that if *stability* in the value of the medium of exchange can be attained at all, without sacrifices and risks outweighing its advantages, it must be by the intervention of government: a voluntary combination powerful enough to produce the result is practically out of the question.

And I have already observed that where *uniformity* of action or abstinence on the part of a whole class of producers is required for the most economical production of a certain utility, the intervention of government is at least likely to be the most effective way of attaining the result: especially if the adoption of the required rule by a majority renders it decidedly the *immediate* interest of individuals to break through it.

To sum up: the general presumption derived from abstract economic reasoning is not in favour of leaving industry altogether to private enterprise, in any community that can usefully be taken even as an ideal for the guidance of practical statesmanship; but is on the contrary in favour of supplementing and controlling such enterprise in various ways by the collective action of the community. The general principles on which the

nature and extent of such collective action should be determined have been given in the present chapter; but it would hardly be possible to work out a system of detailed practical rules on the basis of these principles, by the abstract deductive method here adopted; owing to the extent to which the construction of such a system ought reasonably to be influenced by the particular social and political conditions of the country and time for which it is framed. In passing, therefore, from abstract principles to their concrete applications—so far as the limits of my treatise allow me to discuss the latter—it seems best to adopt a more empirical treatment: the exposition of which will be more conveniently reserved for another chapter.

Henry Sidgwick

Elements of Politics

Chapters 1 and 2

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CHAPTER I

SCOPE AND METHOD OF POLITICS

§ 1. ON moral questions, in our age and country, most persons are accustomed from comparatively early years to pronounce confident decisions; sometimes arrived at intuitively, or at least without conscious processes of reasoning, sometimes the result of rational processes of more or less length. The citizens of a modern state—at least if it is under government in any degree popular—are similarly accustomed to decide unhesitatingly many, if not all, of the political questions which the course of their national life brings before them: but in this case, to a greater extent than in the former, the decisions are arrived at as the result of conscious reasoning from certain general principles or assumptions. Now, the primary aim of the Political Theory that is here to be expounded is not to supply any entirely new method of obtaining reasoned answers to political questions; but rather, by careful reflection, to introduce greater clearness and consistency into the kind of thought and reasoning with which we are all more or less familiar. In order to arrive at sound conclusions on practical questions—I do not mean *infallible* conclusions, but conclusions as free from error as human beings, in the present stage of their development, can hope to reach—much detailed knowledge is needed which the general theory of politics cannot profess to give: it can only point out the nature and sources of this further

knowledge, and the manner in which it is to be applied. The general theory of politics ought to classify the considerations by which any given political question should be decided, and indicate their general bearing on the question: but the degree of weight to be attached to each species of considerations in any particular case is usually difficult to estimate precisely without special experience: so that the main practical use of the theory is to show how experience is to be interrogated. Still, clearness and precision in our general political conceptions, definiteness and consistency in our fundamental assumptions and methods of reasoning, though they do not constitute anything like a complete protection against erroneous practical conclusions, are yet, I believe, of considerable practical value; and the systematic effort to acquire them deserves an important place in the intellectual training of a thoroughly educated man and citizen.

We may appropriately begin by trying to attain clearness and precision in our general conception of the subject investigated. In the first place, it seems to me convenient and in accordance with usage to draw a distinction,—which is sometimes overlooked,—between “Politics” and the “Social Science,” or, as it is now most commonly called, Sociology. I take the former study as having a narrower scope than the latter: Sociology, as I conceive it, deals with human societies generally; Politics with governed societies regarded as possessing government,—that is, societies of which the members are accustomed to obey, at least in certain matters, the directions given by some person or body of persons forming part of the society. The difference between the two subjects is not indeed great, if we merely consider the number of human beings included in either case; since the great majority of mankind are, and have been in historical times, members of political or governed societies. Still, we know of inferior races who only exhibit this characteristic doubtfully and imperfectly: as Mr. Spencer points out (*Princ. of Soc.* § 228), “groups of Esquimaux, of Australians, of Bushmen, of Fuegians, are without even

that primary contrast of parts implied by settled chieftainship. Their members are subject to no control but such as is temporarily acquired by the stronger, or more cunning, or more experienced." Such groups, therefore, lack what we now regard as an essential characteristic of political society, though they can hardly be excluded from the range of "Sociology" or the "Social Science."¹

But we are more concerned to note that the members even of societies that have settled governments have relations to each other of the greatest importance, which, though they could hardly be maintained without government, are still, in the main, not determined by it: and, accordingly, in those branches of social science which are primarily concerned with these other relations, the fact of government drops properly into the background. Consider, for instance, the industrial or professional system of modern communities, by which men are distinguished from and related to each other as physicians, teachers, masons, carpenters, etc. This vast system of relations, with all the minutely subdivided organisation of labour which it involves, has been in the main constructed without the direct action of government: though, no doubt, it could not be maintained without the enforcement, through governmental agency, of rights of property, contracts, etc.; and though it has been importantly modified—to a varying extent in different ages and countries—by direct governmental interference. Accordingly, it has been possible for the followers of Adam Smith to separate almost entirely the study of the industrial organisation of society—under the name of "Political Economy"²—from the study of its

¹ Even in the case of superior races, in a primitive condition, it is often difficult to find anything that can be properly called government—except during war. Thus Burckhardt (*Notes on the Bedouins*, i. pp. 115-6) tells us that though "every Arab tribe has its chief sheikh, and every camp is headed by a sheikh or at least by an Arab of some consideration," still "the sheikh has no actual authority over individuals . . . his commands would be treated with contempt, but deference" may be "paid to his advice."

² In my *Principles of Political Economy* (Introduction, ch. ii. § 2) I have pointed out that the term "Political Economy" was originally used to denote

political organisation: and this separation I hold to be in the main expedient, though it is liable to be carried too far. We have also to note—what is sometimes overlooked by writers who lay stress on the analogy between the organism of an individual man (or other animal) and the “social organism”—that human beings, considered in respect of their industrial or economic relations, fall into groups differing widely, both in extent and in sharpness of definition, from the groups into which they are combined by their political relations. Thus most of the citizens of any European community have, through foreign trade, economic relations of more or less importance with the members of some other communities: and not a few of them have a closer economic connection with some foreigners than they have with most of their fellow-citizens.

There are other relations of various kinds by which civilised men, in the present age, are socially connected into groups not coinciding with either of those just discussed. Some of those groups—religious societies being the most important example—have a kind of government, and may therefore be called *quasi-political*. But, as they exist in modern¹ countries generally, they differ from political societies in the important characteristic that the government of such a quasi-political group cannot inflict on its members any (mundane) penalty more formidable than exclusion from religious ceremonials and from voluntary social relations; whereas the penalties inflicted by the government of a political society—at any rate if its political character is fully developed—extend to deprivation of liberty, property, and even life itself. Other groups again—for example, those constituted by the possession of a common language and literature—have, as such, no government at all. The influence exercised on the lives of individuals by both kinds of relations constitutes an *art* rather than a *science*—the theory of right governmental management of national industry, and not the theory of the manner in which industry tends to organise itself independently of governmental interference.

¹ I mean by “modern” the type of State now prevalent in Western Europe and America.

tutes a very important part of the whole fact of social organisation; but I only refer to it here in order to make clear the distinction above drawn between "Social Science" or "Sociology," which treats of human society generally, and "Politics," which treats of political societies regarded in their political aspect:—*i.e.* as under government. Such a society, when it has attained a certain degree of civilised order, and is in settled occupation of a certain portion of the earth's surface over which its government exercises supreme control, we call a State.¹

§ 2. The question, however, still remains how far Politics can be properly or advantageously separated from the general science of society. To this question J. S. Mill (*Logic*, B. vi. ch. ix. § 4) appears to give a decidedly negative answer. He says that there can be no separate science of government; government being the fact which of all others is most mixed up, both as cause and effect, with the qualities of the particular people or of the particular age: in treating of the phenomena of government we have to take account of "all the circumstances by which the qualities of the people are influenced." He holds, accordingly, that "all questions respecting the tendencies of forms of government must stand part of the general science of society, not of any separate branch of it." Of this general science, as he afterwards explains (ch. x. § 2), "the fundamental problem is to find the laws according to which any state of society produces the state which succeeds it and takes its place." And the solution of this problem, as he goes on to explain, can only be advantageously attempted by a method primarily historical: we must obtain from history empirical laws of social development, and afterwards endeavour to connect these, by a process which he calls "inverse deduction," with "the psychological and ethological laws which govern the action of circumstances on men and of men on circumstances." In Mill's view, in short, Theoretical Politics can only be scientifically studied as one part or application of the Science or Philosophy of History.

¹ See chap. xiv. § 2.

Now, I agree with Mill in holding that the scientific study of the structures and functions of the different governments that have actually existed in human societies cannot well be pursued in complete separation from the scientific study of other important elements of the societies in question: whether the aim of the student is to ascertain the causes of the differences in such governments or to examine their effects. But I do not think that there is any fundamental difference, in this respect, between the study of political relations and the study of economic relations, or, again, of religion, of art, of science and philosophy, as factors of social life. In each of these cases the student concentrates his attention on one element of human history which can only be partially separated from other components of the whole complex fact of social development. Experience seems to show that this kind of concentration, and consequent partial separation of historical and sociological study into special branches, is unavoidable in the division of intellectual labour which the growth of our knowledge renders necessary in a continually increasing degree. I think, therefore, that it must be accepted in the study of Polity no less than in other departments of History and Social Science: though I quite admit that it ought never to be carried so far as to make us forget the influence exercised on government by other social changes—for instance, by the development of thought, of knowledge, of morals, of industry.

In any case the study, at once historical and scientific, of Political Society, and the general science of society of which this study is a more or less separable element, are undoubtedly studies of great interest: and it is possible—perhaps even probable—that when they have reached a further stage of development they may take the leading place in any rational and systematic method of answering the political questions with which we shall be concerned in the present treatise. At present, however, I do not think that this is the case.

As has been explained, the primary aim of these

lectures is to set forth in a systematic manner the general notions and principles which we use in ordinary political reasonings. Now, ordinary political reasonings have some practical aim in view: to determine whether either the *constitution* or the *action* of government ought to be modified in a certain proposed manner. Hence the primary aim of our study must be similarly practical: we must endeavour to determine what *ought* to be, so far as the constitution and action of government are concerned, as distinct from what is or has been. And in the systematic reasonings by which we seek to arrive at such practical conclusions I conceive that the historical study of the forms and functions of government can at present only occupy a secondary place.

For, first, it must be observed that History cannot determine for us the ultimate end and standard of good and bad, right and wrong, in political institutions;—whether we take this to be general happiness, or social wellbeing defined somehow so as to distinguish it from happiness. This ultimate end we cannot get from history; we bring it with us to the study of history when we judge of the goodness or badness of the laws and political institutions which history shows us.

Secondly, supposing that we are agreed on the ultimate end to which our political efforts should be directed—and I think the majority of my readers will probably agree in taking it to be general happiness—still, the study of past history appears to me only to a very limited extent useful in determining our choice of means for the attainment of the end here and now.

This is partly on account of the inevitable defects of the study of human history—the difficulty of ascertaining past events with sufficient fulness and accuracy to enable us to establish trustworthy generalisations as to their causal relations. But it is still more due to the very characteristic which gives the history of civilised mankind its special interest for the philosopher—viz. that it is concerned with that part of the knowable universe in which change most

distinctly takes the form of progress: so that each age has its own problems, in the solution of which the assistance that we can obtain from a study of preceding ages can only be of a subordinate kind. Even granting that History scientifically treated may enable us to decide, at least roughly and approximately, how far particular laws and institutions have tended to promote human happiness or social wellbeing in past ages; we cannot hence legitimately infer, in any direct and cogent way, what structure or mode of action of government is likely to be most conducive to happiness here and now. This, indeed, the advocates of what is called the "historical method" have usually maintained with especial emphasis: they have been especially anxious to urge that the value of all political institutions is "relative," and that those best adapted to promote social wellbeing in any given age and country may be in the highest degree unsuited to different circumstances and a different stage in the development of human society. They have, it is true, chiefly urged this "relativity" as a reason against applying our current political maxims in judging the events and institutions of the past: but their arguments seem equally valid against attempts to base present maxims of policy on inductions from past history.

It may be said, however, that so far as we have ascertained the true laws of development of political societies, we shall know what government is to be and do in the future, no less than what it has been and done in the past. I grant that a scientific study of political history must, in virtue of its scientific character, aim at prevision; indeed it has hardly earned a title to the name of science, until it can supply some rational forecast of the future. But any such sociological forecasts—in the present stage of development of political science—can only be vague and general, if they are kept within the limits of caution and sobriety; and any guidance that may be derived from such forecasts for the problems of practical politics must be mainly negative and limitative, and can hardly amount to positive direction. It may be useful in preventing us from wasting

our efforts in the attempt to realise impracticable ideals: it may show us to some extent, with some degree of probability, which of the characteristics of our own political society will increase in importance as the years go on, and which will decrease: it may thus lay down for us certain lines within which our choice of governmental institutions and laws is necessarily restricted: but it can hardly, I conceive, instruct us how to choose within these lines. For instance, suppose that we know in this way—I am far from affirming that we do know—that in the course of one or two centuries all nations now civilised will have adopted some form of democracy: this will render it useless to inquire what kind of aristocracy would be best adapted for any of these nations, but will not materially assist us in determining the particular form of democracy most likely to be conducive to its wellbeing. It would no doubt be a mistake to disregard such probable forecasts: and they have, in fact, been kept in view throughout the composition of the present treatise; and I have considered carefully how far they may reasonably be held to modify conclusions otherwise arrived at. I have not, indeed, found that the extent of this modifying influence has been great: but had it been greater, it could, I think, only have been of the limitative kind above described. Grant that we know all that the most confident of scientific historians would claim to know of the irresistible tendencies of social and political development; the question still remains, What, within the limits set by these tendencies, is the best mode of organising government and directing its action? And the more we believe in a law of development tending to make the future specifically unlike the past, the less direct assistance can be expected from our knowledge of what the structure and functions of government have been, in determining what they ought to be.

I do not mean to imply that the student of the Art of Government can derive *no* positive assistance at all from history. Notwithstanding the continual process of change and development through which political societies pass, the

fundamental aims and conditions of the work of government do not change so quickly and completely from age to age that we can learn nothing as to the right methods of working from the action of states and statesmen in the past. And the same may be said of the qualities of human intellect and feeling, on which the determination of the appropriate structure of government will properly depend. It would therefore be rash to affirm that suggestions of practical value may not be derived, in particular cases, from the study of problems analogous to our own which have been dealt with by statesmen in other ages and countries. But it will, I think, be generally admitted, with regard to all but very recent history, that any practical inferences that may be drawn from such a study must generally be of a very indirect and uncertain kind:—that we can never safely reason “Because such a law, such a form or institution of government, such a measure or line of policy, was suitable in Greece or Rome or any mediæval country, or even in any European state of the sixteenth, seventeenth, or eighteenth century, therefore it would be suitable here and now.”

The case is different when we turn to the recent history of States on a level in civilisation with our own. Here, no doubt, we find that statesmen and thinkers are often grappling with practical problems closely similar in their nature and conditions to those with which we have to deal. Still, even these modern facts, for a student of the general principles and method of practical politics, appear to be chiefly valuable in the way of suggestion, or as a test of results otherwise obtained; the particular instances afforded of success or failure of certain political institutions or modes of governmental action being rarely in themselves sufficient to justify confident general inductions as to the expediency of adopting such institutions or modes of action in modern states. It is rather when we pass from the general theory to a particular application of it, that the study of these analogous cases, if conducted with a due regard to differences as well as resemblances, becomes of great importance.

§ 3. On the whole, then, I think that, for the purpose of general political reasoning that has a practical aim, induction from the political experiences which history records can only be employed in a secondary way.¹ But if this be so, by what other rational method can we deal with the questions of Practical Politics? The method commonly adopted in political reasoning that appeals to general principles is the following: we assume certain general characteristics of social man—characteristics belonging not to mankind universally, but to civilised man in the most advanced stage of his development: and we consider what laws and institutions are likely to conduce most to the welfare of an aggregate of such beings living in social relations. The present work is an attempt to render this method more systematic and precise: the practical principles defined and applied in it are accordingly based on certain general assumptions as to human motives and tendencies, which are derived primarily from the ordinary experience of civilised life, though they find adequate confirmation in the facts of the current and recent history of our own and other civilised countries. These propositions, it should be observed, are not put forward as *exactly* or *universally* true, even of contemporary civilised man; but only as sufficiently near the truth for practical purposes. As instances of these fundamental assumptions, I may give what Bentham² lays down as “propositions upon which the good of Equality is founded,” viz. that, generally speaking, “each portion of wealth has as corresponding to it a portion”—or, more exactly, a “certain

¹ Such, I may observe, is the method actually employed, not only by Bentham and James Mill, but even by J. S. Mill, in his treatise on *Representative Government*—notwithstanding the views expressed in his *Logic of the Moral Sciences* to which I have above referred. I have no right to suggest that Mill had consciously abandoned the general conception of the relation of Politics to History which we find in his *Logic*: but when he came to treat with a view to practical conclusions the question of the best form of Government, he certainly dealt with it by a method not primarily historical: a method in which history seems to be only used either to confirm practical conclusions otherwise arrived at, or to suggest the limits of their applicability.

² *Principles of the Civil Code*, Part I, ch. vi.

chance"—of happiness: that "of two individuals, with equal fortunes, he that has the most wealth has the greatest chance of happiness"; but that "the excess in happiness of the richer will not be so great as the excess of his wealth." Of these propositions the last, as Bentham says, is not likely to be disputed: but the first two, if universally stated, any one with any wide experience of human beings will probably be disposed to contradict: it is easy to find both persons to whom it has manifestly been a misfortune to have been made suddenly richer, and persons who have not appreciably lost happiness by having become suddenly poorer. But it remains true that—other things being equal—an overwhelming majority of sensible and reasonable persons would always prefer a larger income to a smaller, both for themselves and for those whom they desire to benefit, and all that Bentham is concerned to maintain—all that he requires to assume for the establishment of general rules of legislation—is that this great majority of sensible persons would be right in the great majority of cases.

As another of these fundamental assumptions, let us take a proposition of J. S. Mill's,¹ viz. that "each person is the only safe guardian of his own rights and interests." This proposition, of course, is only intended by Mill to apply to sane adults—and, to avoid controversy, I will for the present suppose (what, I hardly need say, is not Mill's view) that it is only applicable to adult males: since it is not clear that the common sense of mankind considers women generally to be the safest guardians of their own pecuniary interests. Even among male adults it is not difficult to find instances of persons not insane, who are so recklessly passionate or self-indulgent, or so easily deluded, that a wise parent or friend would prefer to place any gift or bequest intended for their benefit in the hands of trustees. Still it remains broadly and generally true that this proposition is, as Mill says, an "elementary maxim of prudence" on which men commonly act without hesitation in their

¹ *Representative Government*, ch. iii.

private affairs: and it is primarily on this ground of common experience that he maintains the validity of this maxim as a principle for the construction of the "ideally best polity"; though he appeals for confirmation to the specifically *political* experience which the history of oppressed classes in different ages and countries abundantly furnishes.

These and other fundamental assumptions of deductive politics we shall have to discuss more fully in subsequent chapters: in which I shall consider carefully the limitations and exceptions to which they ought to be taken as subject. Here I will only say that, while it is a grave and not uncommon error to treat generalisations as to human conduct which are only approximately true as if they were universally and absolutely true, it is a no less serious mistake—and perhaps it is at the present time the more prevalent and dangerous mistake—to throw a rule aside as valueless, or treat it as having only a vague and indefinite validity, because we find it subject to important limitations and exceptions. Whereas the truth is, that in most cases our knowledge, in any real and important sense, of a general truth relating to human action and its motives and effects, develops along with our knowledge of its limitations and exceptions: until we have a definite and clear apprehension of the latter, we cannot have a firm grasp of the former. This will, I think, be abundantly illustrated in the exposition of political principles that follows: I have said enough for the present to illustrate the general nature, and to give a *prima facie* justification, of the method which I shall be mainly engaged in developing. For myself, while I regard this method as useful and even indispensable, I quite admit the importance of bearing constantly in mind its inevitable limitations and imperfections. It must never be forgotten that no particular nation is composed of individuals having only the few simple and general characteristics which are all we can include in our conception of the civilised man to whom our abstract political reasoning relates. An actual nation consists of persons of whom

the predominant number have, besides the general characteristics just mentioned, a certain vaguely defined complex of particular characteristics which we call the "national character" of Englishmen, Frenchmen, etc.; among which sentiments and habits of thought and action, formed by the previous history of the nation, must always occupy a prominent place: and a consideration of these particular characteristics may properly modify to an important extent the conclusions arrived at by our general reasoning. Thus I may conclude, from the point of view of abstract theory, that by taking twelve plain men and shutting them up in a room till they are unanimous, I am likely to get but a blunt and clumsy instrument for the administration of criminal justice: but this defect may be more than compensated by the peculiar confidence placed in this instrument by a people whom the unbroken tradition of centuries has taught to regard trial by jury as the "palladium of its liberties." So again, no one constructing a legislative organ, composed of two chambers, for a newly-founded community of modern civilised men, would propose that membership of the second or revising chamber should be handed down from father to son, like a piece of private property: but, in a country that has long been led by a hereditary aristocracy, a chamber so appointed may have a valuable power of resistance to dangerous popular impulses which it may be difficult to obtain by any other mode of appointment.

These are questions which we shall afterwards have to discuss: I only refer to them now by way of illustration; and in order to warn the reader that, in my opinion, no questions of this kind—regarded as practical problems presented for solution to a particular nation at a particular time—can be absolutely and finally determined by the method which I shall try to work out in subsequent chapters. At the same time, this general treatment of the subject cannot fail, in my opinion, to be useful, provided that we are not misled into regarding it as complete and final: useful, not merely as a preparatory exercise, but because considerations of the general kind with which

we shall be concerned must always form an important part of the discussion of any question of practical politics, though they have to be combined with—and to a varying extent overruled by—considerations of a more special kind.¹

§ 4. The study of Politics, then, as I shall treat it, is concerned primarily with constructing, on the basis of certain psychological premises, the system of relations which ought to be established among the persons governing, and between them and the governed, in a society composed of civilised men, as we know them. I shall refer not unfrequently to actual laws and political institutions: but chiefly by way of illustration, or to give concrete particularity to conclusions which would otherwise remain general and vague. The inquiry has two main divisions, (1) one relating to the Work or Functions of Government, and (2) the other to its Structure or Constitution: along with the latter I have thought it convenient to include a general inquiry into the relations, moral as well as legal, that ought to exist between government and the governed, besides such relations as are already defined in the determination of governmental functions; and also an inquiry into the relation of the state to voluntary associations of political importance. In deciding which of the two main divisions is to be taken first, we seem at first sight to be in a dilemma. On the one hand it may be fairly said that the first, in logical order of discussion, ought clearly to precede the second; for in investigating the best constitution we are considering the fitness of Government as an

¹ The least reflection will show that in ordinary political discussions reference is continually made to propositions laid down as true of civilised man generally, not merely of the English species of civilised man. Why is strong resistance made to legislation interfering with freedom of contract? Because it is thought that *men in general* are likely to know their own interest better than any government can know it for them; or that they are likely to gain more in vigour of intellect and character by being left to manage their own affairs than they are likely to lose materially through foolish contracts. Why is it thought expedient to increase the number of peasant proprietors? Because it is thought that men in general will labour more energetically if they receive the whole advantage resulting from their labour. And, similarly, in other cases of current interest.

instrument to do a particular work: and in such a consideration we ought to get as clear an idea as possible of the work that has to be done before we proceed to consider how the instrument ought to be constituted. On the other hand it may be urged with no less plausibility that in the matter of government, as in private affairs, we cannot decide what it is prudent to attempt till we know what means we have at our disposal for effecting our ends. And in truth neither department of the subject can be entirely left out of view in studying the other. But on the whole it seems the best solution of the difficulty to begin by considering what government ought to do; bearing in mind that—so far as our conclusions on this point go beyond our experience of what governments actually have done—they must not be regarded as final until we have considered the prospect of obtaining a government qualified to carry out the work which we have judged to be desirable if possible. I propose, therefore, to begin by considering the Work of Government. Here, again, doubt may be raised as to whether we should consider first Internal or External Functions—*i.e.* the action of government on the members of the community governed, or its action in relation to other communities and individuals. It is undeniable that, in early periods of human history, the most pressing need of government is created by war, and that, in many cases, a predominant influence has been exercised on its development by this need. Still, in the consideration of civilised polity, it would seem that the Internal Functions of Government should properly occupy our attention first, as being more essentially implied in our general notion of political society; since we can conceive—indeed many have looked forward to—the union of the human race under one “parliament of man”; or, again, we can conceive a political society so much separated from others by physical barriers as to have no external relations of much importance.

Further, it should be observed that the External Action of Government usually involves Internal Action,—often of a very important kind. Thus, though the primary object

for which an army is raised is usually to fight a foreign enemy, still, in the work of raising and disciplining such an army in modern states, an important and peculiar exercise of governmental functions in relation to the governed is normally required.

I shall begin, then, with the Internal Functions of Government. Here the establishment and administration of Law is admittedly the most important: and to this accordingly our attention will be first directed. Hume indeed asserts, in a well-known essay, that "we are to look upon all the vast apparatus of our government as having ultimately no other object or purpose but the distribution of justice, or, in other words, the support of the twelve judges. Kings and parliaments, fleets and armies, officers of the court and revenue, ambassadors, ministers and privy-councillors, are all subordinate in their end to this part of administration."¹ There is some exaggeration in this statement;—since (*e.g.*) the objection that a French province has to being conquered and annexed by Germany is not due mainly to a fear of a bad administration of justice by German judges, but more to the national sentiment which makes it desire to remain a part of the French state. Still Hume's view is so far true as to make it proper for us, in considering the work that government has to do, to direct our attention first to the establishment and administration of a good system of Law. But before we proceed to the consideration of what Law and Government ought to be, it is desirable to undertake a preliminary inquiry into the characteristics that are essentially implied in the commonly received notions of Government and Law. To this we will proceed in the next chapter.

¹ Hume, *Moral, Political, and Literary Essays*, Part I. Essay V.

CHAPTER II

THE FUNDAMENTAL CONCEPTIONS OF POLITICS

§ 1. AN eminent writer,¹ who treats of the "Logic of Politics," distinguishes a "preliminary branch" of the science of Politics, which he regards as an essential preparation for a practical no less than for a purely theoretical study of the subject, though it does not itself include an answer to any practical questions. This preliminary study, he explains, deals with the structure and functions of government not as they ought to be, but as they must be; that is, it teaches what is essentially involved in the idea of political government, and explains the necessary instruments and methods of government—laws and their sanctions, executive commands and judicial decisions, the establishment of rights and obligations, etc. Its aim is to make clear by discussion and definition these and other general notions that enter into our complex conception of political society; but it does not inquire into the operation and tendency of any particular kinds of laws or executive commands, or of any particular organisation of the judicature or other governmental institutions; nor does it urge the preference of any one law or institution to any other. "It explains the meaning of monarchy, aristocracy, democracy, but does not teach which is the best form. It shows what is the nature of punishment, but does not say which punishments are the most efficacious. It explains the nature of a dependency, without arguing the question—should colonies have a separate government?"

¹ Mr. Bain, in his *Logic*; *Induction*, ch. viii.

I agree with Mr. Bain in recognising the value of the study thus marked off as preliminary.¹ To obtain clear and precise definitions of leading terms is an important, and not altogether easy, achievement in all departments of scientific inquiry: but it is specially important in our present subject. But in most cases it seems to me most convenient, in such a treatise as the present, not to separate our discussion of the meaning of essential terms from our discussion of the practical questions in which the terms are used. I therefore propose, generally, to defer examining the definitions of such terms as "property" and "contract" till we come to consider what rights of property and of contract should be maintained in a well-ordered society: and similarly I shall not attempt to deal with the difficulties of determining precisely the separation between "legislative" and "executive" functions, until we are about to inquire how the organs exercising these functions should be constituted. But some preliminary discussion of the fundamental conceptions "Government," "Law," "Right," "Obligation" is almost indispensable, before we begin to consider the general principles on which Government ought to act in establishing and maintaining legal rights among the governed, and compelling the performance of their legal obligations: and in the course of this discussion a provisional view of the characteristics and relations of the leading internal functions of government will naturally be given.

§ 2. First, for clearness, we will confine our attention to the political conditions of an orderly modern state. Here reflection shows us that the notions of Government and Law are closely connected. The essential characteristic of Government, as we commonly conceive it, is that it gives commands, general and particular, to members of the community governed:—meaning by a "command" a direction to do, or abstain from doing, a certain act or class of

¹ This preliminary branch, if worked out in complete separation from the practical inquiries from which Mr. Bain distinguishes it, might be called "Formal" as contrasted with "Material" Politics; it would include, as a portion, the study of general jurisprudence, as now commonly distinguished from the theory of legislation.

acts, combined with an announcement, express or tacit, of some penalty to be inflicted on those who do not conform to such direction. A subordinate organ of Government is one whose power of issuing such commands is limited by the commands of a superior organ: a Supreme Government is one that is not so limited. On the other hand, the essential characteristic of the Laws of any community is that they are general directions as to the conduct of members of the community, for disobedience to which a penalty¹ of some kind will normally be inflicted by the authority of Government. This penalty is by no means the only motive which prompts ordinary citizens to obey the laws; nor is it necessarily the chief motive; but it is—or is believed to be—generally indispensable as an inducement to secure adequate conformity to the law. In order, then, to the complete establishment of any proposed law in a community, it is necessary not only that the law should be definitely determined and declared, but also that an adequate penalty should be actually inflicted on any person who transgresses it, whenever, after impartial investigation, the fact of the transgression and the degree of its gravity have been duly ascertained. Now it is clear that the functions (1) of laying down the law, and (2) of investigating and deciding cases of alleged infringement, may be separated from each other; and also (3) from the actual infliction of the penalty and the performance of whatever other acts are required for the effectual execution of the laws—such as the organisation and direction of the military force of the community to crush any open resistance to its government. These three functions, then, are those primarily distinguished as “legislative,” “judicial,” and “executive.”

¹ The word “penalty” must be here understood in a wide sense: since the penalty may consist only in the enforced payment of damages to a private individual injured by the violation of the rule; or may be merely negative, and consist in the withdrawal from the law-breaker of some governmental protection of his interests to which he would otherwise have been entitled. In the case, again, of *servants* of Government, the penalty may be merely reprimand or dismissal. Finally, as we shall see, the penalty ordinarily incurred by subordinate legislative bodies for illegal law-making is merely the annoyance of finding their laws or bye-laws declared invalid.

In a subsequent chapter we shall see reasons for assigning these functions, in a great measure, to separate organs respectively: and we shall have to consider how to deal with any disagreement and conflict that may arise among these organs. But for the present, when we are considering the work that has to be done rather than the method of doing it, we may assume generally that the different organs of government—legislative, executive, and judicial, superior and subordinate, central and local—will all co-operate harmoniously: so that we may speak of any or all briefly as “the government.”

We may say, then, that in the modern state the notion of Law—in the sense in which we are now concerned with it—involves the notion of Government, and *vice versa*. But this mutual implication of the two notions has only been reached slowly and gradually in the development of political society. Historically, Law first appears in the form of Custom existing from time immemorial, and conceived by rulers and ruled to be equally binding on both,—obedience to it being mainly caused by habit, and by fear of general disapproval and its consequences, rather than by any special fear of governmental penalties. And for a long time after the intervention of government to enforce law has become regular and fundamentally important, the greater part of the changes actually made in law are not made in the way of express and conscious legislation. In consequence of this, it would be a mistake to suppose that the whole body of laws in force, even in any modern State, has actually been laid down by a legislative organ recognised as such. In some countries, indeed, where Law has been codified, this would be formally true; but in a great measure only formally, as the substance of a new code usually consists, in the main, of laws previously in force. But in such a country as England the supposition would not be even formally true. For a great part of our Law consists of old customary rules modified and added to by the decisions of judges; who either (1) while professedly interpreting pre-existing rules, have extended, restricted, or in some way further defined them; or (2) have overruled them in accordance with what

they regarded as higher principles of justice or equity.¹ And it is to be noted that this conception of a higher law valid independently of human legislation, lingered till a very late stage of our civilisation. Thus we find that Blackstone, while defining Law as "a rule of civil conduct prescribed by the supreme power in a state," still recognises a "Law of Nature" which claims our obedience without being so prescribed, and is indeed "superior in obligation to any other" law. In virtue of this Law of Nature, Blackstone declares, men have "natural rights, such as life and liberty," which "receive no additional strength when declared by the municipal laws to be inviolable"; which "no human legislature has power to abridge or destroy, unless the owner shall himself commit some act that amounts to a forfeiture." Such language was by no means peculiar to Blackstone; a doctrine of this kind was prevalent among jurists of the eighteenth century. But it is now, on the whole, antiquated: and, indeed, it seems to involve a grave and dangerous confusion between (1) Law as it is, here and now, in any given community, and (2) Law as it ought to be, the ideal by which Positive Law ought to be judged and, if possible, rectified. Such an ideal, if it is a true ideal, must of course coincide with or be based upon "those eternal and immutable laws of good and evil, to which the Creator himself conforms, and which he has enabled human reason to discover,"—which Blackstone calls "Law of Nature,"—so far as any such eternal principles are held to be discoverable. But it would be a serious error for any individual Englishman to suppose that this ideal, as conceived by him, was actually established as law in England at the present day, so far as it diverges from the laws laid down by Parliament, or defined by a series of judicial decisions: and any language which encourages a man to claim, as valid here and now, rights not secured by the actually established law of his country, is dangerously revolutionary.

¹ The principles have often actually been derived from some foreign system of law, but their application has been justified not by their source, but by their intrinsic superiority.

Is then—it may be asked—the power of government to introduce new laws theoretically unlimited in a modern state? The answer to this question requires careful consideration. First, we have to observe that Law, in the political sense in which we are now concerned with it—the law of a state,—is only one species of a genus. In a wider sense the term “law” may be properly applied to any general rule which directs persons to do or abstain from doing a class of acts, and for disobedience to which some penalty may reasonably be expected by the persons disobeying. Thus when we speak of the “laws of health” we mean a set of rules of conduct, the breach of which is held to entail an appreciably increased chance of disease. So again, the rules of morality, regarded as the expression of God’s will, are, by all who believe in a moral government of the world, properly conceived as the “Law of God.” It is to be observed, however, that—since there are usually considerable variations of moral opinion and sentiments within the limits of the same modern community—the true or Divine Code of morality, as conceived by any reflective individual, may diverge importantly from the body of rules supported by the prevalent opinion of his community at any given time,—which for distinction sake may be called the “Positive morality” of the community. Both Positive morality, and Ideal morality as conceived by any individual may come into conflict with the law of the state: it is a familiar experience that a law actually in force is condemned as unjust and oppressive or otherwise immoral by a minority of members of the community; and even when the opinion of this minority becomes the prevalent opinion, the law does not therefore at once cease to exist,—though, in a state under popular government, its days are then numbered. When such conflict occurs, it is in most cases admittedly the moral duty of an individual to obey the laws of his state even when they are bad, and when, if he had supreme legislative power, it would be his moral duty to alter them: at the same time it is also generally recognised that Positive Law may sometimes command

what morality and religion forbid, and that in such cases there is a moral obligation to disobey the law. Consequently—as a modern government has only a very limited power of modifying the moral opinions of the governed—its legislative power finds in positive morality two kinds of limits, one more completely effectual, but wider and less practically operative, the other narrower but more elastic. That is, there are among the conceivable commands of government some which would certainly be disobeyed so widely that they could not be enforced; while there are others which would probably be obeyed by the bulk of the community, so long as they were not revoked, but would be so strongly disapproved that government would have a powerful inducement to revoke them. The former limit may be assumed to exist in every political society; but it is usually impossible to determine exactly where it lies, since government is ordinarily restrained from approaching it by its desire to avoid popular disapproval of the less intense kind: though the effectiveness of this narrower and more elastic limit varies very much in degree, with differences in the forms of government and in the extent to which active political interests are developed among the members of the society.

The power of government, then, in a modern state is limited not only by its own morality—or by the law of God, so far as itself recognises principles of religious duty,—but by the prevalent moral opinion of the community; especially by opinions, resting on custom and habit, as to the proper nature and limits of governmental coercion. But can we ever properly say that the power of government is limited by Positive Law?

This question has been answered in the negative by leading English publicists:¹ and, as we shall see, there is usually some sense in which the negative answer is true; but it is sometimes a very peculiar sense, requiring to be carefully explained and limited.

At first sight it may seem that a supreme government cannot be subject to strictly legal restraints; since the

¹ See especially Austin's *Jurisprudence*, vol. i. ch. vi.

effectual restraint of law lies in the fear of some penalty which government will inflict, and no supreme government can be alarmed by the dread of its own penalties. And this is obviously true in the case of simple monarchy, or any form of government where the supreme rulers have a lifelong tenure. So far as such rulers are actually restrained by constitutional rules—commonly regarded as laws—which purport to limit their legislative or other powers, it is not a fear of strictly legal penalties that restrains them; it is rather a fear of disobedience and resistance rendered peculiarly formidable by the fact that the moral sentiment of Order and Law-observance—which ordinarily co-operates with the fear of legal penalties in producing obedience to government—will be at least partly on the side of those who disobey and resist a government that is breaking recognised constitutional rules.

If, however, supreme rulers only hold power for a limited time, it is quite conceivable that, when they have laid down their power, they may suffer strictly legal punishment, inflicted by their successors, for unconstitutional legislation. But though this is conceivable, I know no modern constitution which provides for this kind of punishment of persons invested with legislative power who have made unconstitutional laws. In fact, so long as the legislative and executive organs of a supreme government co-operate harmoniously, and the judicial organ applies unquestioningly the law laid down by the legislature, the restraint placed on governmental action by constitutional rules alone—apart from prevalent opinion, which may in a particular case be opposed to some constitutional rule—is nowhere greater than the corresponding restraint in the case of simple monarchy: and it may easily be in practice less, since a popularly elected organ of government, receiving the manifest support of the majority that elected it, is not unlikely to be bolder than a monarch in defying a constitutional restraint.

The case is different in such a constitution as that of the United States of North America; where the judicial organ, being separate from the legislature and independently

constituted, has normally the function of deciding whether the laws made by the latter are consistent with the fundamental laws of the constitution. No one doubts that in this case the legislature is under strictly legal restraints. It is true that the legislators have no other penalty to fear—beyond the censure of public opinion—except the annoyance caused by wasted labour. But this is ordinarily the only judicial penalty inflicted on subordinate bodies to which a closely limited legislative power has been granted by a superior legislature: thus in England a railway company¹ is judicially restrained from making bye-laws beyond the limits of its authority, only by the fear that such bye-laws will be declared invalid by the judges if any attempt be made to enforce them. If then, in such a constitution as that of the United States, there were any fundamental laws laid down as unalterable, it could not be denied that the highest legislative organ in such a constitution was under strictly legal restraints,—so long, at least, as the independence of the Supreme Court of Judicature was maintained. But in fact no modern state has such a constitution: every modern constitution contains some provision for altering it, from which no rule that it contains is exempted. For instance, in the constitution of the United States a provision for alteration, extending to all the clauses that circumscribe the legislative power of Congress, is made as follows:—

“The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose amendments to this constitution, or, on the application of the Legislatures of two-thirds of the several States, shall call a convention proposing amendments, which in either case shall be valid to all intents and purposes, as a part of this constitution, when ratified by the Legislatures of three-fourths of the several States, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress.”

¹ The bye-laws of an English railway company have to be approved by the Board of Trade: but the restraint thus exercised is not strictly a judicial restraint.

Here, then, a fresh ground is afforded for those who argue that a supreme government cannot be subject to legal restraint; and this ground is actually taken by Austin and others. They admit that in the United States the legislative power of Congress is strictly limited by law—that (*e.g.*) Congress is legally restrained from making an “*ex post facto* law” by a clause in the constitution forbidding it. But, they argue, the complex body consisting of Congress and the Legislatures of three-fourths of the separate states¹—provided these Legislatures are all agreed—is not similarly limited. This complex body can constitutionally rescind the clauses prohibiting *ex post facto* laws, and every other clause of the constitution, and make, or authorise the making of, any law that it pleases: its power is therefore legally unlimited. There can be no doubt that this contention is true: the only question can be whether this complex body is properly called the “sovereign” or “supreme government” of the United States, Congress being only allowed the title of a subordinate legislature. We need not decide a merely verbal issue: but it is important to note that, if the word “government” is so used, it is used in a sense materially different from its ordinary meaning. For ordinarily we conceive an organ of government to exercise its functions regularly, at comparatively short intervals: for instance, while historians regard the English House of Commons as an organ of government in England during the later Middle Ages, they do not commonly treat the States-General in France as an organ of government during the same period, because it only came into existence irregularly, at intervals of several years. But similarly, the complex body that has unlimited legislative power in the United States does not act at all for long periods; during a period of more than sixty years, from 25th September 1804 to 1st February 1865, this unlimited sovereign of the United States remained completely inactive. Surely

¹ I omit the complication introduced by the alternative method of summoning conventions; since it is in the power of Congress not to adopt this method.

it strains language to say that during these sixty years citizens of the United States "habitually obeyed" this inert composite entity?

If it be replied that this complex body *possessed* power legally unlimited during the period above mentioned, though it did not *exercise* it, the answer again must be that the statement is true in a sense, but misleading if made without qualification. It is true that it *might* without illegality have altered every rule in the constitution: but the statement ignores the fact that it was the legally determined structure of the body in question—the difficulty of bringing about the required majority of two-thirds in both Houses of Congress, and the required agreement of the prescribed number of legislatures—which practically prevented action of this or any other kind. It seems truer to say that in this and similar cases there is an actual organ of government whose commands are habitually obeyed, and a possible organ of government whose power is legally unlimited: but that the two do not coincide, and that the latter may at any given time be incapable of coming into operation at all, owing to the balanced state of opinion.

In the case of England the difficulties just explained do not arise: since the ordinary process of legislation is also the process by which the Constitution is changed.

We can say with indisputable truth that there are no legal limits to the authority of Parliament in England:¹ in endeavouring to ascertain what the law of England is, we never ask what Parliament has authority to do, but only what it has done. But a new difficulty arises in communities like our own as regards the attribution of sovereignty or supreme power. Are we to say that in

¹ It may be observed that the legal view of the omnipotence of Parliament, now generally accepted, was not completely reached till a comparatively late period of English history: even so late as the eighteenth century we find—not merely in the vague generalities of the writers of law-books, but even in the more particular dicta of judges—the recognition of legal principles limiting the legislative power of Parliament. Thus Holt affirms that "if an Act of Parliament should ordain that the same person should be party and judge, it would be a void Act of Parliament."

England sovereignty is to be attributed to the complex body formed by (1) the Monarch, (2) the House of Lords, and (3) the House of Commons, or ought we to substitute for the third element of the sovereign the constituencies which choose the House of Commons?¹ On the one hand, the constituencies in England certainly cannot make laws, nor have they a constitutional right to invalidate laws made by Parliament. No private Englishman will suffer any legal penalty for disobeying a resolution passed by the most decisive majority of the electorate; and no law-court would admit such a resolution as a valid excuse for disobeying a law laid down by Parliament. On the other hand, it may be plausibly maintained that by the power of dismissal when election time comes round the constituencies can keep their representatives in "habitual obedience."²

These and other difficulties I shall discuss in subsequent chapters;³ but this preliminary discussion has seemed necessary to explain why, while I adopt substantially Austin's conception of the relation of Law to Government, as applied to the civil law of a modern political community in its latest stage, I prefer in stating it to avoid the difficulties of Austin's notion of sovereignty. The question "where supreme power ultimately resides" is one that it is most important to ask with regard to any political society: but it is a question to which, in my opinion, any simple general answer is liable to be misleading, and the discussion of it in the form appropriate to the present treatise will come more fitly after we have considered in detail the proper constitution of the different organs of Government.

In the first part of our inquiry, then, which relates to the work of government, it will be enough to assume that

¹ A similar question of course arises in the case of the United States—or any state with a constituent body distinct from the ordinary legislature—as regards the action of the ordinary legislatures, within the limits fixed by the constitution.

² Austin's statements on this point appear to me hopelessly confused and inconsistent. See Appendix A.

³ See chap. xxvii., and especially chap. xxxi.

the society with which we are concerned includes one or more persons or bodies, who, so far as they agree, possess legislative power circumscribed by no definite limits; and so may be taken to constitute a supreme legislative organ, whose general rules, defining the rights and obligations of private members of the community, will be habitually obeyed by the bulk of the community. I shall assume that any transgressor of these rules, ascertained to be such by the judicature, will be punished by the executive government, which will be able to bring overwhelming force to crush any openly recalcitrant member. I shall assume that these organs co-operate harmoniously, keeping each to his proper sphere, so that we may habitually speak of them as one Government. And, finally, I shall assume that the Laws with which we are concerned in our theory of legislation are rules which, if they have not actually emanated from the resolutions of the supreme government, may at any rate be regarded as having its approval, being maintained by penalties inflicted by its authority. It is the connection of Law with Government on the one hand and Penalty on the other on which it appears to me important to lay stress—understanding the connection in either case to be taken as normal, and approximately universal in a well-ordered community, not as absolutely universal.¹

§ 3. In the preceding discussion I have spoken of law as determining the (legal) rights and obligations of private members of the community. The terms used in this definition, though sufficiently familiar, require some further explanation in order to make their import as clear as possible.

Let us begin by considering the term "legal obligation." By this we express the relation of a general rule or command, enforced by the authority of government, to the member or members of the community whose civil conduct it is intended to control. The law is conceived as exercising

¹ See chap. xiii. I may repeat that the word "Penalty" is to be understood in a wide sense, to include negative as well as positive penalties, and "damages" as well as punishment proper.

a certain constraint on the will of such person or persons; and it is this constraint that the term "obligation" expresses. A similar constraint is exercised in the case of "moral obligations" by the conscience of the individual who lies under the obligation, and the moral opinion of the community of which he is a member.¹

It is not quite so easy to see what is meant by the term "legal right";² and perhaps the most convenient way of making this clear is to examine the relation of Rights to Obligations according to the ordinary use of both terms. A little reflection will show that we cannot conceive Rights of any one individual without corresponding Obligations imposed on others. Thus *A*'s right of property in any material thing necessarily implies obligations imposed on *B*, *C*, *D*, etc., to abstain from interfering with *A*'s use of the thing: similarly any right to services that *A* may have in consequence of a contract implies that the other party to the contract is under an obligation to render the services: so again, if a child has a right to education, some one is under an obligation to educate it. It is not, however, similarly clear that the imposition of Obligations on one or more individuals always involves the granting of Rights to other persons. Consider (*e.g.*) the legal obligation on Englishmen to abstain from suicide, vagrancy, or keeping gambling-houses: there do not appear to be in these cases—as in those just considered—any definite Rights belonging to assignable individuals which are violated if the obligations are not fulfilled. Still, when we reflect on the interest that the community at large has in the observance of the laws in question, it does not seem strained to say that the community has a right to their observance.

¹ The distinction—and possible divergence in particulars—between what any individual believes to be moral truth, and the moral opinion of his society, must always be borne in mind.

² The difficulty of defining "a right" is increased by the fact that while we recognise in ordinary discourse that there are *moral* as well as *legal rights*, and that the two kinds of rights are not always coincident, we still frequently speak of "rights" without clearly distinguishing which of the two we mean. At present I am concerned with legal rights; but the definition that I propose to give may easily be applied, *mutatis mutandis*, to moral rights.

Comparing these cases, I arrive at the conclusion that "a right" is really an obligation regarded from a different point of view: *i.e.* regarded in relation to the person to whom the obligation is intended to be useful. In the case of such rights as the right of property, the rule which binds or obliges the members of the community to abstain from interfering with the owner's use of the appropriated thing has at the same time the effect of securing or protecting the owner's freedom of action in respect of the thing in question: and hence some thinkers have conceived a "Right" as being essentially "secured or protected liberty." But there are other cases to which this definition clearly would not apply: *e.g.* when a child is said to have a "right to education" there is no liberty secured to the child, but merely an obligation imposed on other persons of rendering it certain positive services.¹

Accordingly, in forming a definite conception of any right, it is indispensable to ascertain the obligation implied in it, and the persons on whom this obligation is thrown. For instance, in speaking of rules determining the rights of private members of the community, we may imply either obligations imposed on private persons, or obligations imposed on members of the government. The distinction thus drawn is important in separating the discussion of the work that Government has to do from the discussion of the methods and instruments by which the work should be done. It will be somewhat further developed in the next chapter.

¹ Some writers hold that a legal right implies that the person who is said to have the right must be able to obtain, by a legal process, redress or punishment from any violation of his right. I agree that such redress or punishment must be somehow obtainable—otherwise the rule professing to determine the right would not deserve the name of a law: but it does not seem to me necessary that the individual whose right is violated should himself have the right of suing or prosecuting the violator: it seems to me better to regard this latter as a secondary and additional right, which is ordinarily given for the better security of the first, but may in some cases be withheld. Thus I should say that a destitute pauper had a legal right to relief in England, because the poor-law officials are liable to punishment if they refuse him relief, though the pauper himself cannot sue or prosecute them.