

Jeremy Bentham

***An Introduction to the Principles of
Morals and Legislation***

Chapter 1 Of The Principle of Utility
Chapter 10 Of Motives

Jeremy Bentham, *An Introduction to the
Principles of Morals and Legislation*.
Oxford Clarendon Press, 1907

AN INTRODUCTION

TO THE

PRINCIPLES OF MORALS AND LEGISLATION.

CHAPTER I.

OF THE PRINCIPLE OF UTILITY.

I. NATURE has placed mankind under the governance of two sovereign masters, *pain* and *pleasure*. It is for them alone to point out what we ought to do, as well as to determine what we shall do. On the one hand the standard of right and wrong, on the other the chain of causes and effects, are fastened to their throne. They govern us in all we do, in all we say, in all we think: every effort we can make to throw off our subjection, will serve but to demonstrate and confirm it. In words a man may pretend to abjure their empire: but in reality he will remain subject to it all the while. The *principle of utility*¹ recognises

Mankind
governed
by pain and
pleasure.

¹ Note by the Author, July 1822.

To this denomination has of late been added, or substituted, the *greatest happiness* or *greatest felicity* principle: this for shortness, instead of saying at length *that principle* which states the greatest happiness of all those whose interest is in question, as being the right and proper, and only right and proper and universally desirable, end of human action: of human action in every situation, and in particular in that of a functionary or set of functionaries exercising the powers of Government. The word *utility* does not so clearly point to the ideas of *pleasure* and *pain* as the words *happiness* and *felicity* do: nor does it lead us to the consideration of the *number*, of the interests affected; to the *number*, as being the circumstance, which contributes, in the largest proportion, to the formation of the standard here in question; the *standard of right and wrong*, by which alone the propriety of human conduct, in every situation, can with propriety be tried. This want of a sufficiently manifest connexion between the ideas of *happiness* and *pleasure* on the one hand, and the idea of *utility* on the other, I have every now and then found operating, and with but too much efficiency, as a bar to the acceptance, that might otherwise have been given, to this principle.

this subjection, and assumes it for the foundation of that system, the object of which is to rear the fabric of felicity by the hands of reason and of law. Systems which attempt to question it, deal in sounds instead of sense, in caprice instead of reason, in darkness instead of light.

But enough of metaphor and declamation : it is not by such means that moral science is to be improved.

Principle of
utility,
what.

II. The principle of utility is the foundation of the present work : it will be proper therefore at the outset to give an explicit and determinate account of what is meant by it. By the principle¹ of utility is meant that principle which approves or disapproves of every action whatsoever, according to the tendency which it appears to have to augment or diminish the happiness of the party whose interest is in question : or, what is the same thing in other words, to promote or to oppose that happiness. I say of every action whatsoever ; and therefore not only of every action of a private individual, but of every measure of government.

Utility
what.

III. By utility is meant that property in any object, whereby it tends to produce benefit, advantage, pleasure, good, or happiness, (all this in the present case comes to the same thing) or (what comes again to the same thing) to prevent the happening of mischief, pain, evil, or unhappiness to the party whose interest is considered : if that party be the community in general, then the happiness of the community : if a particular individual, then the happiness of that individual.

A principle,
what.

¹ The word principle is derived from the Latin principium : which seems to be compounded of the two words *primus*, first, or chief, and *capium*, a termination which seems to be derived from *capio*, to take, as in *municipium*, *municipium* ; to which are analogous, *auceps*, *forceps*, and others. It is a term of very vague and very extensive signification : it is applied to any thing which is conceived to serve as a foundation or beginning to any series of operations : in some cases, of physical operations ; but of mental operations in the present case.

The principle here in question may be taken for an act of the mind ; a sentiment ; a sentiment of approbation ; a sentiment which, when applied to an action, approves of its utility, as that quality of it by which the measure of approbation or disapprobation bestowed upon it ought to be governed.

IV. The interest of the community is one of the most general expressions that can occur in the phraseology of morals: no wonder that the meaning of it is often lost. When it has a meaning, it is this. The community is a fictitious *body*, composed of the individual persons who are considered as constituting as it were its *members*. The interest of the community then is, what?—the sum of the interests of the several members who compose it.

Interest of the community, what.

V. It is in vain to talk of the interest of the community, without understanding what is the interest of the individual¹. A thing is said to promote the interest, or to be *for* the interest, of an individual, when it tends to add to the sum total of his pleasures: or, what comes to the same thing, to diminish the sum total of his pains.

VI. An action then may be said to be conformable to the principle of utility, or, for shortness sake, to utility, (meaning with respect to the community at large) when the tendency it has to augment the happiness of the community is greater than any it has to diminish it.

An action conformable to the principle of utility, what.

VII. A measure of government (which is but a particular kind of action, performed by a particular person or persons) may be said to be conformable to or dictated by the principle of utility, when in like manner the tendency which it has to augment the happiness of the community is greater than any which it has to diminish it.

A measure of government conformable to the principle of utility, what.

VIII. When an action, or in particular a measure of government, is supposed by a man to be conformable to the principle of utility, it may be convenient, for the purposes of discourse, to imagine a kind of law or dictate, called a law or dictate of utility: and to speak of the action in question, as being conformable to such law or dictate.

Laws or dictates of utility, what.

IX. A man may be said to be a partizan of the principle of utility, when the approbation or disapprobation he annexes to any action, or to any measure, is determined by and proportioned

A partizan of the principle of utility, who.

¹ Interest is one of those words, which not having any superior *genus*, cannot in the ordinary way be defined.

to the tendency which he conceives it to have to augment or to diminish the happiness of the community : or in other words, to its conformity or unconformity to the laws or dictates of utility.

Ought, ought not, right and wrong. &c. how to be understood.

X. Of an action that is conformable to the principle of utility one may always say either that it is one that ought to be done, or at least that it is not one that ought not to be done. One may say also, that it is right it should be done ; at least that it is not wrong it should be done : that it is a right action ; at least that it is not a wrong action. When thus interpreted, the words *ought*, and *right* and *wrong*, and others of that stamp, have a meaning : when otherwise, they have none.

To prove the rectitude of this principle is at once unnecessary and impossible.

XI. Has the rectitude of this principle been ever formally contested ? It should seem that it had, by those who have not known what they have been meaning. Is it susceptible of any direct proof ? it should seem not : for that which is used to prove every thing else, cannot itself be proved : a chain of proofs must have their commencement somewhere. To give such proof is as impossible as it is needless.

It has seldom, however, as yet been consistently pursued.

XII. Not that there is or ever has been that human creature breathing, however stupid or perverse, who has not on many, perhaps on most occasions of his life, deferred to it. By the natural constitution of the human frame, on most occasions of their lives men in general embrace this principle, without thinking of it : if not for the ordering of their own actions, yet for the trying of their own actions, as well as of those of other men. There have been, at the same time, not many, perhaps, even of the most intelligent, who have been disposed to embrace it purely and without reserve. There are even few who have not taken some occasion or other to quarrel with it, either on account of their not understanding always how to apply it, or on account of some prejudice or other which they were afraid to examine into, or could not bear to part with. For such is the stuff that man is made of : in principle and in practice, in a right track and in a wrong one, the rarest of all human qualities is consistency.

It can never be consistently combated.

XIII. When a man attempts to combat the principle of utility, it is with reasons drawn, without his being aware of it, from

that very principle itself¹. His arguments, if they prove any thing, prove not that the principle is *wrong*, but that, according to the applications he supposes to be made of it, it is *misapplied*. Is it possible for a man to move the earth? Yes; but he must first find out another earth to stand upon.

XIV. To disprove the propriety of it by arguments is im- Course to be taken for

¹ 'The principle of utility, (I have heard it said) is a dangerous principle: it is dangerous on certain occasions to consult it.' This is as much as to say, what? that it is not consonant to utility, to consult utility: in short, that it is *not* consulting it, to consult it.

Addition by the Author, July 1822.

Not long after the publication of the *Fragment on Government*, anno 1776, in which, in the character of an all-comprehensive and all-commanding principle, the principle of *utility* was brought to view, one person by whom observation to the above effect was made was *Alexander Wedderburn*, at that time Attorney or Solicitor General, afterwards successively Chief Justice of the Common Pleas, and Chancellor of England, under the successive titles of Lord Loughborough and Earl of Rosslyn. It was made—not indeed in my hearing, but in the hearing of a person by whom it was almost immediately communicated to me. So far from being self-contradictory, it was a shrewd and perfectly true one. By that distinguished functionary, the state of the Government was thoroughly understood: by the obscure individual, at that time not so much as supposed to be so: his disquisitions had not been as yet applied, with any thing like a comprehensive view, to the field of Constitutional Law, nor therefore to those features of the English Government, by which the greatest happiness of the ruling *one* with or without that of a favoured few, are now so plainly seen to be the only ends to which the course of it has at any time been directed. The *principle of utility* was an appellative, at that time employed—employed by me, as it had been by others, to designate that which, in a more perspicuous and instructive manner, may, as above, be designated by the name of the *greatest happiness principle*. This principle (said Wedderburn) is a dangerous one. Saying so, he said that which, to a certain extent, is strictly true: a principle, which lays down, as the only *right* and justifiable end of Government, the greatest happiness of the greatest number—how can it be denied to be a dangerous one? dangerous it unquestionably is, to every government which has for its *actual* end or object, the greatest happiness of a certain *one*, with or without the addition of some comparatively small number of others, whom it is matter of pleasure or accommodation to him to admit, each of them, to a share in the concern, on the footing of so many junior partners. *Dangerous* it therefore really was, to the interest—the sinister interest—of all those functionaries, himself included, whose interest it was, to maximize delay, vexation, and expense, in judicial and other modes of procedure, for the sake of the profit, extractable out of the expense. In a Government which had for its end in view the greatest happiness of the greatest number, Alexander Wedderburn might have been Attorney General and then Chancellor: but he would not have been Attorney General with £15,000 a year, nor Chancellor, with a peerage with a veto upon all justice, with £25,000 a year, and with 500 sinecures at his disposal, under the name of Ecclesiastical Benefices, besides *et ceteras*.

surmounting
prejudices
that may
have been
entertained
against it.

possible ; but, from the causes that have been mentioned, or from some confused or partial view of it, a man may happen to be disposed not to relish it. Where this is the case, if he thinks the settling of his opinions on such a subject worth the trouble, let him take the following steps, and at length, perhaps, he may come to reconcile himself to it.

1. Let him settle with himself, whether he would wish to discard this principle altogether ; if so, let him consider what it is that all his reasonings (in matters of politics especially) can amount to ?

2. If he would, let him settle with himself, whether he would judge and act without any principle, or whether there is any other he would judge and act by ?

3. If there be, let him examine and satisfy himself whether the principle he thinks he has found is really any separate intelligible principle ; or whether it be not a mere principle in words, a kind of phrase, which at bottom expresses neither more nor less than the mere averment of his own unfounded sentiments ; that is, what in another person he might be apt to call caprice ?

4. If he is inclined to think that his own approbation or disapprobation, annexed to the idea of an act, without any regard to its consequences, is a sufficient foundation for him to judge and act upon, let him ask himself whether his sentiment is to be a standard of right and wrong, with respect to every other man, or whether every man's sentiment has the same privilege of being a standard to itself ?

5. In the first case, let him ask himself whether his principle is not despotical, and hostile to all the rest of human race ?

6. In the second case, whether it is not anarchial, and whether at this rate there are not as many different standards of right and wrong as there are men ? and whether even to the same man, the same thing, which is right to-day, may not (without the least change in its nature) be wrong to-morrow ? and whether the same thing is not right and wrong in the same place at the same time ? and in either case, whether all argument is not at

an end ? and whether, when two men have said, ' I like this,' and ' I don't like it,' they can (upon such a principle) have any thing more to say ?

7. If he should have said to himself, No : for that the sentiment which he proposes as a standard must be grounded on reflection, let him say on what particulars the reflection is to turn ? if on particulars having relation to the utility of the act, then let him say whether this is not deserting his own principle, and borrowing assistance from that very one in opposition to which he sets it up : or if not on those particulars, on what other particulars ?

8. If he should be for compounding the matter, and adopting his own principle in part, and the principle of utility in part, let him say how far he will adopt it ?

9. When he has settled with himself where he will stop, then let him ask himself how he justifies to himself the adopting it so far ? and why he will not adopt it any farther ?

10. Admitting any other principle than the principle of utility to be a right principle, a principle that it is right for a man to pursue ; admitting (what is not true) that the word *right* can have a meaning without reference to utility, let him say whether there is any such thing as a *motive* that a man can have to pursue the dictates of it : if there is, let him say what that motive is, and how it is to be distinguished from those which enforce the dictates of utility : if not, then lastly let him say what it is this other principle can be good for ?

external acts, or over their consequences, nor consequently over any pain or any pleasure that may be in the number of such consequences. Now it is only on account of their tendency to produce either pain or pleasure, that any acts can be material. With acts, therefore, that rest purely in the understanding, we have not here any concern: nor therefore with any object, if any such there be, which, in the character of a motive, can have no influence on any other acts than those.

Motives to
the will.

III. The motives with which alone we have any concern, are such as are of a nature to act upon the will. By a motive then, in this sense of the word, is to be understood any thing whatsoever, which, by influencing the will of a sensitive being, is supposed to serve as a means of determining him to act, or voluntarily to forbear to act¹, upon any occasion. Motives of this sort, in contradistinction to the former, may be styled *practical* motives, or motives applying to practice.

Figurative
and unfigur-
ative senses
of the word.

IV. Owing to the poverty and unsettled state of language, the word *motive* is employed indiscriminately to denote two kinds of objects, which, for the better understanding of the subject, it is necessary should be distinguished. On some occasions it is employed to denote any of those really existing incidents from whence the act in question is supposed to take its rise. The sense it bears on these occasions may be styled its *literal* or *unfigurative* sense. On other occasions it is employed to denote a certain fictitious entity, a passion, an affection of the mind, an ideal being which upon the happening of any such incident is considered as operating upon the mind, and prompting it to take that course, towards which it is impelled by the influence

¹ When the effect or tendency of a motive is to determine a man to forbear to act, it may seem improper to make use of the term *motive*: since motive, properly speaking, means that which disposes an object to *move*. We must however use that improper term, or a term which, though proper enough, is scarce in use, the word *determinative*. By way of justification, or at least apology, for the popular usage in this behalf, it may be observed, that even forbearance to act, or the negation of motion (that is, of bodily motion) supposes an act done, when such forbearance is voluntary. It supposes, to wit, an act of the will, which is as much a positive act, as much a motion, as any other act of the thinking substance.

of such incident. Motives of this class are Avarice, Indolence, Benevolence, and so forth ; as we shall see more particularly farther on. This latter may be styled the *figurative* sense of the term *motive*.

V. As to the real incidents to which the name of motive is also given, these too are of two very different kinds. They may be either, 1. The *internal* perception of any individual lot of pleasure or pain, the expectation of which is looked upon as calculated to determine you to act in such or such a manner ; as the pleasure of acquiring such a sum of money, the pain of exerting yourself on such an occasion, and so forth : or, 2. Any *external* event, the happening whereof is regarded as having a tendency to bring about the perception of such pleasure or such pain ; for instance, the coming up of a lottery ticket, by which the possession of the money devolves to you ; or the breaking out of a fire in the house you are in, which makes it necessary for you to quit it. The former kind of motives may be termed interior, or internal : the latter exterior, or external.

VI. Two other senses of the term *motive* need also to be distinguished. Motive refers necessarily to action. It is a pleasure, pain, or other event, that prompts to action. Motive then, in one sense of the word, must be previous to such event. But, for a man to be governed by any motive, he must in every case look beyond that event which is called his action ; he must look to the consequences of it : and it is only in this way that the idea of pleasure, of pain, or of any other event, can give birth to it. He must look, therefore, in every case, to some event posterior to the act in contemplation : an event which as yet exists not, but stands only in prospect. Now, as it is in all cases difficult, and in most cases unnecessary, to distinguish between objects so intimately connected, as the posterior possible object which is thus looked forward to, and the present existing object or event which takes place upon a man's looking forward to the other, they are both of them spoken of under the same appellation, *motive*. To distinguish them, the one first mentioned may be termed a *motive in prospect*, the other a

Motives interior and exterior.

Motive in prospect—motive in case.

motive in *esse*: and under each of these denominations will come as well exterior as internal motives. A fire breaks out in your neighbour's house: you are under apprehension of its extending to your own: you are apprehensive, that if you stay in it, you will be burnt: you accordingly run out of it. This then is the act: the others are all motives to it. The event of the fire's breaking out in your neighbour's house is an external motive, and that in *esse*: the idea or belief of the probability of the fire's extending to your own house, that of your being burnt if you continue, and the pain you feel at the thought of such a catastrophe, are all so many internal events, but still in *esse*: the event of the fire's actually extending to your own house, and that of your being actually burnt by it, external motives in prospect: the pain you would feel at seeing your house a burning, and the pain you would feel while you yourself were burning, internal motives in prospect: which events, according as the matter turns out, may come to be in *esse*: but then of course they will cease to act as motives.

Motives im-
mediate and
remote.

VII. Of all these motives, which stand nearest to the act, to the production of which they all contribute, is that internal motive in *esse* which consists in the expectation of the internal motive in prospect: the pain or uneasiness you feel at the thoughts of being burnt¹. All other motives are more or less remote: the motives in prospect, in proportion as the period at which they are expected to happen is more distant from the period at which the act takes place, and consequently later in point of time: the motives in *esse*, in proportion as they also are more distant from that period, and consequently earlier in point of time².

¹ Whether it be the expectation of being burnt, or the pain that accompanies that expectation, that is the immediate internal motive spoken of, may be difficult to determine. It may even be questioned, perhaps, whether they are distinct entities. Both questions, however, seem to be mere questions of words, and the solution of them altogether immaterial. Even the other kinds of motives, though for some purposes they demand a separate consideration, are, however, so intimately allied, that it will often be scarce practicable, and not always material, to avoid confounding them, as they have always hitherto been confounded.

² Under the term *esse* must be included as well *past* existence, with re-

VIII. It has already been observed, that with motives of which the influence terminates altogether in the understanding, we have nothing here to do. If then, amongst objects that are spoken of as motives with reference to the understanding, there be any which concern us here, it is only in as far as such objects may, through the medium of the understanding, exercise an influence over the will. It is in this way, and in this way only, that any objects, in virtue of any tendency they may have to influence the sentiment of belief, may in a practical sense act in the character of motives. Any objects, by tending to induce a belief concerning the existence, actual, or probable, of a practical motive; that is, concerning the probability of a motive in prospect, or the existence of a motive in *esse*; may exercise an influence on the will, and rank with those other motives that have been placed under the name of practical. The pointing out of motives such as these, is what we frequently mean when we talk of giving *reasons*. Your neighbour's house is on fire as before. I observe to you, that at the lower part of your neighbour's house is some wood-work, which joins on to yours; that the flames have caught this wood-work, and so forth; which I do in order to dispose you to believe as I believe, that if you stay in your house much longer you will be burnt. In doing this, then, I suggest motives to your understanding; which motives, by the tendency they have to give birth to or strengthen a pain, which operates upon you in the character of an internal motive in *esse*, join their force, and act as motives upon the will.

§ 2. *No motives either constantly good or constantly bad.*

IX. In all this chain of motives, the principal or original link seems to be the last internal motive in prospect: it is to this

Nothing can act of itself as a motive

ference to a given period, as *present*. They are equally real, in comparison with what is as yet but future. Language is materially deficient, in not enabling us to distinguish with precision between *existence* as opposed to *unreality* and *present* existence as opposed to *past*. The word *existence* in English, and *esse*, adopted by lawyers from the Latin, have the inconvenience of appearing to confine the existence in question to some single period considered as being present.

but the ideas
of pleasure
or pain.

that all the other motives in prospect owe their materiality: and the immediately acting motive its existence. This motive in prospect, we see, is always some pleasure, or some pain; some pleasure, which the act in question is expected to be a means of continuing or producing: some pain which it is expected to be a means of discontinuing or preventing. A motive is substantially nothing more than pleasure or pain, operating in a certain manner.

No sort of
motive is in
itself a bad
one.

X. Now, pleasure is in *itself* a good: nay, even setting aside immunity from pain, the only good: pain is in itself an evil; and, indeed, without exception, the only evil; or else the words good and evil have no meaning. And this is alike true of every sort of pain, and of every sort of pleasure. It follows, therefore, immediately and incontestibly, that *there is no such thing as any sort of motive that is in itself a bad one*¹.

Insecurity
of expres-
sions in
which good
or bad are
applied to
motives.

XI. It is common, however, to speak of actions as proceeding from *good* or *bad* motives: in which case the motives meant are such as are internal. The expression is far from being an accurate one; and as it is apt to occur in the consideration of almost every kind of offence, it will be requisite to settle the precise meaning of it, and observe how far it quadrates with the truth of things.

Any sort of
motive may
give birth to
any sort of
act.

XII. With respect to goodness and badness, as it is with everything else that is not itself either pain or pleasure, so is it with motives. If they are good or bad, it is only on account of their effects: good, on account of their tendency to produce pleasure, or avert pain: bad, on account of their tendency to produce pain, or avert pleasure. Now the case is, that from one and the same motive, and from every kind of motive, may proceed actions that are good, others that are bad, and others that

¹ Let a man's motive be ill-will; call it even malice, envy, cruelty; it is still a kind of pleasure that is his motive: the pleasure he takes at the thought of the pain which he sees, or expects to see, his adversary undergo. Now even this wretched pleasure, taken by itself, is good: it may be faint; it may be short: it must at any rate be impure: yet while it lasts, and before any bad consequences arrive, it is as good as any other that is not more intense. See ch. iv. [Value].

are indifferent. This we shall proceed to shew with respect to all the different kinds of motives, as determined by the various kinds of pleasures and pains.

XIII. Such an analysis, useful as it is, will be found to be a matter of no small difficulty; owing, in great measure, to a certain perversity of structure which prevails more or less throughout all languages. To speak of motives, as of anything else, one must call them by their names. But the misfortune is, that it is rare to meet with a motive of which the name expresses that and nothing more. Commonly along with the very name of the motive, is tacitly involved a proposition imputing to it a certain quality; a quality which, in many cases, will appear to include that very goodness or badness, concerning which we are here inquiring whether, properly speaking, it be or be not imputable to motives. To use the common phrase, in most cases, the name of the motive is a word which is employed either only in a *good sense*, or else only in a *bad sense*. Now, when a word is spoken of as being used in a good sense, all that is necessarily meant is this: that in conjunction with the idea of the object it is put to signify, it conveys an idea of *approbation*: that is, of a pleasure or satisfaction, entertained by the person who employs the term at the thoughts of such object. In like manner, when a word is spoken of as being used in a bad sense, all that is necessarily meant is this: that, in conjunction with the idea of the object it is put to signify, it conveys an idea of *disapprobation*: that is, of a displeasure entertained by the person who employs the term at the thoughts of such object. Now, the circumstance on which such approbation is grounded will, as naturally as any other, be the opinion of the *goodness* of the object in question, as above explained: such, at least, it must be, upon the principle of utility: so, on the other hand, the circumstance on which any such disapprobation is grounded, will, as naturally as any other, be the opinion of the *badness* of the object: such, at least, it must be, in as far as the principle of utility is taken for the standard.

Difficulties
which stand
in the way
of an ana-
lysis of this
sort.

Now there are certain motives which, unless in a few particular cases, have scarcely any other name to be expressed by but such a word as is used only in a good sense. This is the case, for example, with the motives of piety and honour. The consequence of this is, that if, in speaking of such a motive, a man should have occasion to apply the epithet bad to any actions which he mentions as apt to result from it, he must appear to be guilty of a contradiction in terms. But the names of motives which have scarcely any other name to be expressed by, but such a word as is used only in a bad sense, are many more¹. This is the case, for example, with the motives of lust and avarice. And accordingly, if in speaking of any such motive, a man should have occasion to apply the epithets good or indifferent to any actions which he mentions as apt to result from it, he must here also appear to be guilty of a similar contradiction².

This perverse association of ideas cannot, it is evident, but throw great difficulties in the way of the inquiry now before us. Confining himself to the language most in use, a man can scarce avoid running, in appearance, into perpetual contradictions. His propositions will appear, on the one hand, repugnant to truth; and on the other hand, adverse to utility. As paradoxes, they will excite contempt: as mischievous paradoxes, indignation. For the truths he labours to convey, however important, and however salutary, his reader is never the better: and he himself is much the worse. To obviate this inconvenience, completely, he has but this one unpleasant remedy; to lay aside the old phraseology and invent a new one. Happy the man whose

¹ For the reason, see chap. xi. [Dispositions], par. xvii. note.

² To this imperfection of language, and nothing more, are to be attributed, in great measure, the violent clamours that have from time to time been raised against those ingenious moralists, who, travelling out of the beaten tract of speculation, have found more or less difficulty in disentangling themselves from the shackles of ordinary language: such as Rochefoucault, Mandeville and Helvetius. To the unsoundness of their opinions, and, with still greater injustice, to the corruption of their hearts, was often imputed, what was most commonly owing either to a want of skill, in matters of language on the part of the author, or a want of discernment, possibly now and then in some instances a want of probity, on the part of the commentator.

language is ductile enough to permit him this resource. To palliate the inconvenience, where that method of obviating it is impracticable, he has nothing left for it but to enter into a long discussion, to state the whole matter at large, to confess, that for the sake of promoting the purposes, he has violated the established laws of language, and to throw himself upon the mercy of his readers¹.

§ 3. *Catalogue of motives corresponding to that of Pleasures and Pains.*

XIV. From the pleasures of the senses, considered in the gross, results the motive which, in a neutral sense, may be termed physical desire: in a bad sense, it is termed sensuality. Name used in a good sense it has none. Of this, nothing can be determined, till it be considered separately, with reference to the several species of pleasures to which it corresponds. Physical desire corresponding to pleasures of sense in general.

XV. In particular, then, to the pleasures of the taste or palate corresponds a motive, which in a neutral sense having received no name that can serve to express it in all cases, can only be termed, by circumlocution, the love of the pleasures of the palate. The motive corresponding to the pleasures of the palate. In particular cases it is styled hunger: in others, thirst². The love of good cheer expresses this motive, but seems to go beyond:

¹ Happily, language is not always so intractable, but that by making use of two words instead of one, a man may avoid the inconvenience of fabricating words that are absolutely new. Thus instead of the word lust, by putting together two words in common use, he may frame the neutral expression, sexual desire: instead of the word avarice, by putting together two other words also in common use, he may frame the neutral expression, pecuniary interest. This, accordingly, is the course which I have taken. In these instances, indeed, even the combination is not novel: the only novelty there is consists in the steady adherence to the one neutral expression, rejecting altogether the terms, of which the import is infected by adventitious and unsuitable ideas.

In the catalogue of motives, corresponding to the several sorts of pains and pleasures, I have inserted such as have occurred to me. I cannot pretend to warrant it complete. To make sure of rendering it so, the only way would be, to turn over the dictionary from beginning to end: an operation which, in a view to perfection, would be necessary for more purposes than this. See B. I. tit. [Defamation], and Append. tit. [Composition].

² Hunger and thirst, considered in the light of motives, import not so much the desire of a particular kind of pleasure, as the desire of removing a positive kind of pain. They do not extend to the desire of that kind of pleasure which depends on the choice of foods and liquors.

Jeremy Bentham

Theory of Legislation

Principles of Legislation

Chapters 1 to 13

Jeremy Bentham, *Theory of Legislation*.
Translated from the French of Etienne
Dumont by R. Hildreth. London:
Trubner & Co., Paternoster Row, 1864

PRINCIPLES OF LEGISLATION.

CHAPTER I.

The Principle of Utility.

THE PUBLIC GOOD ought to be the object of the legislator; GENERAL UTILITY ought to be the foundation of his reasonings. To know the true good of the community is what constitutes the science of legislation; the art consists in finding the means to realize that good.

The principle of *utility*, vaguely announced, is seldom contradicted; it is even looked upon as a sort of common-place in politics and morals. But this almost universal assent is only apparent. The same ideas are not attached to this principle; the same value is not given to it; no uniform and logical manner of reasoning results from it.

To give it all the efficacy which it ought to have, that is, to make it the foundation of a system of reasonings, three conditions are necessary.

First,—To attach clear and precise ideas to the word *utility*, exactly the same with all who employ it.

Second,—To establish the unity and the sovereignty of this principle, by rigorously excluding every other. It is nothing to subscribe to it in general; it must be admitted without any exception.

Third,—To find the processes of a moral arithmetic by which uniform results may be arrived at.

The causes of dissent from the doctrine of utility may all be referred to two false principles, which exercise an influence, sometimes open and sometimes secret, upon the judgments of men. If these can be pointed out and excluded, the true principle will remain in purity and strength.

These three principles are like three roads which often cross each other, but of which only one leads to the wished-for destination. The traveller turns often from one into another, and loses in these wanderings more than half his time and strength. The true route is however the easiest; it has mile-stones which cannot be shifted, it has inscriptions, in a universal language, which cannot be effaced; while the two false routes have only contradictory directions in enigmatical characters. But without abusing the language of allegory, let us seek to give a clear idea of the true principle, and of its two adversaries.

Nature has placed man under the empire of *pleasure* and of *pain*. We owe to them all our ideas; we refer to them all our judgments, and all the determinations of our life. He who pretends to withdraw himself from this subjection knows not what he says. His only object is to seek pleasure and to shun pain, even at the very instant that he rejects the greatest pleasures or embraces pains the most acute. These eternal and irresistible sentiments ought to be the great study of the moralist and the legislator. The *principle of utility* subjects everything to these two motives.

Utility is an abstract term. It expresses the property or tendency of a thing to prevent some evil or to procure some good. *Evil* is pain, or the cause of pain. *Good* is pleasure, or the cause of pleasure. That which is conformable to the utility, or the interest of an individual, is what tends to augment the total sum of his happiness. That which is conformable to the utility, or the interest of a community, is what tends to augment the total sum of the happiness of the individuals that compose it.

A *principle* is a first idea, which is made the beginning or basis of a system of reasonings. To illustrate it by a sensible image, it is a fixed point to which the first link of a chain is

attached. Such a principle must be clearly evident;—to illustrate and to explain it must secure its acknowledgment. Such are the axioms of mathematics; they are not proved directly; it is enough to show that they cannot be rejected without falling into absurdity.

The *logic of utility* consists in setting out, in all the operations of the judgment, from the calculation or comparison of pains and pleasures, and in not allowing the interference of any other idea.

I am a partisan of the *principle of utility* when I measure my approbation or disapprobation of a public or private act by its tendency to produce pleasure or pain; when I employ the words *just, unjust, moral, immoral, good, bad*, simply as collective terms including the ideas of certain pains or pleasures; it being always understood that I use the words *pain* and *pleasure* in their ordinary signification, without inventing any arbitrary definition for the sake of excluding certain pleasures or denying the existence of certain pains. In this matter we want no refinement, no metaphysics. It is not necessary to consult Plato, nor Aristotle. *Pain* and *pleasure* are what everybody feels to be such—the peasant and the prince, the unlearned as well as the philosopher.

He who adopts the *principle of utility*, esteems virtue to be a good only on account of the pleasures which result from it; he regards vice as an evil only because of the pains which it produces. Moral good is *good* only by its tendency to produce physical good. Moral evil is *evil* only by its tendency to produce physical evil; but when I say *physical*, I mean the pains and pleasures of the soul as well as the pains and pleasures of sense. I have in view man, such as he is, in his actual constitution.

If the partisan of the *principle of utility* finds in the common list of virtues an action from which there results more pain than pleasure, he does not hesitate to regard that pretended virtue as a vice; he will not suffer himself to be imposed upon by the general error; he will not lightly believe in the policy of employing false virtues to maintain the true.

If he finds in the common list of offences some indifferent action, some innocent pleasure, he will not hesitate to transport

this pretended offence into the class of lawful actions; he will pity the pretended criminals, and will reserve his indignation for their persecutors.

CHAPTER II.

*The Ascetic Principle.**

THIS principle is exactly the rival, the antagonist of that which we have just been examining. Those who follow it have a horror of pleasures. Everything which gratifies the senses, in their view, is odious and criminal. They found morality upon privations, and virtue upon the renouncement of one's self. In one word, the reverse of the partisans of utility, they approve everything which tends to diminish enjoyment, they blame everything which tends to augment it.

This principle has been more or less followed by two classes of men, who in other respects have scarce any resemblance, and who even affect a mutual contempt. The one class are philosophers, the other, devotees. The ascetic philosophers, animated by the hope of applause, have flattered themselves with the idea of seeming to rise above humanity, by despising vulgar pleasures. They expect to be paid in reputation and in glory, for all the sacrifices which they seem to make to the severity of their maxims. The ascetic devotees are foolish people, tormented by vain terrors. Man, in their eyes, is but a degenerate being, who ought to punish himself without ceasing for the crime of being born, and never to turn off his thoughts from that gulf of eternal misery which is ready to open beneath his feet. Still, the martyrs to these absurd opinions have, like all others, a fund of hope. Independent of the worldly pleasures attached to the reputation of sanctity, these atrabilious pictists flatter themselves that every instant of voluntary pain here below will procure them an age of happiness in

* Ascetic, by its etymology, signifies *one who exercises*. It was applied to the monks, to indicate their favourite practices of devotion and penitence.

another life. Thus, even the ascetic principle reposes upon some false idea of utility. It acquired its ascendancy only through mistake.*

The devotees have carried the ascetic principle much further than the philosophers. The philosophical party has confined itself to censuring pleasures; the religious sects have turned the infliction of pain into a duty. The stoics said that pain was not an evil; the Jansenists maintained that it was actually a good. The philosophical party never reproved pleasures in the mass, but only those which it called gross and sensual, while it exalted the pleasures of sentiment and the understanding. It was rather a preference for the one class, than a total exclusion of the other. Always despised or disparaged under its true name, pleasure was received and applauded when it took the titles of *honour*, *glory*, *reputation*, *decorum*, or *self-esteem*.

Not to be accused of exaggerating the absurdity of the ascetics, I shall mention the least unreasonable origin which can be assigned to their system.

It was early perceived that the attraction of pleasure might seduce into pernicious acts; that is, acts of which the good was not equivalent to the evil. To forbid these pleasures, in consideration of their bad effects, is the object of sound morals and good laws. But the ascetics have made a mistake, for they have attacked pleasure itself; they have condemned it in general; they have made it the object of a universal prohibition, the sign of a reprobate nature; and it is only out of regard for human weakness that they have had the indulgence to grant some particular exemptions.

* This mistake consists in representing the Deity in words, as a being of infinite benevolence, yet ascribing to him prohibitions and threats which are the attributes of an implacable being, who uses his power only to satisfy his malevolence.

We might ask these ascetic theologians what life is good for, if not for the pleasures it procures us?—and what pledge we have for the goodness of God in another life, if he has forbidden the enjoyment of this?

CHAPTER III.

SECTION I.

The Arbitrary Principle; or the Principle of Sympathy and Antipathy.

THIS principle consists in approving or blaming by sentiment, without giving any other reason for the decision except the decision itself. *I love, I hate*; such is the pivot on which this principle turns. An action is judged to be good or bad, not because it is conformable, or the contrary, to the interest of those whom it affects, but because it pleases or displeases him who judges. He pronounces sovereignly; he admits no appeal; he does not think himself obliged to justify his opinion by any consideration relative to the good of society. "It is my interior persuasion; it is my intimate conviction; I feel it; sentiment consults nobody; the worse for him who does not agree with me—he is not a man, he is a monster in human shape." Such is the despotic tone of these decisions.

But, it may be asked, are there men so unreasonable as to dictate their particular sentiments as laws, and to arrogate to themselves the privilege of infallibility? What you call the *principle of sympathy and antipathy* is not a principle of reasoning; it is rather the negation, the annihilation of all principle. A true anarchy of ideas results from it; since every man having an equal right to give *his* sentiments as a universal rule, there will no longer be any common measure, no ultimate tribunal to which we can appeal.

Without doubt the absurdity of this principle is sufficiently manifest. No man, therefore, is bold enough to say openly, "I wish you to think as I do, without giving me the trouble to reason with you." Every one would revolt against a pretension so absurd. Therefore, recourse is had to diverse inventions of disguise. Despotism is veiled under some ingenious phrase. Of this the greater part of philosophical systems are a proof.

One man tells you that he has in himself something which has

been given him to teach what is good and what is evil; and this he calls either his *conscience* or his *moral sense*. Then, working at his ease, he decides such a thing to be good, such another to be bad. Why? Because my moral sense tells me so; because my conscience approves or disapproves it.

Another comes and the phrase changes. It is no longer the moral sense,—it is *common sense* which tells him what is good and what is bad. This common sense is a sense, he says, which belongs to everybody; but then he takes good care in speaking of everybody to make no account of those who do not think as he does.

Another tells you that this moral sense and this common sense are but dreams; that the *understanding* determines what is good and what is bad. His understanding tells him so and so; all good and wise men have just such an understanding as he has. As to those who do not think in the same way, it is a clear proof that their understandings are defective or corrupt.

Another tells you that he has an *eternal and immutable rule of right*, which rule commands this and forbids that; then he retails to you his own particular sentiments, which you are obliged to receive as so many branches of the eternal rule of right.

You hear a multitude of professors, of jurists, of magistrates, of philosophers, who make the *law of nature* echo in your ears. They all dispute, it is true, upon every point of their system; but no matter—each one proceeds with the same confident intrepidity, and utters his opinions as so many chapters of the *law of nature*. The phrase is sometimes modified, and we find in its place, *natural right*, *natural equity*, *the rights of man*, &c.

One philosopher undertakes to build a moral system upon what he calls *truth*; according to him, the only evil in the world is lying. If you kill your father, you commit a crime, because it is a particular fashion of saying that he is not your father. Everything which this philosopher does not like, he disapproves under the pretext that it is a sort of falsehood—since it amounts to asserting that we ought to do what ought not to be done.

The most candid of these despots are those who say openly, “I am one of the elect; and God takes care to enlighten the elect

as to what is good and what is evil. He reveals himself to me, and speaks by my mouth. All you who are in doubt, come and receive the oracles of God."

All these systems, and many more, are at bottom only the *arbitrary principle, the principle of sympathy and antipathy*, masked under different forms of language. The object is, to make our opinions triumph without the trouble of comparing them with the opinions of other people. These pretended principles are but the pretext and the support of despotism,—at least of that despotism of disposition which has but too much inclination to develop itself in practice whenever it can do so with impunity. The result is, that with the purest intentions a man torments himself, and becomes the scourge of his fellows. If he is of a melancholy disposition, he falls into a sullen taciturnity, and bitterly deploras the folly and the depravity of man. If he is of an irascible temper, he declaims furiously against all who do not think as he does. He becomes one of those ardent persecutors who do evil in the spirit of holiness; who blow the fires of fanaticism with that mischievous activity which the persuasion of duty always gives; and who brand with the reproach of perversity or of bad faith all who do not blindly adopt the opinions which they hold sacred.

However, it is essential to observe that the *principle of sympathy and antipathy* must often coincide with the *principle of utility*. To love what benefits us, to hate what hurts us, is a universal principle of the human heart. It thus happens that, from one end of the world to the other, acts beneficent or hurtful are regarded with the same sentiments of approbation or dislike. Morality and jurisprudence, led by this kind of instinct, have often reached the great end of utility without having a clear idea of it. But these sympathies and these antipathies are not a sure and invariable guide. Let a man refer his happiness or his misery to an imaginary cause, and he becomes subject to unfounded loves and unreasonable hates. Superstition, charlatanism, the spirit of sect and party, repose almost entirely upon blind sympathies and blind antipathies.

Incidents the most frivolous,—a difference in fashion, a slight diversity of opinion, a variety in taste, are enough to present a man to the eyes of another under the aspect of an enemy. What is history, but a collection of the absurdest animosities, the most useless persecutions? A prince conceives an antipathy against certain men who use some indifferent expressions; he calls them Arians, Protestants, Socinians, Deists. He builds scaffolds; the ministers of the altar array the executioners; the day on which the heretics perish in the flames is celebrated as a national festival. In Russia a civil war was undertaken to settle a long controversy as to the number of fingers which ought to be used in making the sign of the cross. The citizens of Rome and Constantinople were divided into implacable factions about players, charioteers, and gladiators; and to give importance to such shameful quarrels, it was pretended that the success of the *greens* or of the *blues* presaged abundance or famine, victories or reverses to the empire.

Antipathy may sometimes be found in unison with the principle of utility; but even then it is not a good basis of action. When a person through resentment prosecutes a robber before the tribunals, the action is certainly good, but the motive is dangerous. If it sometimes produces good actions, more often its fruits are fatal. The sole basis of action always surely good is the consideration of utility. Good is often done from other motives; it is never constantly done except from that consideration alone. Sympathy and antipathy must be subjected to it, to prevent them from becoming hurtful; but the principle of utility is its own regulator; it admits no other; and it is impossible to give that principle too great extension.

To sum up;—the *ascetic principle* attacks utility in front. The *principle of sympathy* neither rejects it nor admits it; it pays no attention to it; it floats at hazard between good and evil. The ascetic principle is so unreasonable, that its most senseless followers have never attempted to carry it out. The principle of sympathy and antipathy does not prevent its partisans from having recourse to the principle of utility. This last alone neither

asks nor admits any exception. *Qui non sub me contra me*; that which is not under me is against me; such is its motto. According to this principle, to legislate is an affair of observation and calculation; according to the ascetics, it is an affair of fanaticism; according to the principle of sympathy and antipathy, it is a matter of humour, of imagination, of taste. The first method is adapted to philosophers; the second to monks; the third is the favourite of wits, of ordinary moralists, of men of the world, of the multitude.

SECTION II.

Causes of Antipathy.

Antipathy exercises so powerful an influence over morals and legislation, that it is important to investigate the principles which give birth to it.

FIRST CAUSE.—*Repugnance of Sense.*—Nothing is more common than the transition from a physical to a moral antipathy, especially with feeble minds. A multitude of innocent animals suffer a continual persecution, because they have the misfortune to be thought ugly. Everything unusual has the power of exciting in us a sentiment of disgust and hatred. What is called a *monster* is only a being which differs a little from others of its kind. Hermaphrodites, whose sex is undetermined, are regarded with a sort of horror, only because they are rare.

SECOND CAUSE.—*Wounded Pride.*—He who does not adopt my opinion, indirectly declares that he has but little respect for my knowledge upon the point in dispute. Such a declaration offends my self-love, and shows me an adversary in this man, who not only testifies a degree of contempt for me, but who will propagate that contempt in proportion as his opinion triumphs over mine.

THIRD CAUSE.—*Power controlled.*—Even when our vanity does not suffer, we perceive by the difference of tastes, by the resistance of opinions, by the shock of interests, that our power is limited, that our dominion, which we desire to extend everywhere, is

bounded on every side. This compulsive feeling of our own weakness is a secret pain, a germ of discontent against others.

FOURTH CAUSE.—*Confidence in the future weakened or destroyed.*—We love to believe that men are such as we imagine our happiness requires them to be. Every act on their part which tends to diminish our confidence in them, cannot but give us a secret disgust. An example of falsehood makes us see that we cannot always rely upon what they say, or what they promise; an example of absurdity inspires a general doubt as to their reason, and consequently as to their conduct. An act of caprice, or of levity, makes us conclude that we cannot rely on their affections.

FIFTH CAUSE.—*The desire of unanimity.*—Unanimity pleases us. This harmony of sentiment is the only pledge we can have, apart from our own reason, of the truth of our opinions, and of the utility of the actions founded upon those opinions. Besides, we love to dwell upon subjects to our taste; it is a source of agreeable recollections and of pleasing hopes. The conversation of persons whose taste conforms to ours, augments this fund of pleasure, by fixing our attention upon agreeable objects, and presenting them to us under new points of view.

SIXTH CAUSE.—*Envy.*—He who enjoys himself without doing harm to anybody, ought not, it would seem, to have enemies. Yet it may be said that his enjoyment impoverishes those who do not partake it.

It is a common observation, that envy acts with most force against recent advantages, while it spares older ones. Thus it is, that the word *upstart* always has an injurious acceptation. It expresses a new success; envy adds, as accessory ideas, humbling recollections and a feigned contempt.

Envy makes ascetics. The differences of age, of wealth, of circumstances, prevent all men from having equal enjoyments; but the severity of privation can reduce all to the same level. Envy inclines us towards rigid speculations in morals, as a means of reducing the amount of pleasures. It has been said,—and with reason,—that a man who should be born with an organ

of pleasure, which the rest of us do not possess, would be pursued as a monster.

Such is the origin of antipathy; such is the collection of sentiments of which it is composed. To moderate its violence, let us recollect that there is no such thing as a perfect conformity even between two individuals; that if we yield to this unsociable sentiment, it will always go on increasing, and will contract more and more the circle of our good-will and of our pleasures; that, in general, our antipathies re-act against ourselves; that it is in our power to enfeeble, and even to extinguish them, by banishing from our minds the ideas of those objects by which they are excited. Fortunately, the causes of sympathy are constant and natural, while the causes of antipathy are accidental and transitory.

Moral writers may be arranged in two classes; those who labour to extirpate the venomous plants of antipathy; and those who seek to propagate them. The first class are apt to be calumniated; the others gain respect and popularity, because, under the specious veil of morals, they are in the service of vengeance and of envy. The books which attain the most speedy celebrity, are those which the demon of antipathy has dictated, such as libels, works of party, satirical memoirs, &c. *Telemachus* did not owe its brilliant success to its morality, or to the charm of its style; but to the general opinion that it contained a satire upon Louis XIV. and his Court. When Hume, in his History, wished to calm the spirit of party, and to treat the passions like a chemist who analyzes poisons, the mob of readers rose up against him; they did not like to see it proved that men were rather ignorant than wicked, and that past ages, always extolled to depreciate the present, had been far more fertile in misfortunes and crimes.

Fortunate for himself, fortunate is the writer who can give himself up to these two false principles; to him belong the field of eloquence, the employment of figures, the vehemence of style, exaggeration of expressions, and all the vulgar vocabulary of the passions. All his opinions are dogmas, eternal, immutable truths,

as immoveable as God and nature. As a writer, he exercises the power of a despot, and proscribes those who do not agree with him.

The partisan of the principle of utility is in a position by no means so favourable to eloquence. His means are as different as his object. He can neither dogmatize, dazzle, nor astonish. He is obliged to define all his terms, and always to employ the same word in the same sense. He consumes a long time in getting ready, in making sure of his foundation, in preparing his instruments; and he has everything to fear from that impatience which grows weary with preliminaries, and which wishes to arrive in a moment at great results. However, this slow and cautious advance is the only one which leads to the end desired; for if the power of spreading truth among the multitude belongs to eloquence, the power of discovering it appertains only to analysis.

CHAPTER IV.

Operation of these principles upon Legislation.

THE principle of utility has never yet been well developed, nor well followed out by any legislator; but, as we have already mentioned, it has penetrated from time to time into laws, from its occasional alliance with the principles of sympathy and antipathy. The general ideas of vice and virtue, founded upon a confused perception of good and evil, have been sufficiently uniform in every essential point; and the early laws, without which no society can exist, have been made in conformity with these popular ideas.

The ascetic principle, though embraced with warmth by its partisans in their private conduct, has never had much direct influence upon the operations of government. On the contrary, every government has had for its system and its object the acquisition of strength and prosperity. The rulers of states have never made evil an end; they have been seduced into it by false views

of greatness and power, or by private passions which have resulted in public evils. The system adopted at Sparta—a discipline which well entitles that community to be called a convent of warriors—in relation to the circumstances of that state, was necessary to its preservation, or, at least, was esteemed so by its legislator; and under that aspect, was conformable to the principle of utility. Many Christian states have permitted the establishment of monastic orders; but the vows are *supposed* to be voluntary. To torment one's self was esteemed a work of merit; to torment another against his will has been always regarded as a crime. St. Louis wore sackcloth, but he obliged none of his subjects to wear it.

The principle which has exercised the greatest influence upon governments, is that of sympathy and antipathy. In fact, we must refer to that principle all those specious objects which governments pursue, without having the general good for a single and independent aim; such as good morals, equality, liberty, justice, power, commerce, religion; objects respectable in themselves, and which ought to enter into the views of the legislator; but which too often lead him astray, because he regards them as ends, not as means. He substitutes them for public happiness, instead of making them subordinate to it.

Thus, a government, entirely occupied with wealth and commerce, looks upon society as a workshop, regards men only as productive machines, and cares little how much it torments them, provided it makes them rich. The customs, the exchanges, the stocks, absorb all its thoughts. It looks with indifference upon a multitude of evils which it might easily cure. It wishes only for a great production of the means of enjoyment, while it is constantly putting new obstacles in the way of enjoying.

Other governments esteem power and glory as the sole means of public good. Full of disdain for those states which are able to be happy in a peaceful security, they must have intrigues, negotiations, wars and conquests. They do not consider of what misfortunes this glory is composed, and how many victims these bloody triumphs require. The *éclat* of victory, the acquisition

of a province, conceal from them the desolation of their country, and make them mistake the true end of government.

Many persons do not inquire if a state be well administered; if the laws protect property and persons; if the people are happy. What they require, without giving attention to anything else, is political liberty—that is, the most equal distribution which can be imagined of political power. Wherever they do not see the form of government to which they are attached, they see nothing but slaves; and if these pretended slaves are well satisfied with their condition, if they do not desire to change it, they despise and insult them. In their fanaticism they are always ready to stake all the happiness of a nation upon a civil war, for the sake of transporting power into the hands of those whom an invincible ignorance will not permit to use it, except for their own destruction.

These are examples of some of the phantasies which are substituted in politics, instead of the true search after happiness. They do not grow out of an opposition to happiness; they are the fruits of inadvertence or mistake. A small part of the plan of utility is seized upon; an exclusive attachment is evinced for that small part; in the pursuit of some particular branch of the public good, the general happiness is disregarded; it is forgotten that all these particular objects have only a relative value, and that happiness alone has a value which is intrinsic.

CHAPTER V.

Further Explanations.—Objections answered.

SOME trifling objections, some little verbal difficulties, may be raised against the *principle of utility*; but no real or distinct objection can be opposed to it. In fact, how can it be contested except by reasons taken from itself? To say that it is a dangerous principle, is to say that it would be contrary to utility to consult utility.

The difficulty upon this question grows out of a kind of per-

version of language. It has been customary to speak of *virtue* in opposition to *utility*. Virtue is described as the sacrifice of our interest to our duties.

To convey clear ideas upon this subject, it should be explained, that there are interests of different orders, and that different interests, in certain circumstances, are incompatible. Virtue is the sacrifice of a less interest to a greater, of a momentary to a durable, of a doubtful to a certain interest. Every idea of virtue not derived from this notion, is as obscure in conception as it is precarious in motive.

Those who, for the sake of accommodation, are willing to distinguish between politics and morals, to assign utility as the principle of the one, and justice as the foundation of the other, announce nothing but confused ideas. The only difference between politics and morals is, that one directs the operations of governments, and the other the actions of individuals; but their object is common; it is happiness. That which is politically good cannot be morally bad, unless we suppose that the rules of arithmetic, true for large numbers, are false for small ones.

While we imagine that we follow the *principle of utility*, we may nevertheless do evil. A feeble and narrow soul deceives itself by taking into consideration but a small part of evil or of good. An ardent disposition deceives itself by giving an extreme importance to a particular good, by which all consecutive evils are concealed from its sight. That which constitutes a bad man, is the habit of pleasures injurious to others; but this very habit supposes the absence of many kinds of pleasure. One ought not to hold *utility* responsible for mistakes contrary to its nature, and which it alone is able to rectify. If a man calculates badly, it is not arithmetic which is in fault; it is himself. If the charges which are alleged against Machiavel are well founded, his errors did not spring from having consulted the principle of utility, but from having applied it badly. This fact, the author of the *Anti-Machiavel* has clearly perceived. He refutes the *Prince* by making it appear that its maxims are fatal; and that bad faith is bad policy.

Those who, from reading Cicero's *Offices* and the Platonic moralists, have a confused notion of the *useful* as opposed to the *honest*, often quote that observation of Aristides upon the scheme which Themistocles was unwilling to disclose, except to him alone. "The project of Themistocles is *very advantageous*," said Aristides to the assembled people, "but it is *very unjust*." Here seems to be a decided opposition between the useful and the just. Not so. It is only a comparison of good and evil. *Unjust* is a term which presents the collective idea of all those evils which result from a situation in which men can no longer trust one another. Aristides might have said, "The project of Themistocles would be useful for a moment, but injurious for ages; what it would give is nothing in comparison with what it would take away."*

It is sometimes said that the *principle of utility* is only a revival of epicureanism. The ravages which that doctrine made in morals are well known. It was adopted by the most corrupt of men.

It is true that Epicurus alone of all the ancients had the merit of having known the true source of morals; but to suppose that his doctrine leads to the consequences that have been imputed to it, is to suppose that happiness may become the enemy of happiness. *Sic presentibus utaris voluptatibus, ut futuris non noceas*,—So use present pleasures as not to lessen those which are to come. In this sentiment Seneca coincides with Epicurus; and what more can morality desire than the retrenchment of every pleasure injurious to one's self or to others? Now this is the very principle of utility.

But, it is again objected, every one makes himself the judge of his own utility, and upon this system every obligation will lose its force the moment people cease to see their interest in regarding it.

* This anecdote is not worth being cited except to clear up the sense of words. Its falsity has been proved. See Mitford's *History of Greece*. Plutarch wished to compliment the Athenians; but he would have been much embarrassed to reconcile the greater part of their history with this noble sentiment.

Every one makes himself the judge of his own utility; such is the fact, and such it ought to be; otherwise man would not be a rational agent. He who is not a judge of what is agreeable to him, is less than a child; he is an idiot. The obligation which binds men to their engagements is nothing but the perception of a superior interest, which prevails over an inferior interest. A man is bound not only by the particular utility of such or such an engagement; but when the engagement becomes onerous to one of the parties, he is still bound by the general utility of engagements; by the confidence in his word which every sensible man wishes to inspire, in order that he may be considered a man of truth, and enjoy the advantages incident to the reputation of probity. It is not the engagement itself which constitutes the obligation; for some engagements are void, and some are unlawful. Why? Because they are esteemed injurious. It is, then, the utility of a contract which gives force to it.

It is easy to reduce to a calculation of good and of evil all the acts of the most exalted virtue; and virtue is neither degraded nor weakened by being represented as an effect of reason, and being explained in a simple and intelligible manner.

If we refuse to acknowledge the principle of utility, we fall into a complete circle of sophistry. I ought to keep my promise. Why? Because my conscience bids me do it. How do you know that your conscience bids you do it? Because I have an interior feeling to that effect. Why ought you to obey your conscience? Because God is the author of my nature, and to obey my conscience is to obey God. Why ought you to obey God? Because it is my first duty. How do you know that? My conscience tells me so, &c., &c. We can never get out of this circle, which presently becomes the source of obstinate and inveterate error. For if we judge of everything by feeling, there is no means left to distinguish the dictates of an enlightened conscience from those of a blinded one. All persecutors will have the same pretence; all fanatics the same right.

If you desire to reject the principle of utility because it may

be ill applied, what is there to put in its place? Where is the rule which cannot be abused? Where is this infallible guide?

Will you substitute for it some despotic principle, which orders men, like passive slaves, to act so and so, without knowing why?

Will you substitute for it some fluctuating and capricious principle, founded only upon your own intimate and particular feelings?

If so, what motives will you hold out to induce people to follow you? Shall these motives be independent of interest? In that case, if people do not agree with you, how will you reason with them,—how bring them to terms? Whither will you cite all the sects, all the systems, all the contradictions that cover the world, if not to the tribunal of a common interest?

The most obstinate opposers of the principle of utility are those who take their stand upon what they call the *religious principle*. They profess to take the will of God for the only rule of good and evil. It is the only rule, they say, which has all the requisite characters; which is infallible, universal, sovereign, and so on. I answer that the religious principle is not a distinct principle by itself; it is only a particular form of one or the other of those above described. Unless God explains himself to each individual by immediate acts and particular revelations, what is called his will can only be what we presume to be such. How does a man presume the will of God? From his own. Now his particular will is always directed by one of the three principles above described. How do you know that God forbids such and such a thing? "Because it would be prejudicial to the happiness of mankind," answers the partisan of utility. "Because it includes a gross and sensual pleasure," says the ascetic. "Because it wounds the conscience, is contrary to natural sentiments, and ought to be detested without stopping to examine it,"—such is the language of antipathy.

But revelation, it will be said, is the direct expression of the will of God. There is nothing left to be questioned or disputed. Here is a guide far preferable to human reason.

I do not answer indirectly that revelation is not universal; that even among Christian nations there are many persons who do not admit it; and that in morals and politics, some principle of reasoning is necessary, which is common to all men. But I reply that revelation is not a system of politics nor of morals; that all its precepts need to be explained, modified, and limited, one by the other; that, taken in a literal sense, they would overturn the world, annihilate self-defence, industry, commerce, reciprocal attachments; and that ecclesiastical history is an incontestable proof of the frightful evils which have resulted from religious maxims badly understood.

What a difference between the Protestant and Catholic theologians—between the moderns and the ancients! The gospel morality of Paley is not the gospel morality of Nicole. That of the Jansenists was not that of the Jesuits.

The interpreters of Scripture may be divided into three classes. The first class have the principle of utility for their rule of criticism; the second class are ascetics; the third class follows the mixed impressions of sympathy and antipathy. The first, far from excluding pleasure, quote it as a proof of the goodness of God. The ascetics are its mortal enemies; if they ever permit it, it is not for itself, but only in view of some certain necessary end. The last approve it, or condemn it, according to their fancy, without being guided by the consideration of consequences. It seems, then, that revelation is not a principle by itself; for nothing can be properly called a principle except that which needs no proof, and which serves to prove everything else.

CHAPTER VI.

The different kinds of Pleasures and Pains.

WE experience without cessation a variety of sensations which do not interest us, and which glide by without fixing our attention. Thus, the greater part of the objects which are familiar to us no longer produce a sensation sufficiently vivid to cause us

either pain or pleasure. These names cannot be given except to sensations which attract our attention; which make themselves noticeable in the crowd; and of which we desire the continuance or the end. These pleasurable perceptions are either simple or complex: simple, when they cannot be decomposed into others; complex, when they are composed of several simple pains or simple pleasures, or perhaps of a mixture of pleasures and pains. What determines us to regard several pleasures as a complex pleasure, and not as so many simple pleasures, is the nature of the cause which excites them. We are led to consider all the pleasures which are produced by the action of the same cause as a single pleasure. Thus a theatrical show which gratifies many of our senses at the same time by the beauty of decorations, music, company, dresses, and the action of performers, constitutes a complex pleasure.

It has cost a great labour of analysis to prepare a complete catalogue of the simple pleasures and pains. This catalogue has a dryness which will repulse many readers, for it is not the work of a writer of romance, who only seeks to please and move; it is a bill of particulars, it is the inventory of our sensations.

SECTION I.

Simple Pleasures.

1st. *Pleasures of Sense*.—Those which can be immediately referred to our organs independently of all associations, viz., the pleasures of *taste*, of *smell*, of *sight*, of *hearing*, of *touch*, especially the blessing of *health*, that happy flow of spirits, that perception of an easy and unburdensome existence, which cannot be referred to any of the senses in particular, but which appertains to all the vital functions; finally, the pleasures of *novelty*, those which we experience when new objects are applied to our senses. They do not form a separate class, but they play so conspicuous a part, that it is necessary to mention them expressly.

2nd. *Pleasures of Riches*—meaning thereby that kind of pleasure

which we derive from the possession of a thing, which is a means of enjoyment or security,—a pleasure which is most lively at the moment of acquisition.

3rd. *Pleasures of Address*.—Those which result from some difficulty overcome, from some relative perfection in the handling and employ of the instruments which aid in the attainment of pleasure or utility. A person who touches a harpsichord, for example, experiences a pleasure perfectly distinct from that of hearing the same piece of music executed by another.

4th. *Pleasures of Friendship*.—Those which accompany the persuasion of possessing the good will of such and such individuals, and the right of expecting from them, in consequence, spontaneous and gratuitous services.

5th. *Pleasures of a good Reputation*.—Those which accompany the possession or acquisition of the esteem and good will of the people about us, the persons with whom we may have relations or common interests; and as a fruit of this disposition on their part, the right of expecting their voluntary and gratuitous services, should we happen to need them.

6th. *Pleasures of Power*.—Those which a man experiences who perceives in himself the means of disposing others to serve him through their hopes or their fears; that is, by the fear of some evil, or the hope of some good which he can do them.

7th. *Pleasures of Piety*.—Those which accompany the persuasion of acquiring or possessing the favour of God; and the power, in consequence, of expecting particular favours from him, either in this life or in another.

8th. *Pleasures of Benevolence*.—Pleasures which we are sensible of tasting, when we contemplate the happiness of those who love us. They may also be called *pleasures of sympathy* or *pleasures of the social affections*. Their force is more or less expansive. They have the power of concentrating themselves into a narrow circle, or of spreading over entire humanity. Benevolence extends itself to animals of which we love the species or individuals; the signs of their happiness affect us agreeably.

9th. *Pleasures of Malevolence*.—They result from the sight or

the thought of pain endured by those beings who do not love us, whether men or animals. They may also be called *pleasures of the irascible passions, of antipathy, or of the anti-social affections.*

10th. When we apply our mental faculties to the acquisition of new ideas, and discover, or think we discover, interesting truths in the moral or physical sciences, the pleasure which we experience may be called the *pleasure of knowledge.* The transport of joy which Archimedes felt at the solution of a difficult problem, is easily understood by all those who have applied themselves to abstract studies.

11th. When we have tasted such or such a pleasure, and in certain cases even, when we have suffered such or such a pain, we love to retrace them exactly in the precise order of all their circumstances. These are the *pleasures of memory.* They are as varied as the recollections in which they originate.

12th. But sometimes memory suggests certain pleasures, which we arrange in a different order, according to our desires; and to which we join the most agreeable circumstances we have noticed, either in our own life or in that of others. These are *pleasures of the imagination.* The painter who copies after nature, represents the operations of memory; he who selects groups here and there, and arranges them to suit himself, represents the workings of the imagination. New ideas in the arts and sciences, and all discoveries which interest our curiosity, contribute to the pleasures of the imagination, which sees in these discoveries an extension of its field of enjoyments.

13th. The idea of a future pleasure, joined to the expectation of presently enjoying it, constitutes the *pleasure of hope.*

14th. *Pleasures of Association.*—An object may be unable to give any pleasure in itself; but if it is connected in the mind with some other object which is agreeable, it participates in the charm of that object. Thus the different incidents of a game of chance, when we play for nothing, derive their interest from an association with the pleasure of gaining.

15th. Lastly, there are pleasures founded upon pains. When one has suffered, the cessation or diminution of the pain is itself

a pleasure, and often a very lively one. These may be called *pleasures of relief, or of deliverance*. They are as various as our pains.

Such are the materials of all our enjoyments. They unite, combine, and modify each other in a thousand ways, so that it requires some little attention and experience to discover, in a complex pleasure, all the simple pleasures which are its elements.

The delight which a country landscape gives, is composed of different pleasures—pleasures of the senses, of the imagination, and of sympathy. The variety of objects and their various colours, the flowers, the trees, the intermixture of light and shade, gratify the sight; the ear is soothed by the song of birds, the murmur of fountains, and the gentle rustling which the wind makes among the leaves; the air, embalmed with the perfume of fresh vegetation, wafts agreeable odours; while its elastic purity makes the circulation more rapid and exercise more agreeable. Imagination and benevolence unite to embellish the scene, by presenting ideas of wealth, of abundance, of fertility. The innocence and happiness of the birds, the flocks, and the domestic animals, furnish an agreeable contrast to the recollection of the fatigues and agitations of human life. We transfer to the inhabitants of the country all the pleasures with which the novelty of these objects inspires us. Finally, a sentiment of gratitude to that eternal Being, whom we regard as the author of all these benefits, augments our confidence and our admiration.

SECTION II.

Simple Pains.

1st. *Pains of Privation.*—These correspond to all the pleasures whose absence excites a sentiment of chagrin. They exist in three principal modifications. *First*, if we desire a certain pleasure, but have more fear of wanting it than hope of obtaining it, the pain that results may be called *pain of desire, or of unsatisfied*

desire. *Second*, if we have had strong hopes of enjoying the pleasure in question, but these hopes have suddenly failed, this privation is a *pain of disappointment.* *Third*, if we have enjoyed a good, or, what amounts to the same thing, if we have counted strongly upon its possession, and then lose it, the sentiment which this loss produces is called *regret.* That languor of soul described by the word *ennui* is a pain of privation which cannot be referred to any particular object, but to the absence of every agreeable sensation.

2nd. *Pains of Sense.*—There are nine kinds: those of *hunger* and *thirst*; those of *taste*, of *smell*, of *touch*, produced by the application of substances which excite disagreeable sensations; those of *hearing* and *sight*, produced by sounds or images which offend those organs, independently of association; *excess of cold* or *heat*,—unless these pains ought to be referred to the sense of touch; *diseases* of all kinds; finally, *fatigue*, whether of mind or body.

3rd. *Pains of Mal-address.*—Those which are sometimes experienced in fruitless attempts or laborious efforts to apply to their different uses the various kinds of tools or instruments, whether of pleasure or pain.

4th. *Pains of Enmity.*—Those which a man feels when he believes himself an object of malevolence on the part of certain individuals, and apprehends that he may be exposed in consequence to experience the practical effects of their hatred.

5th. *Pains of a Bad Reputation.*—Those which a man feels when he believes himself actually an object of the malevolence or contempt of the world which surrounds him, or exposed to become so. They may also be called *pains of dishonour*, or *pains of the popular sanction.*

6th. *Pains of Piety.*—They result from the fear of having offended the Supreme Being, and of incurring his chastisements, either in this life or in the life to come. If they are thought to be well founded, they are called *religious fears*,—if ill founded, they are denominated *superstitious fears.*

7th. *Pains of Benevolence.*—These are the pains which we

experience at the sight or thought of the suffering whether of men or animals. The emotions of pity make us weep at the miseries of others, as well as at our own. They may also be called *pains of sympathy, pains of the social affections*.

8th. *Pains of Malevolence*.—These are the pains we experience at reflecting on the happiness of those we hate. They may also be called *pains of antipathy, pains of the anti-social affections*.

9th, 10th, and 11th. The *pains of memory, of the imagination, and of fear*, are the exact reverse and counterpart of the pleasures of corresponding names.

The labour of preparing this catalogue of pleasures and pains is dry, but its utility is great. The whole system of morals, the whole system of legislation, rests upon a single basis, and that basis is, the *knowledge of pains and pleasures*. It is the only foundation of clear ideas upon those subjects. When we speak of vices and virtues, of actions innocent or criminal, of a system remuneratory or penal, what is it that we speak of? Of pains and pleasures, and of nothing else. A reason in morals or politics, which cannot be translated by the simple words *pain* or *pleasure*, is an obscure and sophisticated reason, from which nothing can be concluded.

You wish, for example, to study the subject of offences,—that great object which directs all legislation. This study, at bottom, will be nothing but a comparison, a calculation, of pains and pleasures. You consider the *criminality* or the *evil* of certain actions,—that is, the pains which result from them to such and such individuals; the *motive* of the delinquent,—that is, the expectation of pleasure which led him to commit the action in question; the *advantage* of the offence,—that is, the acquisition of pleasure which has resulted from it; the *legal punishment* which ought to be inflicted,—that is, what pain the guilty person ought to undergo. It thus appears that the theory of pains and pleasures is the sole foundation of all knowledge upon the subject of legislation.

The more these two catalogues are examined, the more matter for reflection they will be found to contain.

It is obvious at once, that pleasures and pains may be divided into two classes: *pleasures and pains which relate to others;—pleasures and pains purely personal.* Those of benevolence and of malevolence compose the first class; all the rest belong to the second.

It is worthy of observation that many kinds of pleasure exist without having corresponding pains. 1st. *Pleasures of novelty.* The sight of new objects is a source of pleasures, while the simple absence of new objects is not felt as a pain. 2nd. *Pleasures of love.* The want of them is not attended with positive pain, except when there is disappointment. Some temperaments may suffer from this want, but in general continence is in the power of every one, and is very far from being a state of pain. 3rd. *Pleasures of riches and of acquisitions;* they have no corresponding pains except where there is disappointment. To acquire is always agreeable; simple non-acquisition is not felt as a pain. 4th. It is the same with the *pleasures of power.* Their possession is a good; their mere absence is not an evil; it is only felt as an evil by reason of some particular circumstance, such as privation or disappointment.

CHAPTER VII.

Pains and Pleasures considered as Sanctions.

THE will cannot be influenced except by motives; but when we speak of *motives*, we speak of *pleasures* or *pains*. A being whom we could not affect either by painful or pleasurable emotions would be completely independent of us.

The pain or pleasure which is attached to a law form what is called its sanction. The laws of one state are not laws in another, because they have no sanction there, no obligatory force.

Pleasures and pains may be distinguished into four classes:

- 1st. Physical.
- 2nd. Moral.
- 3rd. Political.
- 4th. Religious.

Consequently, when we come to consider pains and pleasures under the character of punishments and rewards, attached to certain rules of conduct, we may distinguish four sanctions.

1st. Those pleasures and pains which may be expected in the ordinary course of nature, acting by itself, without human intervention, compose the *natural or physical sanction*.

2nd. The pleasures or pains which may be expected from the action of our fellow-men, in virtue of their friendship or hatred, of their esteem or their contempt—in one word, of their spontaneous disposition towards us, compose the *moral sanction*; or it may be called the *popular sanction, sanction of public opinion, sanction of honour, sanction of the pains and pleasures of sympathy*.

3rd. The pleasures or pains which may be expected from the action of the magistrate, in virtue of the laws, compose the *political sanction*; it may also be called the *legal sanction*.

4th. The pleasures or pains which may be expected in virtue of the threats or promises of religion, compose the *religious sanction*.

A man's house is destroyed by fire. Is it in consequence of his imprudence?—It is a pain of the natural sanction. Is it by the sentence of a judge?—It is a pain of the political sanction. Is it by the malice of his neighbours?—It is a pain of the popular sanction. Is it supposed to be the immediate act of an offended Divinity?—In such a case it would be a pain of the religious sanction, or, vulgarly speaking, a judgment of God.

It is evident from this example that the same sort of pains belong to all the sanctions. The only difference is in the circumstances which produce them.

This classification will be very useful in the course of this work. It is an easy and uniform nomenclature, absolutely necessary to distinguish and describe the different kinds of moral powers, those intellectual levers which constitute the machinery of the human heart.

These four sanctions do not act upon all men in the same manner, nor with the same degree of force. They are sometimes rivals, sometimes allies, and sometimes enemies. When they

agree, they operate with an irresistible power ; when they are in opposition, they mutually enfeeble each other ; when they are rivals, they produce uncertainties and contradictions in the conduct of men.

Four bodies of laws may be imagined, corresponding to these four sanctions. The highest point of perfection would be reached if these four codes constituted but one. This perfection, however, is as yet far distant, though it may not be impossible to attain it. But the legislator ought always to recollect that he can operate directly only by means of the political sanction. The three others must necessarily be its rivals or its allies, its antagonists or its ministers. If he neglects them in his calculations, he will be deceived in his results ; but if he makes them subservient to his views, he will gain an immense power. There is no chance of uniting them, except under the standard of utility.

The natural sanction is the only one which always acts ; the only one which works of itself ; the only one which is unchangeable in its principal characteristics. It insensibly draws all the others to it, corrects their deviations, and produces whatever uniformity there is in the sentiments and the judgments of men.

The popular sanction and the religious sanction are more variable, more dependent upon human caprices. Of the two, the popular sanction is more equal, more steady, and more constantly in accordance with the principle of utility. The force of the religious sanction is more unequal, more apt to change with times and individuals, more subject to dangerous deviations. It grows weak by repose, but revives by opposition.

In some respects the political sanction has the advantage of both. It acts upon all men with a more equal force ; it is clearer and more precise in its precepts ; it is surer and more exemplary in its operations ; finally, it is more susceptible of being carried to perfection. Its progress has an immediate influence upon the progress of the other two ; but it embraces only actions of a certain kind ; it has not a sufficient hold upon the private conduct of individuals ; it cannot proceed except upon proofs which it is often impossible to obtain ; and secrecy, force, or stratagem are

able to escape it. It thus appears, from considering what each of these sanctions can effect, and what they cannot, that neither ought to be rejected, but that all should be employed and directed towards the same end. They are like magnets, of which the virtue is destroyed when they are presented to each other by their contrary poles, while their power is doubled when they are united by the poles which correspond.

It may be observed, in passing, that the systems which have most divided men have been founded upon an exclusive preference given to one or the other of these sanctions. Each has had its partisans, who have wished to exalt it above the others. Each has had its enemies, who have sought to degrade it by showing its weak side, exposing its errors, and developing all the evils which have resulted from it, without making any mention of its good effects. Such is the true theory of all those paradoxes which elevate nature against society, politics against religion, religion against nature and government, and so on.

Each of these sanctions is susceptible of error, that is to say, of some applications contrary to the principle of utility. But by applying the nomenclature above explained, it is easy to indicate by a single word the seat of the evil. Thus, for example, the reproach which after the punishment of a criminal falls upon an innocent family is an error of the popular sanction. The offence of usury, that is, of receiving interest above the legal interest, is an error of the political sanction. Heresy and magic are errors of the religious sanction. Certain sympathies and antipathies are errors of the natural sanction. The first germ of mistake exists in some single sanction, whence it commonly spreads into the others. It is necessary, in all these cases, to discover the origin of the evil before we can select or apply the remedy.

CHAPTER VIII.

The measure of Pleasures and Pains.

THE sole object of the legislator is to increase pleasures and to prevent pains; and for this purpose he ought to be well acquainted with their respective values. As pleasures and pains are the only instruments which he employs, he ought carefully to study their power.

If we examine the *value* of a pleasure, considered in itself, and in relation to a single individual, we shall find that it depends upon four circumstances,—

- 1st. *Its intensity.*
- 2nd. *Its duration.*
- 3rd. *Its certainty.*
- 4th. *Its proximity.*

The value of a pain depends upon the same circumstances.

But it is not enough to examine the value of pleasures and pains as if they were isolated and independent. Pains and pleasures may have other pains and pleasures as their consequences. Therefore, if we wish to calculate the *tendency* of an act from which there results an immediate pain or pleasure, we must take two additional circumstances into the account, viz.—

- 5th. *Its productiveness.*
- 6th. *Its purity.*

A *productive pleasure* is one which is likely to be followed by other pleasures of the same kind.

A *productive pain* is one which is likely to be followed by other pains of the same kind.

A *pure pleasure* is one which is not likely to produce pains.

A *pure pain* is one which is not likely to produce pleasures.

When the calculation is to be made in relation to a collection of individuals, yet another element is necessary,—

- 7th. *Its extent.*

That is, the number of persons who are likely to find themselves affected by this pain or pleasure.

When we wish to value an action, we must follow in detail all the operations above indicated. These are the elements of moral calculation; and legislation thus becomes a matter of arithmetic. The *evil* produced is the outgo, the *good* which results is the income. The rules of this calculation are like those of any other. This is a slow method, but a sure one; while what is called sentiment is a prompt estimate, but apt to be deceptive. It is not necessary to recommence this calculation upon every occasion. When one has become familiar with the process; when he has acquired that justness of estimate which results from it; he can compare the sum of good and of evil with so much promptitude as scarcely to be conscious of the steps of the calculation. It is thus that we perform many arithmetical calculations almost without knowing it. The analytical method, in all its details, becomes essential, only when some new or complicated matter arises; when it is necessary to clear up some disputed point, or to demonstrate a truth to those who are yet unacquainted with it.

This theory of moral calculation, though never clearly explained, has always been followed in practice; at least, in every case where men have had clear ideas of their interest. What is it, for example, that makes up the value of a landed estate? Is it not the amount of pleasure to be derived from it? and does not this value vary according to the length of time for which the estate is to be enjoyed; according to the nearness or the distance of the moment when the possession is to begin; according to the certainty or uncertainty of its being retained?

Errors, whether in legislation or the moral conduct of men, may be always accounted for by a mistake, a forgetfulness, or a false estimate of some one of these elements, in the calculation of good and evil.

CHAPTER IX.

SECTION I.

Circumstances which affect Sensibility.

ALL causes of pleasure do not give the same pleasure to all; all causes of pain do not always produce the same pain. It is in this that *difference of sensibility* consists. This difference is in degree, or in kind: in degree, when the impression of a given cause upon many individuals is uniform, but unequal; in kind, when the same cause produces opposite sensations in different individuals.

This difference of sensibility depends upon certain circumstances which influence the physical or moral condition of individuals, and which, being changed, produce a corresponding change in their feelings. This is an experimental fact. Things do not affect us in the same manner in sickness and in health, in plenty and in poverty, in infancy and old age. But a view so general is not sufficient; it is necessary to go deeper into the human heart. Lyonet wrote a quarto volume upon the anatomy of the caterpillar; morals are in need of an investigator as patient and philosophical. I have not courage to imitate Lyonet. I shall think it sufficient if I open a new point of view—if I suggest a surer method to those who wish to pursue this subject.

1st. The foundation of the whole is *temperament*, or the original constitution. By this word I understand that radical and primitive disposition which attends us from our birth, and which depends upon physical organization, and the nature of the soul.

But although this radical constitution is the basis of all the rest, this basis lies so concealed that it is very difficult to get at it, so as to distinguish those varieties of sensibility which it produces from those which belong to other causes.

It is the business of the physiologist to distinguish these temperaments; to follow out their mixtures; and to trace their effects. But these grounds are as yet too little known to justify the moralist or legislator in founding anything upon them.

2nd. *Health*.—We can hardly define it except negatively. It is the absence of all sensation of pain or uneasiness of which the first seat can be referred to some part of the body. As to sensibility in general, it is to be observed, that, when sick, we are less sensible to the causes of pleasure, and more so to those of pain.

3rd. *Strength*.—Though connected with health, this is a separate circumstance; since a man may be feeble compared with the average of men, and yet not be an invalid. The degree of strength may be measured exactly enough by the weight one can lift, or in other ways. *Feebleness* is sometimes a negative term, signifying the absence of strength; sometimes a relative term, signifying that such an individual is not so strong as such another, with whom he is compared.

4th. *Corporal Imperfections*.—I mean some remarkable deformity; the want of some limb or some faculty which other men enjoy. Its particular effects upon sensibility depend upon the kind of imperfection. Its general effect is, to diminish more or less agreeable impressions, and to aggravate those which are painful.

5th. *The degree of Knowledge*.—That is, the amount of ideas which an individual possesses of a nature calculated to exercise an influence upon his happiness, or that of others. The man of knowledge is he who possesses many of these important ideas; the ignorant, he who has but few, and those few of minor importance.

6th. *Strength of the Intellectual Faculties*.—That is, the degree of facility in recalling ideas already acquired, or in acquiring new ones. Different qualities of mind may be referred to this head, such as exactness of memory, capacity of attention, clearness of discernment, vivacity of imagination, &c.

7th. *Firmness of Soul*.—This quality is attributed to a man when he is less affected by immediate pleasures or pains, than by great pleasures or great pains, which are distant or uncertain. Turenne lacked firmness of soul when he was prevailed upon by the prayers of a woman to betray a state secret. The young Lacedæmonians, who suffered themselves to be scourged to death

before the altar of Diana, without uttering a single cry, proved that the fear of shame and the hope of glory had more influence over them than present pain of the most piercing kind.

8th. *Perseverance*.—This circumstance relates to the *length* of time during which a given motive acts upon the will with a continuous force. We say of a man that he wants perseverance when the motive which makes him act loses all its force without the happening of any external event, or the occurrence of any reason which ought to weaken it; or when he is susceptible of yielding by turns to a great variety of motives. It is thus that children are delighted with playthings, yet soon grow tired of them.

9th. *The bent of Inclination*.—The ideas we have previously formed of a pleasure or a pain, have a great influence upon the manner in which we are affected, when we come to experience that pleasure or that pain. The effect does not always answer the expectation, though it commonly does so. The pleasure which results from the possession of a woman is not to be measured by her beauty, but by the passion of her lover. The inclinations of a man being known, we can calculate with tolerable certainty the pleasure or the pain which a given event will cause him.*

10th. *Notions of Honour*.—By *honour* is meant that sensibility to pains and pleasures, which springs from the opinion of other men; that is, from their esteem or their contempt. The ideas of honour vary much with nations and with individuals; so that it becomes necessary to distinguish, in the first place, the force of this motive, in the second place, its direction.

11th. *Notions of Religion*.—It is well known to what a degree the entire system of sensibility may be affected by religious ideas. It is at the birth of a religion that its greatest effects appear. Mild nations have become bloody; pusillanimous nations have grown bold; slaves have regained their freedom;

* The four following circumstances are only sub-divisions of this head; they are passions—that is, inclinations, considered in reference to certain given pleasures and pains.

and savages have submitted to the yoke of civilization. There is not any cause which has produced such sudden and extraordinary effects upon mankind. There is also an astonishing diversity in the particular bias which religion gives to individuals.

12th. *Sentiments of Sympathy.*—I call *sympathy* that disposition which makes us find pleasure in the happiness of others, and compels us to share their pains. When this disposition extends to a single individual only, it is called *friendship*; when it acts in relation to persons in pain, it is called *pity* or *compassion*; if it embraces an entire class of individuals, it constitutes what is called *esprit de corps*, or *party spirit*; if it embraces a whole nation, it is *public spirit* or *patriotism*; if it extends to all men, it is *humanity*.

But the kind of sympathy which plays the greatest part in common life is that which binds the affections to certain fixed individuals, such as parents, children, a husband, a wife, an intimate friend. Its general effect is to augment the sensibility, whether to pains or pleasures. The individual acquires more extension; he ceases to be solitary; he becomes collective. We see ourselves, so to speak, doubled in those we love; and it is by no means impossible to love ourselves better in these others than in our actual self; and to be less sensible to the events which concern us, by reason of their immediate effect upon ourselves, than on account of their operation upon those connected with us; to feel, for example, that the most bitter part of an affliction is the pain it will cause our friends, and that the greatest charm of personal success is the pleasure we shall take in their joy. Such is the operation of sympathy. These sentiments received and paid back, increase by communication. They may be compared to mirrors, so arranged as mutually to transmit the rays of light, collect them in a common focus, and produce an increase of heat by their reciprocal reflections. The force of these sympathies is one of the reasons which has made legislators prefer married men to bachelors, and fathers of a family to those who have no children. The law has more power over those who expose a greater surface to its operations. Such

men, through an interest in the happiness of those who are to succeed them, look to the future as well as the present; while men who have not the same ties are satisfied with a transitory possession.

With regard to the sympathy which the paternal relation produces, it may be sometimes observed to act independently of any affection. The honour acquired by the father extends to the son; the disgrace of the son spreads back to the father. The members of a family, although disunited by interest and inclination, have a common sensibility for all that appertains to the honour of each.

13th. *Antipathies*.—These are the reverse of those expansive and affectionate sentiments, of which we have been speaking. It is fortunate that the sources of sympathy are constant and natural; they are found everywhere, at all times, and under all circumstances; while antipathies are accidental, and of course transitory. They vary according to times, places, events, and persons; and they have nothing fixed nor determinate. Still, these two principles sometimes coalesce and act together. Humanity makes us hate the inhuman; friendship renders us hostile to the adversaries of our friends; and antipathy itself becomes a cause of union between two persons who have a common enemy.

14th. *Folly, or Disorder of Mind*.—Imperfections of mind may be reduced to ignorance, feebleness, irritability, and inconstancy. What is called *folly* is an extraordinary degree of imperfection, as striking to all the world as the most obvious corporal defect. It not only produces all the imperfections above mentioned, and carries them to excess; but, in addition, it gives an absurd and dangerous turn to the inclinations.

The sensibility of a maniac becomes extreme upon a certain point, while in other respects it is quite benumbed. He seems to have an excessive distrust, a hurtful malignity, a cessation of every sentiment of benevolence; he has no respect for himself nor for others; he braves all decorum and propriety; he is not insensible to fear, nor to good treatment—he yields to firmness

at the same time that mildness makes him tractable; but he has hardly any regard for the future, and can only be acted upon by immediate means.

15th. *Pecuniary Circumstances*.—They consist of the sum total of *means*, compared with the sum total of *wants*. Means comprise, 1st, property, that which is possessed independently of labour; 2nd, the profits of labour; 3rd, the pecuniary aids which we may expect from our relations and friends.

Wants depend upon four circumstances: 1st. Habits of expense. What is beyond these habits is superfluity, what is within them is privation. The greater part of our desires exist only in the recollection of some past enjoyment. 2nd. The persons with whose support we are charged, either by the laws or by opinion, children, poor relations, old servants. 3rd. Unexpected wants. A given sum may have a much greater value at one moment than another; if it is needed, for instance, for an important lawsuit, or for a journey upon which the fate of a family depends. 4th. Expectations of a profit, of an inheritance, &c. It is evident that the hopes of fortune, in proportion to their force, are true wants; and that their loss may affect us almost as much as that of a property already in possession.

SECTION II.

Secondary Circumstances which affect Sensibility.

Authors who have wished to account for differences of sensibility have ascribed them to circumstances of which no mention has yet been made, viz, sex, age, rank, education, habitual occupations, climate, race, government, religion—circumstances all very apparent, very easy to observe, and very convenient for explaining the different phenomena of sensibility. Still, they are but secondary circumstances; I mean that in themselves they are not reasons, but must be explained by the circumstances described in the first section, which are here represented and combined; each secondary circumstance containing in itself many primary

circumstances. As a matter of convenience, we speak of the influence of sex upon sensibility; including in that single phrase all the primary circumstances of strength, knowledge, firmness of soul, perseverance, ideas of honour, sentiments of sympathy, &c. Do we speak of the influence of rank?—We mean by it a certain assemblage of primary circumstances, such as the degree of knowledge, ideas of honour, connections of family, habitual occupations, pecuniary circumstances. It is the same with all the others. Each of these secondary circumstances may be translated by a certain number of the primary. This distinction, though essential, has not yet been analyzed. Let us pass to a more particular examination.

1st. *Sex.*—The sensibility of women seems to be greater than that of men. Their health is more delicate. They are generally inferior in strength of body, knowledge, the intellectual faculties, and firmness of soul. Their moral and religious sensibility is more lively; sympathies and antipathies have a greater empire over them. The honour of a woman consists more in modesty and chastity; that of man in probity and courage. The religion of a woman more easily deviates towards superstition; that is, towards minute observances. Her affections for her own children are stronger during their whole life, and especially during their early youth. Women are more compassionate for those whose sufferings they see; and the very pains they take to relieve them form a new bond of attachment. But their benevolence is locked up in a narrower circle, and is less governed by the principle of utility. It is rare that they embrace in their affections the well-being of their country, much less that of mankind; and the interest which they take in a party depends almost always upon some private sympathy. There enters into all their attachments and antipathies more of caprice and imagination; while men have more regard to personal interests or public utility. Their habitual amusements are more quiet and sedentary. On the whole, woman is better fitted for the family, and man for matters out of doors. The domestic economy is best placed in the hands of the women; the principal management of affairs in those of the men.

2nd. *Age*.—Each period of life acts differently upon sensibility; but it is extremely difficult to state particulars, since the limits of the different ages vary with individuals, and, in fact, are arbitrary with regard to all. In considering infancy, adolescence, youth, maturity, decline, and decrepitude as divisions of human life, we can only speak of them vaguely, and in general terms. The different imperfections of mind, which we have mentioned, are so striking in infancy, that it needs a vigilant and constant protection. The affections of adolescence and early youth are prompt and lively, but are seldom governed by the principle of prudence. The legislator is obliged to protect this age from the errors into which the want of experience or the vivacity of the passions are apt to lead it. As to decrepitude, in many respects it is only a return to the imperfections of infancy.

3rd. *Rank*.—This circumstance depends so much for its effects upon the political constitution of states, that it is almost impossible to announce any proposition with respect to it which is universally true. In general it may be said that the amount of sensibility is greater in the upper ranks than in the lower; the ideas of honour in particular are more predominant.

4th. *Education*.—Health, strength, robustness, may be referred to *physical education*; to *intellectual education* belong the amount of knowledge, its kind, and, to a certain degree, firmness of soul, and perseverance; to *moral education* appertain the bent of the inclinations, the ideas of honour and religion, the sentiments of sympathy, &c. To education in general may be referred the habitual occupations, amusements, attachments, habits of expense, and pecuniary resources. But when we speak of education, we ought not to forget that its influence in all these respects is so modified, either by a concurrence of external circumstances or by natural disposition, that it is often impossible to calculate its effects.

5th. *Habitual occupations*, whether of profit or of amusement and choice. They influence all the other causes—health, strength, knowledge, inclinations, ideas of honour, sympathies, antipathies, fortune, &c. Thus we see common traits of character in certain

professions, especially in those which constitute a class or condition, such as ecclesiastics, soldiers, sailors, lawyers, magistrates, &c.

6th. *Climate*.—Formerly too much was attributed to this cause; it has since been underrated. What renders this examination difficult, is the circumstance that a comparison of nation with nation can only be made as to some great facts, which may be explained in different ways. It seems to be proved that in warm climates men are less strong, less robust; they have less need to labour, because the earth is more fertile; they are more inclined to the pleasures of love, a passion which in those latitudes manifests itself earlier, and with more ardour. All their sensibilities are quicker; their imagination is more lively; their spirit is more prompt, but less vigorous and less persevering. Their habitual occupations announce more of indolence than of activity. They have probably at their birth a physical organization less vigorous, and a temperament of soul less firm and less constant.

7th. *Race*.—A negro born in France or England is in many respects a different being from a child of the French or English race. A Spanish child born in Mexico or Peru at the hour of its birth is very different from a Mexican or Peruvian child. The race may perhaps have an influence upon that natural disposition, which serves as a foundation for all the rest. Afterwards it operates much more sensibly upon the moral and religious bias, upon the sympathies and antipathies.

8th. *Government*.—This circumstance exercises an influence of the same sort with that of education. The magistrate may be considered as a national instructor; and under a vigilant and attentive government the particular preceptor, even the father himself, is but a deputy, a substitute for the magistrate, with this difference, that the authority of the father has its limit, while that of the magistrate extends through the whole life.

The influence of this cause is immense; it extends to almost everything; in fact, it embraces everything except temperament, race, and climate; for even health may depend upon it in many respects, so far as relates to regulations of police, the abundance

of provisions, and the removal of apparent causes of disease. The method of education, the plan followed in the disposal of offices, and the scheme of rewards and punishments, will determine in a great measure the physical and moral qualities of a nation.

Under a government well constituted, or only well administered, though with a bad constitution, it will be seen that men are generally more governed by honour, and that honour is placed in actions more conformed to public utility. Religious sensibility will be more exempt from fanaticism and intolerance, more free from superstition and servile reverence. A common sentiment of patriotism springs up. Men perceive the existence of a national interest. Enfeebled factions will see ancient rallying signs losing their power. The popular affection will be rather directed towards the magistrate than towards the heads of a party, and towards the whole country rather than towards anything else. Private revenge will neither be protracted, nor will it spread through society; the national taste will be directed towards useful expenses, such as voyages of discovery, the perfecting of agriculture, improvements in the sciences, and the embellishment of the country. There will be perceptible, even in the productions of human genius, a general disposition to discuss with calmness important questions of public good.

9th. *Religious Profession.*—We may derive from this source pretty clear indications with respect to religious sensibility, sympathy, antipathy, and the ideas of honour and virtue. In certain cases we may even judge of the intelligence, the strength or weakness of mind, and the disposition of an individual from the sect to which he belongs. I admit that it is common to profess in public, from motives of convenience or good breeding, religious opinions which are not very sincerely entertained. But in these cases the influence of religious profession, though weakened, is not destroyed. Early habits, the ties of society, the power of example, continue to operate even after the principle upon which they are founded ceases to exist.

The man who at heart has ceased to be a Jew, a Quaker, an

Anabaptist, a Calvinist, or a Lutheran, will still be apt to retain a partiality for those of the denomination to which he nominally belongs, and a corresponding antipathy for those of every other.

SECTION III.

Practical application of this Theory.

We cannot calculate the motion of a vessel without knowing the circumstances which influence her sailing, such as the force of the wind, the resistance of the water, the model of the hull, the weight of the lading, &c. In like manner we cannot operate with any certainty upon a question of legislation without considering all the circumstances which affect the sensibility.

I confine myself here to what concerns the penal code. In all its parts a scrupulous attention to this diversity of circumstances is necessary.

1st. *To ascertain the Evil of an Offence.*—The same nominal offence is not in fact the same real offence, when the sensibility of the injured individual is not the same. An action, for example, might be a serious insult to a woman, which to a man would be wholly indifferent. A corporal injury, which, if done to an invalid, would put his life in danger, would be of little comparative consequence to a man in full health. An imputation which might ruin the honour or the fortune of one individual might do no harm to another.

2nd. *To give a proper Satisfaction to the Individual injured.*—Where the sensibility is different, the same nominal satisfaction is not the same real satisfaction. A pecuniary satisfaction for an affront might be agreeable or offensive, according to the rank of the person affronted, according to his fortune, or according to prevailing prejudices. Am I insulted?—my pardon, publicly asked, would be a sufficient satisfaction on the part of my superior, or my equal; but not so on the part of my inferior.

3rd. *To estimate the force of Punishments and their Impression upon Delinquents.*—When the sensibility is essentially different,

the same nominal punishment is not the same real punishment. Exile is not the same thing to a young man and to an old man; to a bachelor and to the father of a family; to an artisan who has no means of subsistence out of his country, and to a rich man who would only find himself obliged to change the scene of his pleasures. Imprisonment would not be an equal punishment for a man and for a woman, for an invalid and for a person in health; for a rich man whose family would not suffer in his absence, and for one who lives only by his labour, and who would leave his children in distress.

4th. *To transplant a Law from one Country to another.*—The same verbal law would not be the same real law, if the sensibility of the two nations was essentially different. A law on which depends the happiness of European families, transported into Asia, would become the scourge of society. Women in Europe are accustomed to enjoy liberty, and even a sort of domestic empire; women in Asia are prepared by their education for the imprisonment of the seraglio, and even for servitude. Marriage is not a contract of the same kind in Europe and in the East; and, if it were submitted to the same laws, the unhappiness of all parties would certainly ensue.

The same punishments, it is said, for the same offences. This adage has an appearance of justice and impartiality which seduces the superficial observer. To give it a reasonable sense, we must determine beforehand what is meant by the same punishments and the same offences. An inflexible law, a law which should regard neither age, nor fortune, nor rank, nor education, nor the moral and religious prejudices of individuals, would be doubly vicious, at once inefficacious and tyrannical. Too severe for one, too indulgent for another; always failing through excess or deficiency; under the appearance of equality, it conceals an inequality the most monstrous.

When a man of great wealth, and another of a moderate condition, are condemned in the same fine, is the punishment the same? Do they suffer the same evil? Is not the manifest inequality of this treatment rendered yet more odious by its de-

lusive equality? And does not the law fail in its object; since the one may lose all his resources of living, while the other pays, and walks off in triumph? Let a robust youth and a weak old man be both condemned to wear irons for the same number of years—a reasoner skilful in obscuring the most evident truths might undertake to prove the equality of this punishment; but the people, who are little given to sophistry, the people, faithful to nature and to sentiment, would feel an internal murmuring of spirit at the sight of such injustice; and their indignation, changing its object, would pass from the criminal to the judge, and from the judge to the legislator.

There are some specious objections which I do not wish to dissemble. “How is it possible to take account of all the circumstances which influence the sensibility? How can we appreciate internal and secret dispositions, such as strength of mind, knowledge, inclinations, sympathies? How can we measure these different qualities? The father of a family, in the treatment of his children, may consult these interior dispositions, these diversities of character; but a public instructor, though charged with but a limited number of pupils, cannot do it. A legislator, who has a numerous people in view, is obliged to confine himself still more to general laws; and he is bound to take care how he increases their complication by descending into particulars. If he leaves to the judges the right of varying the application of the laws according to the infinite diversity of circumstances and characters, there will be nothing to restrain them from the most arbitrary judgments. Under pretext of observing the true spirit of the legislator, the judges will make the laws an instrument of caprice or antipathy.”

To all this, there needs less an answer than an explanation; for it is rather an objection than a decisive attack. The principle is not denied, but its application is thought to be impossible.

1st. I allow that the greater part of these differences in sensibility cannot be appreciated; that it would be impossible to prove their existence in individual cases, or to measure their strength and degree. But, happily, these interior and secret dispositions

have certain outward and manifest indications. These are the secondary circumstances above enumerated, viz., *sex, age, rank, race, climate, government, education, religious profession*;—palpable and evident circumstances, which represent interior dispositions.

Thus the legislator is aided as to the most difficult point. He need not trouble himself with metaphysical or moral qualities; he may confine himself to circumstances that are obvious. For example, he directs a given punishment to be modified, not in proportion to the sensibility of the criminal, his perseverance, his strength of mind, his knowledge, &c., but according to sex or age. It is true that presumptions drawn from these circumstances are liable to error. A child of fifteen *may* have more knowledge than a man of thirty; an individual woman may have more courage or less modesty than an individual man; but these presumptions are in general just enough for the avoidance of tyrannical laws, and will be sufficient to gain for the legislator the suffrages of opinion.

2nd. These secondary circumstances are not only easy to seize, but they are few in number, and they form general classes. They furnish grounds of justification, of extenuation, or of aggravation. Thus the difficulty disappears, and simplicity pervades the whole.

3rd. In this there is nothing arbitrary. It is not the judge, it is the law which modifies such and such a punishment, according to the sex, the age, the religious profession. As to other circumstances of which the examination must be absolutely left to the judge, as the *more* or *less* of derangement of mind, the *more* or *less* of strength, the *more* or *less* of fortune, the legislator, who cannot decide upon individual cases, will direct the tribunals by general rules, and will leave them a certain latitude in order that they may proportion their judgment to the particular nature of the circumstances.

What is here recommended is not a utopian idea. There has scarcely been a legislator so barbarous or so stupid, as⁴ entirely to neglect the circumstances which influence sensibility. A more

or less confused feeling of them has guided the establishment of civil and political rights; and more or less of regard to these circumstances has always been shown in the institution of punishments. Hence the differences which have been admitted in the case of women, children, freemen, slaves, soldiers, priests, &c.

Droco seems to have been the only penal legislator who rejected all these considerations. In his view all crimes were equal, because they were all violations of the law. He condemned all delinquents to death, without distinction. He confounded, he overturned all principles of human sensibility. His horrible work endured but a short time; nor is it probable that his laws were ever literally followed. Without falling into this extreme, how many faults of the same kind have been committed? I should never finish were I to cite examples. It is notorious that there have been sovereigns who have preferred to lose provinces, and to make blood flow in streams, rather than humour a particular sensibility, rather than tolerate a custom indifferent in itself, rather than respect an ancient prejudice in favour of a certain dress, or a certain form of prayer.

A prince of our times,* active, enlightened, and animated by the desire of glory, and a wish to promote the happiness of his subjects, undertook to reform everything in his territories; and, in so doing, excited all to oppose him. On the eve of his death, recalling all the vexations he had experienced, he wished it to be inscribed upon his tomb, that he had been unfortunate in all his enterprises. It would have been well to add, for the instruction of posterity, that he had never known how to respect and to humour the prejudices, the inclinations, the sensibilities of men.

When a legislator studies the human heart, when he makes provision for the different degrees, the different kinds of sensibility, by exceptions, limitations, and mitigations, these temperaments of power charm us as a paternal condescension. It is the foundation of that approval which we give to the laws, under the names, a little vague it is true, of humanity, equity, adaptation, moderation, wisdom.

* Joseph II. of Austria.

We may here discover a striking analogy between the art of the legislator and that of the physician. A catalogue of circumstances which influence sensibility, is alike necessary to these two sciences. That which distinguishes the physician from the empiric, is an attention to everything which constitutes the particular state of the individual. But it is especially in maladies of the soul, in those where the moral nature is affected, and where it is necessary to surmount injurious habits and to form new ones, that it is necessary to study everything which influences the disposition of the patient. A single error here may change all the results, so that what were intended as remedies, may prove to be aggravations.

CHAPTER X.

Analysis of Political Good and Evil.—How they are diffused through Society.

It is with government as with medicine ; its only business is the choice of evils. Every law is an evil, for every law is an infraction of liberty. Government, I repeat it, has but the choice of evils. In making that choice, what ought to be the object of the legislator ? He ought to be certain of two things : 1st, that in every case the acts which he undertakes to prevent are really evils ; and, 2nd, that these evils are greater than those which he employs to prevent them.

He has then two things to note—the evil of the offence, and the evil of the law ; the evil of the malady, and the evil of the remedy.

An evil seldom comes alone. A portion of evil can hardly fall upon an individual, without spreading on every side, as from a centre. As it spreads, it takes different forms. We see an evil of one kind coming out of an evil of another kind ; we even see evil coming out of good, and good out of evil. It is important to know and to distinguish all these kinds of evil, for in this the very essence of legislation consists. But, happily, these modifi-

cations are few in number, and their differences are strongly marked. Three principal distinctions, and two sub-divisions, will be enough to solve the most difficult problems.

Evil of the first order.

Evil of the second order.

Evil of the third order.

Primitive Evil—Derivative Evil.

Immediate Evil—Consequential Evil.

Extended Evil—Divided Evil.

Permanent Evil—Evanescent Evil.

These are the only new terms which it will be necessary to employ to express the variety of forms which evil may take.

The evil resulting from a bad action may be divided into two principal parts:—1st, That which falls immediately upon such and such assignable individuals, I call *evil of the first order*; 2nd, That which takes its origin in the first, and spreads through the entire community, or among an indefinite number of non-assignable individuals, I call *evil of the second order*.

Evil of the first order may be distinguished into two branches, viz., 1st, the *primitive evil*, which is peculiar to the individual injured, to the first sufferer—the person, for example, who is beaten or robbed; 2nd, the *derivative evil*, that which falls upon certain assignable individuals, as a consequence of the primitive evil, by reason of some relation between them and the first sufferer, whether it be a relation of personal interest or merely of sympathy.

Evil of the second order may also be distinguished into two branches: 1st, *alarm*; 2nd, *danger*. Alarm is a positive pain, a pain of apprehension, the apprehension of suffering the same evil which we see has already fallen upon another. Danger is the probability that a primitive evil will produce other evils of the same kind.

These two branches of evil are closely connected, yet they are so distinct as to be capable of a separate existence. There may be alarm where there is no danger, there may be danger where there is no alarm. We may be frightened at a conspiracy purely

imaginary ; we may remain secure in the midst of a conspiracy ready to break out. But, commonly, alarm and danger go together, as natural effects of the same cause. The evil that has happened makes us anticipate other evils of the same kind, by rendering them probable. The evil that has happened produces danger ; danger produces alarm. A bad action is dangerous as an example ; it prepares the way for other bad actions—1st, By suggesting the idea of their commission ; 2nd, By augmenting the force of temptation.

Let us follow the train of thought which may pass in the mind of an individual when he hears of a successful robbery. Perhaps he did not know of this means of subsistence, or never thought of it. Example acts upon him like instruction, and gives him the first idea of resorting to the same expedient. He sees that the thing is possible, provided it be well managed ; and, executed by another, it appears to him less difficult and less perilous than it really is. Example is a track which guides him along where he never would have dared to be the first explorer. Such an example has yet another effect upon him, not less remarkable. It weakens the strength of the motives which restrain him. The fear of the laws loses a part of its force so long as the culprit remains unpunished ; the fear of shame diminishes in the same degree, because he sees accomplices who afford him an assurance against the misery of being utterly despised. This is so true, that wherever robberies are frequent and unpunished, they are as little a matter of shame as any other means of acquisition. The early Greeks had no scruples about them ; they are gloried in by the Arabs of the present day.

Let us apply this theory. You have been beaten, wounded, insulted, and robbed. The amount of your personal sufferings, so far as they relate to you alone, forms the *primitive* evil. But you have friends, and sympathy makes them share your pains. You have a wife, children, parents ; a part of the indignity which you have suffered, of the affront to which you have been subjected, falls upon them. You have creditors, and the loss you have experienced obliges them to wait. All these persons suffer a less

or greater evil, *derivative* from yours; and these two portions of evil, yours and theirs, compose together the *evil of the first order*.

But this is not all. The news of the robbery, with all its circumstances, spreads from mouth to mouth. An idea of *danger* springs up, and *alarm* along with it. This alarm is greater or less, according to what is known of the character of the robbers, of the personal injuries they have inflicted, of their means and their number; according as we are near the place or distant from it; according to our strength and courage; according to our peculiar circumstances, such as travelling alone, or with a family, carrying little money with us, or being intrusted with valuable effects. This danger and alarm constitute the *evil of the second order*.

If the evil which has been done to you is of a nature to spread of itself—for example, if you have been defamed by an imputation which envelops a class of individuals more or less numerous, it is no longer an evil simply private, it becomes an *extended* evil. It is augmented in proportion to the number of those who participate in it.

If the money of which you were robbed did not belong to you, but to a society, or to the State, the loss would be a *divided* evil. This case differs from the former in the important circumstance, that here, the evil is diminished in proportion to the number among whom it is shared.

If, in consequence of the wound you have received, you suffer an additional evil distinct from the first, such as the abandonment of a lucrative business, the loss of a marriage, or the failure to obtain a profitable situation, that is a *consequential* evil. A *permanent* evil is that which, once done, cannot be remedied, such as an irreparable personal injury, an amputation, death, &c. An *evanescent* evil is that which may pass away altogether, such as a wound which may be healed, or a loss which may be entirely made up.

These distinctions, though partly new, are far from being useless subtleties. It is only by their means that we can appreciate the difference of malignity in different offences, and regulate accordingly the proportion of punishment.

This analysis will furnish us a moral *criterion*, a means of decomposing human actions, as we decompose the mixed metals, in order to discover their intrinsic value, and their precise quantity of alloy.

If among bad actions, or those reputed to be so, there are some which cause no alarm, what a difference between these actions and those which do cause it! The primitive evil affects but a single individual; the derivative evil can extend only to a small number; but the evil of the second order may embrace the whole of society. Let a fanatic commit an assassination on account of what he calls heresy, and the evil of the second order, especially the alarm, may exceed many million times the evil of the first order.

There is a great class of offences of which the entire evil consists in danger. I refer to those actions which, without injuring any particular individual, are injurious to society at large. Let us take, for an example, an offence against justice. The bad conduct of a judge, of an accuser, or a witness, causes a criminal to be acquitted. Here is doubtless an evil, for here is a danger; the danger that impunity will harden the offender, and excite him to the commission of new crimes; the danger of encouraging other offenders by the example and the success of the first. Still, it is probable that this danger, great as it is, will escape the attention of the public, and that those who by the habit of reflection are capable of perceiving it, will not derive from it any alarm. They do not fear to see it realized upon anybody.

But the importance of these distinctions can only be perceived in their development. We shall presently see a particular application of them.

If we carry our views still further, we shall discover another evil, which may result from an offence. When the alarm reaches a certain point, and lasts a long time, the effect is not limited to the passive faculties of man; it extends to his active faculties; it deadens them; it throws them into a state of torpor and decrepitude. Thus, when vexations and depredations have become habitual, the discouraged labourer only works to save himself from starvation; he seeks in idleness the only consolation which

his misfortunes allow; industry fails with hope, and brambles gain possession of the most fertile fields. This branch of evil is the *evil of the third order*.

Whether an evil happens by human agency, or whether it results from an event purely physical, all these distinctions are equally applicable.

Happily, this power of propagation and of diffusion does not appertain to evil only. Good has the same prerogatives. Follow an analogous division, and you will see coming out of a good action, a *good of the first order*, divisible into primitive and derivative; and a *good of the second order*, which produces a certain degree of confidence and security.

The *good of the third order* is manifested in that energy, that gaiety of heart, that ardour of action, which remuneratory motives alone inspire. Man, animated by this sentiment of joy, finds in himself a strength which he did not suspect.

The propagation of good is less rapid and less sensible than that of evil. The seed of good is not so productive in hopes as the seed of evil is fruitful in alarms. But this difference is abundantly made up, for good is a necessary result of natural causes which operate always; while evil is produced only by accident, and at intervals.

Society is so constituted that, in labouring for our particular good, we labour also for the good of the whole. We cannot augment our own means of enjoyment without augmenting also the means of others. Two nations, like two individuals, grow rich by a mutual commerce; and all exchange is founded upon reciprocal advantages.

It is fortunate also that the effects of evil are not always evil. They often assume the contrary quality. Thus, juridical punishments applied to offences, although they produce an evil of the first order, are not generally regarded as evils, because they produce a good of the second order. They produce alarm and danger,—but for whom? Only for a class of evil-doers, who are voluntary sufferers. Let them obey the laws, and they will be exposed neither to danger nor alarm.

We should never be able to subjugate, however imperfectly, the vast empire of evil, had we not learned the method of combating one evil by another. It has been necessary to enlist auxiliaries among pains, to oppose other pains which attack us on every side. So, in the art of curing pains of another sort, poisons well applied have proved to be remedies.

CHAPTER XI.

Reasons for erecting certain Acts into Offences.

WE have made an analysis of evil. That analysis shows us that there are acts from which there results more of evil than of good. It is acts of this nature, or at least acts reputed to be such, that legislators have prohibited. A prohibited act is what we call an *offence*. To cause these prohibitions to be respected, it is necessary to establish *punishments*.

But is it necessary to erect certain acts into offences? or, in other words, is it necessary to subject them to legal punishments?

What a question! Is not all the world agreed on this matter? Why seek to prove a truth universally acknowledged, and so firmly rooted in the minds of men?

Doubtless, all the world is agreed upon this matter. But on what is their agreement founded? Ask his reasons of every man who assents, and you will see a strange diversity of sentiments and principles; and that not only among the people, but among philosophers. Will it be a waste of time to seek out some uniform basis of consent upon a subject so important?

The agreement which actually exists is only founded upon prejudices, which vary according to times and places, customs and opinions. I have always been told that such an action is a crime, and I think that it is so; such is the guide of the people, and even of legislators. But, if usage has erected innocent actions into crimes; if it has made trifling offences to be considered as grave ones, and grave ones as trifling; if it has varied everywhere, it is plain that usage ought to be subjected to some rule,

and ought not to be taken as a rule itself. Let us appeal, then, to the principle of utility. It will confirm the decrees of prejudice when they are just ; it will annul them when they are wrong.

I suppose myself a stranger to all the common appellations of vice and virtue. I am called upon to consider human actions only with relation to their good or bad effects. I open two accounts ; I pass to the account of pure profit all the pleasures, I pass to the account of loss all the pains. I faithfully weigh the interests of all parties. The man whom prejudice brands as vicious, and he whom it extols as virtuous, are, for the moment, equal in my eyes. I wish to judge prejudice itself ; to weigh all actions in a new balance, in order to form a catalogue of those which ought to be permitted, and of those which ought to be forbidden. This operation, which appears at first so complicated, is rendered easy by the distinction between evils of the first, second, and third orders.

Am I to examine an act which attacks the security of an individual ? I compare all the pleasure, or, in other words, all the profit, which results to the author of the act, with all the evil, or all the loss, which results to the party injured. I see at once that the evil of the first order surpasses the good of the first order. But I do not stop there. The action under consideration produces throughout society danger and alarm. The evil which at first was only individual spreads everywhere, under the form of fear. The pleasure resulting from the action belongs solely to the actor ; the pain reaches a thousand—ten thousand—all. This disproportion, already prodigious, appears infinite upon passing to the evil of the third order, and considering that, if the act in question is not suppressed, there will result from it a universal and durable discouragement, a cessation of labour, and, at last, the dissolution of society.

I will now run through the strongest of our desires, those whose satisfaction is accompanied with the greatest pleasures ; and we shall see that, when brought about at the expense of security, their gratification is much more fertile in evil than in good.

I. In the first place let us consider the passion of *hatred*.

This is the most fruitful cause of assaults upon the honour and the person. I have conceived, no matter why, an enmity against you. Passion bewilders me. I insult you; I humble you; I wound you. The sight of your pain makes me experience, at least for a time, a feeling of pleasure. But, even for that time, can it be believed that the pleasure which I taste is equivalent to the pain you suffer? If every atom of your pain separately painted itself in my soul, is it probable that each corresponding atom of my pleasure would appear to have an equal intensity? In fact, only some scattering atoms of your pain present themselves to my troubled and disordered imagination. For you, none is lost; for me, the greater part is completely thrown away. But this pleasure, such as it is, soon betrays its natural impurity. Humanity, a principle not to be entirely quenched, even in the most savage souls, wakes up a secret remorse. Fears of every kind, the fear of vengeance on your part, or on the part of those connected with you; fear of public disapprobation; and, if any sparks of religion are left to me, religious fears;—fears of all kinds come to trouble my security and to disturb my triumph. Passion has died away, the pleasure of its gratification vanishes, and an inward reproach succeeds. But on your side the pain still continues, and may have a long duration. This is the case, even with trifling wounds, which time may cicatrize. How will it be when the injury is incurable in its nature?—when limbs have been maimed, features disfigured, or faculties destroyed? Weigh the evils—their intensity, their duration, their consequences; measure them under all their dimensions, and you will see that in every sense the pleasure is inferior to the pain.

Let us now pass to the effects of the second order. The news of your misfortune instils the poison of fear into every soul. Every man who has an enemy, or who may have an enemy, contemplates with terror what the passion of hate may inspire. Among feeble beings, who have so much to dispute about, and so many causes of mutual envy, among whom a thousand little rivalries excite as many causeless hostilities, the spirit of revenge holds forth a succession of endless evils.

Thus, every act of cruelty produced by a passion, the principle of which exists in every heart, and from which everybody is exposed to suffer, creates an alarm, which will continue until the punishment of the culprit has transferred the danger to the side of injustice, and of cruel enmity. This alarm is a suffering common to all; and there is another suffering resulting from it, which we ought not to forget,—that pain of sympathy felt by generous hearts at the sight of such aggressions.

II. If we examine the actions which may spring from that imperious motive, that desire to which nature has intrusted the perpetuation of the species, we shall see that, when it attacks the security of the person, or of the domestic condition, the good which results from its gratification cannot be compared to the evil it produces.

I speak here only of that attack which manifestly compromises the security of the person, viz., ravishment. It is useless by a gross and puerile pleasantry to deny the existence of this crime, or to diminish the horror of it. Whatever may be said, it is certain that women the most prodigal of their favours do not love to have them snatched by a brutal fury. But, in this case, the greatness of the alarm renders all discussion of the primitive evil unnecessary. However it may be of the actual offence, the possible offence will always be an object of terror. The more universal the desire which gives rise to this offence, the greater and more violent is the alarm. In times when the laws have not had sufficient power to repress it, when manners have not been sufficiently regulated to brand it, it produced acts of vengeance of which history has preserved the recollection. Whole nations have interested themselves in the quarrel; and hatreds originating in this source have been transmitted from fathers to their children. It is possible that the close confinement of women, unknown among the Greeks in the time of Homer, owes its origin to an epoch of troubles and revolutions, when the febleness of the laws had multiplied disorders of this kind, and spread a general terror.

III. With respect to the motive of *cupidity*,—if we compare

the pleasure of acquiring by a violation of another's rights with the pain which such a proceeding occasions, they will not prove to be equivalents. It is true there are cases in which, if we confine ourselves to the effects of the first order, the good will have an incontestable preponderance over the evil. Were the offence considered only under this point of view, it would not be easy to assign any good reasons to justify the rigour of the laws. Everything depends upon the evil of the second order; it is this which gives to such actions the character of crime, and which makes punishment necessary. Let us take, for example, the physical desire of satisfying hunger. Let a beggar, pressed by hunger, steal from a rich man's house a loaf, which perhaps saves him from starving,—can it be possible to compare the good which the thief acquires for himself, with the evil which the rich man suffers? The same is true of less striking examples. Let a man pillage the public treasury; he enriches himself and impoverishes nobody. The wrong which he does to individuals is reduced to impalpable parts. It is not on account of the evil of the first order that it is necessary to erect these actions into offences, but on account of the evil of the second order.

If the pleasure which attends the satisfaction of such powerful desires as hatred, the sexual appetite, and hunger, when that satisfaction runs counter to the interests of others, is not equal to the pain which it causes, the disproportion will appear much greater, as respects motives less active and strong.

The desire of self-preservation is the only one beside which seems to demand a separate examination.

If the question relates to an evil which the laws themselves seek to impose upon an individual, this can only be for some very pressing reason, such as the necessity of carrying into execution punishments ordained by the tribunals, punishments without which there would be no security and no government. Now, if the desire of escaping an evil of this sort be gratified, the law, to the same extent, will be rendered inefficient. It appears, then, that the evil resulting from this satisfaction is that which results from the inefficiency of the laws, or, what amounts to the same

thing, from the non-existence of laws. But the evil which results from the non-existence of laws is, in fact, an assemblage of all the different evils which the laws are established to prevent; that is to say, of all the evils which men are liable to experience on the part of other men. It is true that a single triumph over the laws, obtained in this way by an individual, is not sufficient to shake the whole system; nevertheless, every example of this kind is a symptom of weakness, a step towards destruction. There results, then, from it an evil of the second order, an alarm, at least a danger; and, if the laws connive at this evasion, they will do it in contradiction to their own aim. In order to escape one evil, they will admit another, much more than its equivalent.

There remains the case in which an individual repels an evil to which the laws have not chosen to subject him. If they have not chosen to subject him to it, they do not wish him to submit to it. To repel this evil is itself a good. It is possible that, in making efforts to preserve himself from it, the individual in question may do an evil more than equivalent to this good. Is the evil he does in his own defence confined to what is necessary for that object, or does it go beyond? What is the proportion of the evil which he does to the evil he avoids? Is it equal, greater, or less? Would the evil he has avoided have been susceptible of compensation if, instead of defending himself by a method so costly, he had preferred to submit to it for a time? These are questions of fact, which the law ought to take into consideration, before establishing in detail the regulations of self-defence. It is a subject which belongs to that part of the penal code which treats of the means of justification or extenuation in regard to offences committed. It is sufficient to observe here that in all these cases, though there is, in fact, an evil of the first order, yet all the evil which an individual may do in self-defence produces no alarm and no danger. Other men have nothing to fear, unless they first commence an illegal attack.

CHAPTER XII.

The Limits which separate Morals from Legislation.

MORALITY in general is the art of directing the actions of men in such a way as to produce the greatest possible sum of good.

Legislation ought to have precisely the same object.

But although these two arts, or rather sciences, have the same end, they differ greatly in extent. All actions, whether public or private, fall under the jurisdiction of morals. It is a guide which leads the individual, as it were, by the hand through all the details of his life, all his relations with his fellows. Legislation cannot do this; and, if it could, it ought not to exercise a continual interference and dictation over the conduct of men.

Morality commands each individual to do all that is advantageous to the community, his own personal advantage included. But there are many acts useful to the community which legislation ought not to command. There are also many injurious actions which it ought not to forbid, although morality does so. In a word, legislation has the same centre with morals, but it has not the same circumference.

There are two reasons for this difference: 1st. Legislation can have no direct influence upon the conduct of men, except by punishments. Now these punishments are so many evils, which are not justifiable except so far as there results from them a greater sum of good. But, in many cases in which we might desire to strengthen a moral precept by a punishment, the evil of the punishment would be greater than the evil of the offence. The means necessary to carry the law into execution would be of a nature to spread through society a degree of alarm more injurious than the evil intended to be prevented.

2nd. Legislation is often arrested by the danger of overwhelming the innocent in seeking to punish the guilty. Whence comes this danger? From the difficulty of defining an offence, and giving a clear and precise idea of it. For example, hard-heartedness, ingratitude, perfidy, and other vices which the popular

sanction punishes, cannot come under the power of the law, unless they are defined as exactly as theft, homicide, or perjury.

But, the better to distinguish the true limits of morals and legislation, it will be well to refer to the common classification of moral duties.

Private morality regulates the actions of men, either in that part of their conduct in which they alone are interested, or in that which may affect the interests of others. The actions which affect a man's individual interest compose a class called, perhaps improperly, *duties to ourselves*; and the quality or disposition manifested in the accomplishment of those duties receives the name of *prudence*. That part of conduct which relates to others composes a class of actions called *duties to others*. Now there are two ways of consulting the happiness of others: the one negative, abstaining from diminishing it; the other positive, labouring to augment it. The first constitutes *probity*; the second is *beneficence*.

Morality upon these three points needs the aid of the law; but not in the same degree, nor in the same manner.

I. The rules of prudence are almost always sufficient of themselves. If a man fails in what regards his particular private interest, it is not his will which is in fault, it is his understanding. If he does wrong, it can only be through mistake. The fear of hurting himself is a motive of repression sufficiently strong; it would be useless to add to it the fear of an artificial pain.

Does any one object, that facts show the contrary? That excesses of play, those of intemperance, the illicit intercourse between the sexes, attended so often by the greatest dangers, are enough to prove that individuals have not always sufficient prudence to abstain from what hurts them?

Confining myself to a general reply, I answer, in the first place, that, in the greater part of these cases, punishment would be so easily eluded, that it would be inefficacious; secondly, that the evil produced by the penal law would be much beyond the evil of the offence.

Suppose, for example, that a legislator should feel himself authorized to undertake the extirpation of drunkenness and fornication by direct laws. He would have to begin by a multitude of regulations. The first inconvenience would therefore be a complexity of laws. The easier it is to conceal these vices, the more necessary it would be to resort to severity of punishment, in order to destroy by the terror of examples the constantly recurring hope of impunity. This excessive rigour of laws forms a second inconvenience not less grave than the first. The difficulty of procuring proofs would be such, that it would be necessary to encourage informers, and to entertain an army of spies. This necessity forms a third inconvenience, greater than either of the others. Let us compare the results of good and evil. Offences of this nature, if that name can be properly given to imprudences, produce no alarm; but the pretended remedy would spread a universal terror; innocent or guilty, every one would fear for himself or his connexions; suspicions and accusations would render society dangerous; we should fly from it; we should involve ourselves in mystery and concealment; we should shun all the disclosures of confidence. Instead of suppressing one vice, the laws would produce other vices, new and more dangerous.

It is true that example may render certain excesses contagious; and that an evil which would be almost imperceptible, if it acted only upon a small number of individuals, may become important by its extent. All that the legislator can do in reference to offences of this kind is, to submit them to some slight punishment in cases of scandalous notoriety. This will be sufficient to give them a taint of illegality, which will excite the popular sanction against them.

It is in cases of this kind that legislators have governed too much. Instead of trusting to the prudence of individuals, they have treated them like children, or slaves. They have suffered themselves to be carried away by the same passion which has influenced the founders of religious orders, who, to signalize their authority, and through a littleness of spirit, have held their subjects in the most abject dependence, and have traced for them,

day by day, and moment by moment, their occupations, their food, their rising up, their lying down, and all the petty details of their life. There are celebrated codes, in which are found a multitude of clogs of this sort; there are useless restraints upon marriage; punishments decreed against celibacy; sumptuary laws regulating the fashion of dress, the expense of festivals, the furniture of houses, and the ornaments of women; there are numberless details about aliments permitted or forbidden; about ablutions of such or such a kind; about the purifications which health or cleanliness require; and a thousand similar puerilities, which add, to all the inconvenience of useless restraint, that of besotting the people, by covering these absurdities with a veil of mystery, to disguise their folly.

Yet more unhappy are the States in which it is attempted to maintain by penal laws a uniformity of religious opinions. The choice of their religion ought to be referred entirely to the prudence of individuals. If they are persuaded that their eternal happiness depends upon a certain form of worship or a certain belief, what can a legislator oppose to an interest so great? It is not necessary to insist upon this truth—it is generally acknowledged; but, in tracing the boundaries of legislation, I cannot forget those which it is the most important not to overstep.

As a general rule, the greatest possible latitude should be left to individuals, in all cases in which they can injure none but themselves, for they are the best judges of their own interests. If they deceive themselves, it is to be supposed that the moment they discover their error they will alter their conduct. The power of the law need interfere only to prevent them from injuring each other. It is there that restraint is necessary; it is there that the application of punishments is truly useful, because the rigour exercised upon an individual becomes in such a case the security of all.

II. It is true that there is a natural connection between prudence and probity; for our own interest, well understood, will never leave us without motives to abstain from injuring our fellows.

Let us stop a moment at this point. I say that, independently of religion and the laws, we always have some natural motives—that is, motives derived from our own interest for consulting the happiness of others. 1st. The motive of pure benevolence, a sweet and calm sentiment which we delight to experience, and which inspires us with a repugnance to be the cause of suffering. 2nd. The motives of private affection, which exercise their empire in domestic life, and within the particular circle of our intimacies. 3rd. The desire of good repute, and the fear of blame. This is a sort of calculation of trade. It is paying, to have credit; speaking truth, to obtain confidence; serving, to be served. It is thus we must understand that saying of a wit, *that, if there were no such thing as honesty, it would be a good speculation to invent it, as a means of making one's fortune.*

A man enlightened as to his own interest will not indulge himself in a secret offence through fear of contracting a shameful habit, which sooner or later will betray him; and because the having secrets to conceal from the prying curiosity of mankind leaves in the heart a sediment of disquiet, which corrupts every pleasure. All he can acquire at the expense of security cannot make up for the loss of that; and, if he desires a good reputation, the best guarantee he can have for it is his own esteem.

But, in order that an individual should perceive this connection between the interests of others and his own, he needs an enlightened spirit and a heart free from seductive passions. The greater part of men have neither sufficient light, sufficient strength of mind, nor sufficient moral sensibility to place their honesty above the aid of the laws. The legislator must supply the feebleness of this natural interest by adding to it an artificial interest, more steady and more easily perceived.

More yet. In many cases morality derives its existence from the law; that is, to decide whether the action is morally good or bad, it is necessary to know whether the laws permit or forbid it. It is so of what concerns property. A manner of selling or acquiring, esteemed dishonest in one country, would be irreproachable in another. It is the same with offences against the

state. The state exists only by law, and it is impossible to say what conduct in this behalf morality requires of us before knowing what the legislator has decreed. There are countries where it is an offence to enlist into the service of a foreign power, and others in which such a service is lawful and honourable.*

III. As to beneficence some distinctions are necessary. The law may be extended to general objects, such as the care of the poor; but, for details, it is necessary to depend upon private morality. Beneficence has its mysteries, and loves best to employ itself upon evils so unforeseen or so secret that the law cannot reach them. Besides, it is to individual free-will that benevolence owes its energy. If the same acts were commanded, they would no longer be benefits, they would lose their attraction and their essence. It is morality, and especially religion, which here form the necessary complement to legislation, and the sweetest tie of humanity.

However, instead of having done too much in this respect, legislators have not done enough. They ought to erect into an offence the refusal or the omission of a service of humanity when it would be easy to render it, and when some distinct ill clearly results from the refusal; such, for example, as abandoning a wounded man in a solitary road without seeking any assistance for him; not giving information to a man who is ignorantly meddling with poisons; not reaching out the hand to one who has fallen into a ditch from which he cannot extricate himself; in these, and other similar cases, could any fault be found with a punishment, exposing the delinquent to a certain degree of shame,

* Here we touch upon one of the most difficult of questions. If the law is not what it ought to be; if it openly combats the principle of utility; ought we to obey it? Ought we to violate it? Ought we to remain neuter between the law which commands an evil, and morality which forbids it? The solution of this question involves considerations both of prudence and benevolence. We ought to examine if it is more dangerous to violate the law than to obey it; we ought to consider whether the probable evils of obedience are less or greater than the probable evils of disobedience.

or subjecting him to a pecuniary responsibility for the evil which he might have prevented?

I will add, that legislation might be extended further than it is in relation to the interests of the inferior animals. I do not approve the laws of the Hindus on this subject. There are good reasons why animals should serve for the nourishment of man, and for destroying those which incommode us. We are the better for it, and they are not the worse; for they have not, as we have, long and cruel anticipations of the future; and the death which they receive at our hands may always be rendered less painful than that which awaits them in the inevitable course of nature. But what can be said to justify the useless torments they are made to suffer; the cruel caprices which are exercised upon them? Among the many reasons which might be given for making criminal such gratuitous cruelties, I confine myself to that which relates to my subject. It is a means of cultivating a general sentiment of benevolence, and of rendering men more mild; or at least of preventing that brutal depravity, which, after fleshing itself upon animals, presently demands human suffering to satiate its appetite.*

CHAPTER XIII.

False Methods of Reasoning on the Subject of Legislation.

It has been the object of this introduction to give a clear idea of the principle of utility, and of the method of reasoning conformable to that principle. There results from it a legislative logic, which can be summed up in a few words. What is it to offer a *good reason* with respect to a law? It is to allege the good or evil which the law tends to produce: so much good, so many arguments in its favour; so much evil, so many arguments against it; remembering all the time that good and evil are nothing else than pleasure and pain.

* See *Barrow's Voyage to the Cape of Good Hope*, for the cruelties of the Dutch settlers toward their cattle and their slaves.

What is it to offer a *false reason*? It is the alleging for or against a law something else than its good or evil effects.

Nothing can be more simple, yet nothing is more new. It is not the principle of utility which is new; on the contrary, that principle is necessarily as old as the human race. All the truth there is in morality, all the good there is in the laws, emanate from it; but utility has often been followed by instinct, while it has been combatted by argument. If in books of legislation it throws out some sparks here and there, they are quickly extinguished in the surrounding smoke. BECCARIA is the only writer who deserves to be noted as an exception; yet even in his work there is some reasoning drawn from false sources.

It is upwards of two thousand years since Aristotle undertook to form, under the title of *Sophisms*, a complete catalogue of the different kinds of false reasoning. This catalogue, improved by the information which so long an interval might furnish, would here have its place and its use. But such an undertaking would carry me too far. I shall be content with presenting some heads of error on the subject of legislation. By means of such a contrast, the principle of utility will be put into a clearer light.

1. *Antiquity is not a Reason.*

The antiquity of a law may create a prejudice in its favour; but in itself, it is not a reason. If the law in question has contributed to the public good, the older it is, the easier it will be to enumerate its good effects, and to prove its utility by a direct process.

2. *The Authority of Religion is not a Reason.*

Of late, this method of reasoning has gone much out of fashion, but till recently its use was very extensive. The work of Algernon Sidney is full of citations from the *Old Testament*; and he finds there the foundation of a system of Democracy, as Bossuet had found the principles of absolute power. Sidney wished to combat the partisans of divine right and passive obedience with their own weapons.

If we suppose that a law emanates from the Deity, we suppose that it emanates from supreme wisdom, and supreme bounty.

Such a law, then, can only have for its object the most eminent utility; and this utility, put into a clear light, will always be an ample justification of the law.

3. *Reproach of Innovation is not a Reason.*

To reject innovation is to reject progress: in what condition should we be, if that principle had been always followed? All which exists has had a beginning; all which is established has been innovation. Those very persons who approve a law to-day because it is ancient, would have opposed it as new when it was first introduced.

4. *An Arbitrary Definition is not a Reason.*

Nothing is more common, among jurists and political writers, than to base their reasonings, and even to write long works, upon a foundation of purely arbitrary definitions. This artifice consists in taking a word in a particular sense, foreign from its common usage; in employing that word as no one ever employed it before; and in puzzling the reader by an appearance of profoundness and of mystery.

Montesquieu himself has fallen into this fault in the very beginning of his work. Wishing to give a definition of law, he proceeds from metaphor to metaphor; he brings together the most discordant objects—the Divinity, the material world, superior intelligences, beasts and men. We learn, at last, that *laws are relations; and eternal relations*. Thus the definition is more obscure than the thing to be defined. The word *law*, in its proper sense, excites in every mind a tolerably clear idea, the word *relation* excites no idea at all. The word *law*, in its figurative sense, produces nothing but equivocations; and Montesquieu, who ought to have dissipated the darkness, has only increased it.

It is the character of a false definition, that it can only be employed in a particular way. That author, a little further on (ch. iii.), gives another definition. *Law in general*, he says, *is human reason, in so far as it governs all the people of the earth*. These terms are more familiar; but no clear idea results from

them. Is it the fact, that so many laws, contradictory, ferocious, or absurd, and in a perpetual state of change, are always *human reason*? It would seem that reason, so far from being the law, is often in opposition to it.

This first chapter of Montesquieu has given occasion to an abundance of nonsense. The brain has been racked in search of metaphysical mysteries, where none in fact exist. Even Beccaria has suffered himself to be carried away by this obscure notion of *relations*. To interrogate a man in order to know whether he is innocent or guilty, is to force him, he tells us, to accuse himself. To this procedure he objects; and why? because, as he says, it is *to confound all relations*.* But what does that mean? To enjoy, to suffer, to cause enjoyment, to cause suffering: those are expressions which I understand; but to follow relations and to confound relations, is what I do not understand at all. These abstract terms do not excite any idea in my mind; they do not awaken any sentiment. I am absolutely indifferent about *relations*;—*pleasures* and *pains* are what interest me.

Rousseau has not been satisfied with the definition of Montesquieu. He has given his own, which he announces as a great discovery. *Law*, he says, *is the expression of the general will*. There are, then, no laws except where the people have spoken in a body. There is no law except in an absolute democracy. Rousseau has suppressed, by this supreme decree, all existing laws; and at the same time he has deprived of the possibility of existence all those which are likely to be made hereafter,—the legislation of the republic of San Marino alone excepted.

5. *Metaphors are not Reasons.*

I mean either metaphor properly so called, or allegory, used at first for illustration or ornament, but afterwards made the basis of an argument.

Blackstone, so great an enemy of all reform, that he has gone so far as to find fault with the introduction of the English language into the reports of cases decided by the courts, has neglected

* Beccaria, ch. xii.

no means of inspiring his readers with the same prejudice. He represents the law* as a castle, as a fortress, which cannot be altered without being weakened. I allow that he does not advance this metaphor as an argument; but why does he employ it? To gain possession of the imagination; to prejudice his readers against every idea of reform; to excite in them an artificial fear of all innovation in the laws. There remains in the mind a false image, which produces the same effect with false reasoning. He ought to have recollected that this allegory might be employed against himself. When they see the law turned into a castle, is it not natural for ruined suitors to represent it as a castle inhabited by robbers?

A man's house, say the English, is his castle. This poetical expression is certainly no reason; for if a man's house be his castle by night, why not by day? If it is an inviolable asylum for the owner, why is it not so for every person whom he chooses to receive there? The course of justice is sometimes interrupted in England by this puerile notion of liberty. Criminals seem to be looked upon like foxes; they are suffered to have their burrows, in order to increase the sports of the chase.

A church in Catholic countries is the *House of God*. This metaphor has served to establish asylums for criminals. It would be a mark of disrespect for the Divinity to seize by force those who had taken refuge in his house.

The balance of trade has produced a multitude of reasonings founded upon metaphor. It has been imagined that in the course of mutual commerce nations rose and sank like the scales of a balance loaded with unequal weights; people have been terribly alarmed at what appeared to them a want of equilibrium; for it has been supposed that what one nation gained the other must lose, as if a weight had been transferred from one scale to the other.

The word *mother-country* has produced a great number of prejudices and false reasonings in all questions concerning colonies

* 3 Comm. ch. xvii.

and the parent state. Duties have been imposed upon colonies, and they have been accused of offences, founded solely upon the metaphor of their filial dependence.

6. *A Fiction is not a Reason.*

I understand by fiction an assumed fact notoriously false, upon which one reasons as if it were true.

The celebrated Cocceji, the compiler of the *Code Frederic*, furnishes an example of this kind of reasoning on the subject of last wills. After a deal of circumlocution about the natural right, he decides that the legislator ought to grant to individuals the power of making a will. Why? *Because the heir and the deceased are one and the same person, and consequently the heir ought to continue to enjoy the property of the deceased.* (*Code Fred.* part ii. l. 110, p. 156.) He offers, it is true, some arguments which involve, to a small extent, the principle of utility; but that is in the preface. The serious reason, the judicial reason, is the identity of the living and the dead!

The English lawyers, to justify the confiscation of property in certain cases, have employed a style of reasoning not unlike that of the chancellor of the great Frederic. They have imagined a *corruption of blood* which arrests the course of legal succession. A man has been capitally punished for the crime of high treason; his innocent son is not only deprived of his father's goods, but he cannot even inherit from his grandfather, because the channel by which the goods ought to pass has been corrupted. This fiction of a sort of political original sin serves as a foundation to all this point of law. But why stop there? If in fact the father's blood is corrupted, why not destroy the vile offspring of corruption? Why not execute the son at the same time with the father?

Blackstone, in the seventh chapter of his first book, in speaking of the royal authority, has given himself up to all the puerility of fiction. The king, he tells us, is everywhere present; he can do no wrong; he is immortal.

These ridiculous paradoxes, the fruits of servility, so far from

furnishing just ideas of the prerogatives of royalty, only serve to dazzle, to mislead, and to give to reality itself an air of fable and of prodigy. But these fictions are not mere sparkles of imagination. He makes them the foundation of many reasonings. He employs them to explain certain royal prerogatives, which might be justified by very good arguments, without perceiving how much the best cause is injured by attempting to prop it up by falsehoods. *The judges*, he tells us, *are mirrors, in which the image of the king is reflected.* What puerility! Is it not exposing to ridicule the very objects which he designs to render the most respectable?

But there are fictions more bold and more important, which have played a great part in politics, and which have produced celebrated works: these are *contracts*.

The *Leviathan* of Hobbes, a work now-a-days but little known, and detested through prejudice and at second-hand as a defence of despotism, is an attempt to base all political society upon a pretended contract between the people and the sovereign. The people by this contract have renounced their natural liberty, which produced nothing but evil; and have deposited all power in the hands of the prince. All opposing wills have been united in his, or rather annihilated by it. That which he *wills* is taken to be the will of all his subjects. When David brought about the destruction of Uriah, he acted in that matter with Uriah's consent, for Uriah had consented to all that David might command. The prince, according to this system, might sin against God, but he could not sin against man, because all his actions proceeded from the general consent. It was impossible to entertain the idea of resisting him, because such an idea implied the contradiction of resisting one's self.

Locke, whose name is as dear to the friends of liberty as that of Hobbes is odious, has also fixed the basis of government upon a contract. He agrees that there is a contract between the prince and the people; but according to him the prince takes an engagement to govern according to the laws, and for the public good; while the people, on their side, take an engagement of obedience

so long as the prince remains faithful to the conditions in virtue of which he receives the crown.

Rousseau rejects with indignation the idea of this bilateral contract between the prince and the people. He has imagined a *social contract*, by which all are bound to all, and which is the only legitimate basis of government. Society exists only by virtue of this free convention of associates.

These three systems—so directly opposed—agree, however, in beginning the theory of politics with a fiction, for these three contracts are equally fictitious. They exist only in the imagination of their authors. Not only we find no trace of them in history, but everywhere we discover proofs to the contrary.

The contract of Hobbes is a manifest falsehood. Despotism has everywhere been the result of violence and of false religious ideas. If a people can be found which by a public act has surrendered up the supreme authority to its chief, it is not true that, in so doing, that people submitted itself to all the caprices, however strange or cruel, of its sovereign. The singular act of the Danish people in 1660 includes essential clauses which limit the supreme power.

The *social contract* of Rousseau has not been judged so severely, because men are not difficult about the logic of a system which establishes that which they best love—liberty and equality. But where has this universal convention been formed? What are its clauses? In what language is it written? Why has it always been unknown? Upon coming out of the forests, upon renouncing savage life, what tribe has possessed those great ideas of morals and politics upon which this primitive convention is built?

The contract of Locke is more specious, because, in fact, there are some monarchies in which the sovereign takes certain engagements upon his accession to the throne; and accepts certain conditions upon the part of the nation he is to govern.

However, even this contract is but a fiction. The essence of a contract consists in the free consent of the parties interested. It supposes that all the objects of the engagement are specified and known. Now if the prince is free, at his accession, to accept

or to refuse, are the people equally so? Can a few vague acclamations be counted as an act of individual and universal assent? Can this contract bind that multitude of individuals who never heard of it, who have never been called to sanction it, and who could not have refused their consent without endangering their fortunes and their lives?

Besides, in the greater part of monarchies, this pretended contract has not even the appearance of reality. We do not see even the shadow of an engagement between the prince and the people.

It is not necessary to make the happiness of the human race dependent on a fiction. It is not necessary to erect the social pyramid upon a foundation of sand, or upon a clay which slips from beneath it. Let us leave such trifling to children; men ought to speak the language of truth and reason.

The true political tie is the immense interest which men have in maintaining a government. Without a government there can be no security, no domestic enjoyments, no property, no industry. It is in this fact that we ought to seek the basis and the reason of all governments, whatever may be their origin and their form; it is by comparing them with their object that we can reason with solidity upon their rights and their obligations, without having recourse to pretended contracts which can only serve to produce interminable disputes.

7. *Fancy is not a Reason.*

Nothing is more common than to say, *reason decides, eternal reason orders, &c.* But what is this reason? If it is not a distinct view of good or evil, it is mere fancy; it is a despotism, which announces nothing but the interior persuasion of him who speaks. Let us see upon what foundation a distinguished jurist has sought to establish the paternal authority. A man of ordinary good sense would not see much difficulty in that question; but your learned men find a mystery everywhere.

“The right of a father over his children,” says Cocceji, “is founded in reason;—for, 1st, Children are born in a house, of

which the father is the master; 2nd, They are born in a family of which he is the chief; 3rd, They are of his seed, and a part of his body." These are the reasons from which he concludes, among other things, that a man of forty ought not to marry without the consent of a father, who in the course of nature must by that time be in his dotage. What there is common to these three reasons is, that none of them has any relation to the interests of the parties. The author consults neither the welfare of father nor that of the children.

The right of a father is an improper phrase. The question is not of an unlimited, nor of an indivisible right. There are many kinds of rights which may be granted or refused to a father, each for particular reasons.

The first reason which Cocceji alleges is founded upon a fact which is true only by accident. Let a traveller have children who are born at a tavern, on board a vessel, or in the house of a friend, such a father would lack this first basis of paternal authority. According to this reasoning, the children of a domestic, and those of a soldier, ought not to be subject to their fathers' commands, but to those of the person in whose house they are born.

If the second reason has any determinate sense, it is only a repetition of the first. Is the child of a man who lives in his father's house, or in the house of an elder brother, or a patron, born in a family of which his father is the chief?

The third reason is as futile as it is indecent. "The child is born of the seed of his father, and is a part of his body." If this is the foundation of the right, it ought to put the power of the mother far above that of the father.

And here we may remark an essential difference between false principles and the true one. The principle of utility, applying itself only to the interests of the parties, bends to circumstances, and accommodates itself to every case. False principles, being founded upon things which have nothing to do with individual interests, would be inflexible if they were consistent. Such is the character of this pretended right founded upon birth. The

son naturally belongs to the father, because the matter of which the son is formed once circulated in the father's veins. No matter how unhappy he renders his son;—it is impossible to annihilate his right, because we cannot make his son cease to be his son. The corn of which your body is made formerly grew in my field; how is it that you are not my slave?

8. *Antipathy and Sympathy are not Reasons.*

Reasoning by antipathy is most common upon subjects connected with penal law; for we have antipathies against actions reputed to be crimes; antipathies against individuals reputed to be criminals; antipathies against the ministers of justice; antipathies against such and such punishments. This false principle has reigned like a tyrant throughout this vast province of law. Beccaria first dared openly to attack it. His arms were of celestial temper; but if he did much towards destroying the usurper, he did very little towards the establishment of a new and more equitable rule.

It is the principle of antipathy which leads us to speak of offences as *deserving* punishment. It is the corresponding principle of sympathy which leads us to speak of certain actions as *meriting* reward. This word *merit* can only lead to passion and to error. It is *effects*, good or bad, which we ought alone to consider.

But when I say that *antipathies and sympathies are no reason*, I mean those of the legislator; for the antipathies and sympathies of the people may be reasons, and very powerful ones. However odd or pernicious a religion, a law, a custom may be, it is of no consequence, so long as the people are attached to it. The strength of their prejudice is the measure of the indulgence which should be granted to it. To take away an enjoyment or a hope, chimerical though it may be, is to do the same injury as if we took away a real hope, a real enjoyment. In such a case the pain of a single individual becomes, by sympathy, the pain of all. Thence results a crowd of evils; antipathy against a law which wounds the general prejudice; antipathy against the whole code of that law is a part; antipathy against the

government which carries the laws into execution; a disposition not to aid in their execution; a disposition secretly to oppose it; a disposition to oppose it openly and by force; a disposition to destroy a government which sets itself in opposition to the popular will—all the evils produced by those offences, which, in a collective shape, form that sad compound called *rebellion* or *civil war*—all the evils produced by the punishments which are resorted to as a means of putting a stop to those offences. Such is the succession of fatal consequences which are always ready to arise from fancies and prejudices violently opposed. The legislator ought to yield to the violence of a current which carries away everything that obstructs it. But let us observe, that in such a case, the fancies themselves are not the reason that determines the legislator; his reason is the evils which threaten to grow out of an opposition to those fancies.

But ought the legislator to be a slave to the fancies of those whom he governs? No. Between an imprudent opposition and a servile compliance there is a middle path, honourable and safe. It is to combat these fancies with the only arms that can conquer them—example and instruction. He must enlighten the people, he must address himself to the public reason; he must give time for error to be unmasked. Sound reasons, clearly set forth, are of necessity stronger than false ones. But the legislator ought not to show himself too openly in these instructions, for fear of compromising himself with the public ignorance. Indirect means will better answer his end.

It is to be observed, however, that too much deference for prejudices is a more common fault than the contrary excess. The best projects of laws are for ever stumbling against this common objection,—“Prejudice is opposed to it; the people will be offended!” But how is that known? How has public opinion been consulted? What is its organ? Have the whole people but one uniform notion on the subject? Have all the individuals of the community the same sentiments, including perhaps nine out of ten, who never heard the subject spoken of? Besides, if the people are in error, are they compelled always to

remain so? Will not an influx of light dissipate the darkness which produces error? Can we expect the people to possess sound knowledge, while it is yet unattained by their legislators, by those who are regarded as the wise men of the land? Have there not been examples of other nations who have come out of a similar ignorance, and where triumphs have been achieved over the same obstacles?

After all, popular prejudice serves oftener as a pretext than as a motive. It is a convenient cover for the weakness of statesmen. The ignorance of the people is the favourite argument of pusillanimity and of indolence; while the real motives are prejudices from which the legislators themselves have not been able to get free. The name of the people is falsely used to justify their leaders.

9. *Begging the Question is not a Reason.*

The *petitio principii*, or begging the question, is one of the sophisms which is noted by Aristotle; but it is a Proteus which conceals itself artfully, and is reproduced under a thousand forms.

Begging the question, or rather assuming the question, consists in making use of the very proposition in dispute, as though it were already proved.

This false procedure insinuates itself into morals and legislation, under the disguise of *sentimental* or *impassioned* terms; that is, terms which, beside their principal sense, carry with them an accessory idea of praise or blame. *Neuter* terms are those which simply express the thing in question, without any attending presumption of good or evil; without introducing any foreign idea of blame or approbation.

Now it is to be observed that an impassioned term envelops a proposition not expressed, but understood, which always accompanies its employment, though in general unperceived by those who employ it. This concealed proposition implies either blame or praise; but the implication is always vague and undetermined.

Do I desire to connect an idea of utility with a term which

commonly conveys an accessory idea of blame? I shall seem to advance a paradox, and to contradict myself. For example, should I say that such a piece of *luxury* is a good thing? The proposition astonishes those who are accustomed to attach to this word *luxury* a sentiment of disapprobation.

How shall I be able to examine this particular point without awakening a dangerous association? I must have recourse to a neuter word; I must say, for example, *such a manner of spending one's revenue* is good. This turn of expression runs counter to no prejudice, and permits an impartial examination of the object in question. When Helvetius advanced the idea that all actions have *interest* for their motive, the public cried out against his doctrine without stopping to understand it. Why? Because the word *interest* has an odious sense; a common acceptation, in which it seems to exclude every motive of pure attachment and of benevolence.

How many reasonings upon political subjects are founded upon nothing but impassioned terms! People suppose they are giving a reason for a law, when they say that it is conformable to the principles of monarchy or of democracy. But that means nothing. If there are persons in whose minds these words are associated with an idea of approbation, there are others who attach contrary ideas to them. Let these two parties begin to quarrel, the dispute will never come to an end, except through the weariness of the combatants. For, before beginning a true examination, we must renounce these impassioned terms, and calculate the effects of the proposed law in good and evil.

Blackstone admires in the British constitution the combination of the three forms of government; and he hence concludes that it must possess the collected good qualities of monarchy, aristocracy, and democracy. How happened it that he did not perceive, that without changing his premises, a conclusion might be drawn from them, diametrically opposite, yet equally just; to wit, that the British constitution must unite all the particular *faults* of democracy, aristocracy, and monarchy?

To the word *independence*, there are attached certain accessory

ideas of dignity and virtue; to the word *dependence*, accessory ideas of inferiority and corruption. Hence it is that the panegyrists of the British constitution admire the *independence* of the three powers of which the legislature is composed. This, in their eyes, is the masterpiece of politics; the happiest trait in that whole scheme of government. On the other side, those who would detract from the merits of that constitution, are always insisting upon the actual *dependence* of one or the other of its branches. Neither the praise nor the censure contain any reasons.

As to the fact, the pretended independence does not exist. The king and the greater part of the lords have a direct influence upon the election of the House of Commons. The king has the power of dissolving that House at any moment; a power of no little efficacy. The king exercises a direct influence by honourable and lucrative employments, which he gives or takes away at pleasure. On the other side, the king is dependent upon the two Houses, and particularly upon the Commons, since he cannot maintain himself without money and troops,—two principal and essential matters which are wholly under the control of the representatives of the people. What pretence has the House of Lords to be called independent, while the king can augment its number at pleasure, and change the vote in his favour by the creation of new lords; exercising too, as he does, an additional influence on the temporal peers, by the prospect of advancement in the ranks of the peerage; and on the bishops, by the bait of ecclesiastical promotion?

Instead of reasoning upon a deceptive word, let us consider effects. It is the reciprocal dependence of these three powers which produces their agreement; which subjects them to fixed rules, which gives them a steady and systematic operation. Hence the necessity of mutual respect, attention, concession, and moderation. If they were absolutely independent, there would be continual shocks between them. It would often be necessary to appeal to force; and the result would be a state of anarchy.

I cannot refrain from giving two other examples of this error of reasoning, founded upon the misuse of terms.

If we attempt a theory upon the subject of *national representation*, in following out all that appears to be a natural consequence of that abstract idea, we come at last to the conclusion that *universal suffrage* ought to be established; and to the additional conclusion that the representatives ought to be re-chosen as frequently as possible, in order that the national representation may deserve to be esteemed such.

In deciding these same questions according to the principle of utility, it will not do to reason upon words; we must look only at effects. In the election of a legislative assembly, the right of suffrage should not be allowed except to those who are esteemed by the nation fit to exercise it; for a choice made by men who do not possess the national confidence will weaken the confidence of the nation in the assembly so chosen.

Men who would not be thought fit to be electors, are those who cannot be presumed to possess political integrity, and a sufficient degree of knowledge. Now we cannot presume upon the political integrity of those whom want exposes to the temptation of selling themselves; nor of those who have no fixed abode; nor of those who have been found guilty in the courts of justice of certain offences forbidden by the law. We cannot presume a sufficient degree of knowledge in women, whom their domestic condition withdraws from the conduct of public affairs; in children and adults beneath a certain age; in those who are deprived by their poverty of the first elements of education, &c. &c.

It is according to these principles, and others like them, that we ought to fix the conditions necessary for becoming an elector; and it is in like manner, upon the advantages and disadvantages of frequent elections, without paying any attention to arguments drawn from abstract terms, that we ought to reason in establishing the duration of a legislative assembly.

The last example I shall give will be taken from *contracts*; I mean those political fictions to which this name has been applied by their authors.

When Locke and Rousseau reason upon this pretended contract;

when they affirm that the social or political contract includes such and such a clause, can they prove it otherwise than by the general utility which is supposed to result from it? Grant that this contract which has never been reduced to writing is, however, in full existence. On what depends all its force? Is it not upon its utility? Why ought we to fulfil our engagements? Because the faith of promises is the basis of society. It is for the advantage of all that the promises of every individual should be faithfully observed. There would no longer be any security among men, no commerce, no confidence;—it would be necessary to go back to the woods, if engagements did not possess an obligatory force. It is the same with these political contracts. It is their utility which makes them binding. When they become injurious, they lose their force. If a king had taken an oath to render his subjects unhappy, would such an engagement be valid? If the people were sworn to obey him at all events, would they be bound to suffer themselves to be exterminated by a Nero or a Caligula, rather than violate their promise? If there resulted from the contract effects universally injurious, could there be any sufficient reason for maintaining it? It cannot be denied, then, that the validity of a contract is at bottom only a question of utility—a little wrapped up, a little disguised, and, in consequence, more susceptible of false interpretations.

10. *An imaginary Law is not a Reason.*

Natural law, natural rights, are two kinds of fictions or metaphors, which play so great a part in books of legislation that they deserve to be examined by themselves.

The primitive sense of the word *law*, and the ordinary meaning of the word, is—the will or command of a legislator. The *law of nature* is a figurative expression, in which nature is represented as a being; and such and such a disposition is attributed to her, which is figuratively called a law. In this sense, all the general inclinations of men, all those which appear to exist independently of human societies, and from which must proceed the

establishment of political and civil law, are called *laws of nature*. This is the true sense of the phrase.

But this is not the way in which it is understood. Authors have taken it in a direct sense; as if there had been a real code of natural laws. They appeal to these laws; they cite them, and they oppose them, clause by clause, to the enactments of legislators. They do not see that these natural laws are laws of their own invention; that they are all at odds among themselves as to the contents of this pretended code; that they affirm without proof; that systems are as numerous as authors; and that, in reasoning in this manner, it is necessary to be always beginning anew, because every one can advance what he pleases touching laws which are only imaginary, and so keep on disputing for ever.

What is natural to man is sentiments of pleasure or pain, what are called inclinations. But to call these sentiments and these inclinations *laws*, is to introduce a false and dangerous idea. It is to set language in opposition to itself; for it is necessary to make *laws* precisely for the purpose of restraining these inclinations. Instead of regarding them as laws, they must be submitted to laws. It is against the strongest natural inclinations that it is necessary to have laws the most repressive. If there were a law of nature which directed all men towards their common good, laws would be useless; it would be employing a creeper to uphold an oak; it would be kindling a torch to add light to the sun.

Blackstone, in speaking of the obligation of parents to provide for the support of their children, says, "that it is a principle of natural law, a duty imposed by nature itself, and by the proper act of the parents in bringing the children into the world. Montesquieu," he adds, "observes with reason, that the natural obligation of the father to support his children, is what has caused the establishment of marriage, which points out the person who ought to fulfil this obligation." (Book i. ch. 16.)

Parents are *inclined* to support their children; parents *ought* to support their children; these are two distinct propositions.

The first does not suppose the second; the second does not suppose the first. There are, without doubt, the strongest reasons for imposing upon parents the obligation to bring up their children. Why have not Blackstone and Montesquieu mentioned those reasons? Why do they refer us to what they call the law of nature? What is this law of nature, which needs to be propped up by a secondary law from another legislator? If this natural obligation exists, as Montesquieu says it does, far from serving as the foundation of marriage, it proves its inutility,—at least for the end which he assigns. One of the objects of marriage is, precisely to supply the insufficiency of natural affection. It is designed to convert into obligation that inclination of parents, which would not always be sufficiently strong to surmount the pains and embarrassments of education.

Men are very well disposed to provide for their own support. It has not been necessary to make laws to oblige them to that. If the disposition of parents to provide for the support of their children had been constantly and universally as strong, legislators never would have thought of turning it into an obligation.

The exposure of infants, so common in ancient Greece, is still practised in China, and to a greater extent. To abolish this practice, would it not be necessary to allege other reasons besides this pretended law of nature, which here is evidently at fault?

The word *rights*, the same as the word *law*, has two senses; the one a proper sense, the other a metaphorical sense. *Rights*, properly so called, are the creatures of *law* properly so called; real laws give birth to real rights. *Natural rights* are the creatures of natural law; they are a metaphor which derives its origin from another metaphor.

What there is natural in man is means,—faculties. But to call these means, these faculties, *natural rights*, is again to put language in opposition to itself. For *rights* are established to insure the exercise of means and faculties. The right is the *guarantee*; the faculty is the thing guaranteed. How can we understand each other with a language which confounds under the same term things so different? Where would be the nomen-

clature of the arts, if we gave to the *mechanic* who makes an article the same name as to the article itself?

Real rights are always spoken of in a legal sense; natural rights are often spoken of in a sense that may be called anti-legal. When it is said, for example, that *law cannot avail against natural rights*, the word rights is employed in a sense above the law; for, in this use of it, we acknowledge rights which attack the law; which overturn it, which annul it. In this anti-legal sense, the word *right* is the greatest enemy of reason, and the most terrible destroyer of governments.

There is no reasoning with fanatics, armed with *natural rights*; which each one understands as he pleases, and applies as he sees fit; of which nothing can be yielded, nor retrenched; which are inflexible, at the same time that they are unintelligible; which are consecrated as dogmas, from which it is a crime to vary. Instead of examining laws by their effects, instead of judging them as good or as bad, they consider them in relation to these pretended natural rights; that is to say, they substitute for the reasoning of experience the chimeras of their own imaginations.

This is not a harmless error; it passes from speculation into practice. "Those laws must be obeyed, which are accordant with nature; the others are null in fact; and instead of obeying them, they ought to be resisted. The moment natural rights are attacked, every good citizen ought to rouse up in their defence. These rights, evident in themselves, do not need to be proved; it is sufficient to declare them. How prove what is evident already? To doubt implies a want of sense, or a fault of intellect," &c.

But not to be accused of gratuitously ascribing such seditious maxims to these inspired politicians of nature, I shall cite a passage from Blackstone, directly to the point; and I choose Blackstone, because he is, of all writers, the one who has shown the most profound respect for the authority of governments. In speaking of these pretended laws of nature, and of the laws of revelation, he says: "Human laws must not be permitted to contradict these; if a human law commands a thing forbidden by

the natural or divine law, we are bound to transgress that human law," &c. (1 Comm. p. 43.)

Is not this arming every fanatic against all governments? In the immense variety of ideas respecting natural and Divine law, cannot some reason be found for resisting all human laws? Is there a single state which can maintain itself a day, if each individual holds himself bound in conscience to resist the laws, whenever they are not conformed to his particular ideas of natural or Divine law? What a cut-throat scene of it we should have between all the interpreters of the code of nature, and all the interpreters of the law of God!

"The pursuit of happiness is a natural right." The pursuit of happiness is certainly a natural inclination; but can it be declared to be a right? That depends on the way in which it is pursued. The assassin pursues his happiness, or what he esteems such, by committing an assassination. Has he a right to do so? If not, why declare that he has? What tendency is there in such a declaration to render men more happy or more wise?

Turgot was a great man; but he had adopted the general opinion without examining it. Inalienable and natural rights were the despotism or the dogmatism which he wished to exercise, without himself perceiving it. If he saw no reason to doubt a proposition; if he judged it evidently true; he referred it, without going further, to natural right, to eternal justice. Henceforward he made use of it as an article of faith, which he was no longer permitted to examine.

Utility having been often badly applied, understood in a narrow sense, and having lent its name to crimes, has appeared contrary to eternal justice. It thus became degraded, and acquired a mercenary reputation. It needs courage to restore it to honour, and to re-establish reasoning upon its true basis.

I propose a treaty of conciliation with the partisans of natural rights. If *nature* has made such or such a law, those who cite it with so much confidence, those who have modestly taken upon themselves to be its interpreters, must suppose that nature had some reasons for her law. Would it not be surer, shorter and

more persuasive, to give us those reasons directly, instead of urging upon us the will of this unknown legislator, as itself an authority?

Here would be the place to remark the false methods of argument, which especially prevail in deliberative assemblies—personalities, imputations of bad motives, declamations, delays. But what has been said above is enough to show what is reasoning, according to the principle of utility, and what is not.

All these false methods of reasoning can always be reduced to one or the other of the two false principles. This fundamental distinction is very useful in getting rid of words, and rendering ideas more clear. To refer such or such an argument to one or another of the false principles, is like tying weeds into bundles, to be thrown into the fire.

I conclude with a general observation. The language of error is always obscure and indefinite. An abundance of words serves to cover a paucity and a falsity of ideas. The oftener terms are changed, the easier it is to delude the reader. The language of truth is uniform and simple. The same ideas are always expressed by the same terms. Everything is referred to pleasures or to pains. Every expression is avoided which tends to disguise or intercept the familiar idea, that *from such and such actions result such and such pleasures and pains*. Trust not to me, but to experience, and especially your own. *Of two opposite methods of action, do you desire to know which should have the preference? Calculate their effects in good and evil, and prefer that which promises the greater sum of good.*