THE

LECTURES,

CORRECTED AND IMPROVED,

WHICH

HAVE BEEN DELIVERED FOR A SERIES OF YEARS,

IN THE

COLLEGE OF NEW-JERSEY;

ON THE SUBJECTS OF

MORAL AND POLITICAL PHILOSOPHY.

THE FORMER PART EMBRACING,

I. The general principles of human nature considered as a subject of moral science.

II. The principles of ethics, or the moral relations and duties of men.

III. The principles of natural theology.

IV. And lastly, those of economics, or family relations, as preparatory to the consideration of the relations and duties of civil and political life.

THE LATTER PART EMBRACING,

I. The rules which ought to regulate the conduct of men towards one another in a state of civil society, and the means of enforcing those rules.

II. The rules and principles which give the form to the society or government itself, and which direct its operations.

III. And finally, the rules which should govern the conduct of independent governments or states to one another—the whole comprehending those general principles on the subjects of jurisprudence, politics, and public law, or the law of nature and nations, with which every man of liberal information in a free country ought to be acquainted.

BY THE REV. SAMUEL STANHOPE SMITH, D. D. L. L. D.

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DISTRICT OF NEW-JERSEY, ss.

BE IT REMEMBERED, That on the twenty-ninth day of August, in the thirty-seventh year of the independence of the United States of America, Samuel Stanhope Smith, of the said district, hath deposited in this office the title of a book, the right whereof he claims as author, in the words following, to wit: "The Lectures, corrected and improved, which have been delivered for a series of years in the college of New-Jersey, on the subjects of moral and political philosophy, by the Rev. Samuel Stanhope Smith, D. D. L. L. D. The former part embracing, 1st, The general principles of human nature considered as a subject of moral science. 2d, The principles of ethics, or the moral relations and duties of men. 3d, The principles of natural theology. 4th, And lastly, Those of economics, or family relations, as preparatory to the consideration of the relations and duties of civil and political life. The latter part embracing, 1st, The rules which ought to regulate the conduct of men towards one another in a state of civil society, and the means of enforcing those rules. 2d, The rules and principles which give the form to the society or government itself, and which direct its operations. 3d, And finally, The rules which should govern the conduct of independent governments or states to one another—the whole comprehending those general principles on the subjects of jurisprudence, politics, and public law, or the law of nature and nations, with which every man of liberal information in a free country ought to be acquainted"——*In conformity to the act of the congress of the United States* entitled "An act for the encouragement of learning, by securing the copies of maps, charts, and books, to the authors and proprietors of such copies, during the times therein mentioned," and also an act entitled "An act supplementary to an act entitled an act for the encouragement of learning, by securing the copies of maps, charts, and books, to the authors and proprietors of such copies, during the time therein mentioned, and extending the benefit thereof to the arts of designing, engraving and etching historical and other prints."

ROBERT BOGGS,
Clerk of the District of N. Jersey.

LECTURES,
&c.

LECTURE XV.

OF NATURAL THEOLOGY.

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Of Natural Theology, wherein it consists, and its connexion with the science of morals—The proofs of the divine existence divided into two kinds, the scientific, and popular—Mr Hume's idea of cause—Sketch of Dr S. Clarke's demonstration of the being and attributes of God—The popular mode of reasoning from the works of nature to the existence, wisdom and power of its Author.—An exhortation to study natural history particularly with this view.—Proof of the same truth from the general sentiments of mankind.—Proof, from the absurdity of the reasons invented to account for the origin of things independent of God.—Chance and disorder ignorantly ascribed to the works of nature.—The attributes of the Deity—First, of the natural attributes, spirituality, unity, wisdom, power, eternity, omnipresence—Second, of his moral attributes, holiness, good-

ness, justice.—Some objections to the divine goodness on the score of the evils which exist in the world considered.—Of the evils which attend our entrance into the world, and departure from it.—Of the justice of God, distributive, and vindictive.

NATURAL Theology, which consists in the knowledge of those truths which may be discovered by the exercise of human reason alone, concerning the being and attributes of God, is intimately connected with the science of duty and morals. Among the strongest perceptions of our nature are those which indicate to us a moral law to which we are subject, and render us susceptible of moral obligation. From that sense of morality, which has been already explained, results a profound conviction of the existence of this law, and of a Supreme Lawgiver who imposes obedience to it by the authority of our own internal sentiments, and by the reference which they bear to his righteous judgment which they teach us to apprehend. As reason brings from every survey of the works of nature, irresistible demonstration of the existence of a Deity, infinitely wise, powerful, and benevolent; conscience draws from our own internal feelings, the deep persuasion of his being a most holy and righteous judge of moral conduct. The conviction of these truths must ever possess a useful influence on the morals of mankind. The informations of reason, or the restraints of con-

science, unsupported by this principle, would impose too feeble a check on the force of irregular propensities, or the impulse of unlawful passions. A vicious man, accountable only to himself, would soon learn to overbear the remonstrances of his own mind. For although an atheist, educated in the midst of a religious people, may be preserved within the bounds of a decent morality, by respect for himself, or a prudent deference to the opinion of the world; yet if the belief of the existence of God were eradicated from the public mind, the mass of the people would esteem secrecy alone to be a sufficient justification of any action dictated by inclination. That useful influence which public opinion now creates in favor of virtuous manners, would on the prevalence of a general atheism cease to exist, and the bands of society, which are effectually maintained only by the public morals, would hasten to be dissolved.

Natural theology, therefore, brings to view the most powerful sanction of the moral law. It renders the law itself more clear by discovering the source from which it emanates:—inasmuch as the human mind, when sensibly placing itself in the divine presence, becomes more susceptible of the impressions of truth,—more ready to admit its evidence, and more apprehensive of being misled by the sophistries of error.—The theory of duty, therefore, is naturally conjoined with that science which

is employed in demonstrating the existence, and unfolding the perfections of the divine and infinite mind.

The proofs of the being of God have usually been derived from two sources—the necessary nature of our ideas—and the structure of the universe. The one has been denominated the scientific, the other the popular mode of proof;—or, in the language of the schools, reasoning *a priori*, and *a posteriori*. The former is reasoning from the cause to the effect, the latter, from the effect to the cause. Both these modes of proof rest on one common principle, or necessary idea,—that every effect, or every thing which begins to be must have a cause of its existence. It was one of Mr Hume's metaphisical peculiarities, to deny the idea of causality; maintaining, that, in contemplating the production of any effect, we have no other notion than of one event succeeding another. This position, which was intended to destroy our belief in creation, will find its refutation in each man's own clear and natural perceptions. Can any person declare that his ideas of succession, and of cause are precisely the same? It may be difficult, or impossible to give an accurate definition of the difference, because they are both ideas of the simplest kind, but may be perceived by the plainest understanding to be perfectly distinct.* Admitting, then,

* The idea of cause has, not improbably, been derived originally from some active operation of our own will upon some

the reality of the idea of cause, and the truth of the principle, that whatever begins to be must have a cause, the necessary consequence is, either, that the universe consists of an eternal succession of causes dependent one upon another, or we must look for its existence in some first cause, eternal, unproduced, the source of all motion and power in the operations of nature, the cause of whose being is to be found only in itself, and the necessity of its own nature. The idea of an eternal succession of events, each frail and imperfect, and all dependent one upon another, involves too evident an absurdity to be admitted by philosophy.

We are obliged, therefore, to adopt the only alternative that remains,—the existence of a first cause, original, and independent, from which all things else have been derived. If we ask whence then exists this first cause? Being original and underived, we can find no reason for its existence but in the necessity of its own nature. A being existing by necessity of nature, can never begin to be; it must be eternal. For the same reason, it must be unchangeable; for if any change could

part of our muscular system, producing an exertion of force or strength which is immediately followed by an effect evidently occasioned by that act. I by no means, however, give this as an adequate definition or account of the idea of cause, but only suggest it as a probable occasion of originally exciting the idea in our minds.

take place, there must be something in it which was not necessary. Infinity must be equally predicable of the same being; for how should it be limited when nothing previous existed to bound it? or how should necessary existence be confined to a circumscribed space? The unity of the divine nature is no less a certain consequence of this principle. Two equally necessary and infinite beings could serve no useful purpose that could not be fulfilled by one.—There being no reason, therefore, for the existence of a second, the idea, on all the rules of reasoning in sound philosophy, ought to be rejected. Besides, two beings equally infinite, must occupy the same space,*—being equally the cause of all things which exist, they must possess the same perfection; they must be, to every purpose of existence, the same being. This first and sole cause of all things in the universe must also be almighty; for whatever can exist, can exist only by him. And, finally, he must be all-wise, as knowing the natures and powers of all things possible, for nothing is possible but by him, and every thing is possible that he wills.

This is a very brief and partial sketch of the scientific mode of reasoning, or reasoning *a priori* on this subject. The most profound and masterly example of it which

* See three letters of Dr Clarke on the relations of the Deity to space, and duration.

exists perhaps in any language, you will find in Dr Samuel Clarke's demonstration of the being and attributes of God. But I confess these subtle arguments of a very refined speculation, are little calculated to produce any profound and permanent conviction on the mind. The extreme abstraction of the ideas, although they do great credit to the ingenuity of that celebrated author, can be comprehended only by a few reflecting men; and the most speculative philosopher finds the effort to grasp them tend very much to exhaust the sensibility of the heart, and weaken their practical impression.

The second, or popular mode of reasoning, from the effect to the cause, is more simple and obvious. It is a species of argumentation which naturally offers itself to every man as soon as he opens his eyes upon the face of the world. It is a kind of evidence that reaches the simplest understanding, and becomes more luminous and interesting in proportion as we extend our observation and enquiries into the system of nature. When we behold its order, variety and beauty, the proportion and correspondence of all its parts, the evident demonstrations of wisdom and design, especially in the animal and vegetable worlds, in the structure of the earth, in the planetary system, and, as far as we can judge, throughout the universe, can we forbear to acknowledge a wise and intelligent cause which has planned and arranged

the whole? an omnipotent cause which has given existence to this immense and various structure? and an infinite providence which every where presides over its operations? The details of this argument are too extensive to be minutely pursued in such an elementary system of morals as that in which we are at present engaged. They are, perhaps, not necessary to convince you of that first of truths of which you are already deeply persuaded, and that meets you at every glance which you cast over the surface of nature. Yet, in your private studies, I cannot too strongly recommend it to you diligently to pursue your researches into the natural history of the universe, expressly with this view to assemble before the mind the multiplied evidence which it contains in every part, of the existence, and universal operation of a most wise, beneficent, and almighty power which pervades, and presides over the whole. The beauty, variety, and interesting nature of the study will abundantly reward your pains. But it will further be productive of a double advantage; in the first place, by giving additional confirmation to a principle of the highest importance to individual virtue, and to the happiness of society, which many occasions in the intercourse of life, the momentary prevalence of irregular passions, and at length even the fallacious subtlety of sceptical speculation, might frequently tend to impair: and in the

next place by producing a more profound and habitual impression of that truth on the heart. We may live in the midst of the most demonstrative evidences of it, while, at the same time, the attention of the mind may, from a variety of causes, be little attracted to its consideration. The evidence which now and then glances on the understanding, may not be affected by any doubt; but it is too superficial and transient to make any useful impression. It is only when it is often presented to view when the thoughts are frequently recalled to its consideration, when they ruminate upon it, that it becomes mixed and blended with the habitual contemplations of the mind, and the deep persuasion is lodged there as a constant spring of pure and rational devotion, and the most powerful motive of virtuous action. It is with this intention that I would recommend to you an extensive study of natural history as the surest basis, when prudently investigated, of natural theology. It is a study, likewise, which peculiarly contributes to purify, exalt, and delight the mind; and along with the charming enthusiasm of piety, to strengthen the most solid foundations of virtue, while, to use an expression of Malbranche, "it sees all things in God, and God in all things." Or in the more beautiful and picturesque language of the English poet—while in every part of nature it continually contemplates him

Who chang'd thro' all, is yet in all the same,
Great in the earth as in th' ethereal frame,
Warms in the sun, refreshes in the breeze,
Glows in the stars, and blossoms in the trees;
Lives thro' all life, extends thro' all extent,
Spreads undivided, operates unspent.

Pope's Essay on Man, ep. 1. *l.* 267—274.

This argument is admirably illustrated by the famous Genevan philosopher Bonnet, and by those very respectable English writers Derham and Ray. But, perhaps, no author has treated it with more closeness, perspicuity, and irresistible evidence than Dr Paley in his treatise on natural theology. You see there that mechanical contrivance, that correspondence of parts, that adaptation of means to their respective ends through all the works of nature, which are the most unequivocal indications of wisdom and design, as well as of power and goodness in its author. "Final causes, says a very judicious writer, may be considered as the language in which the existence of God is revealed to man. In this language the sign is natural, and the interpretation instinctive."*

Another argument to the same end which may be considered, either as different in its nature from the preceding, or as only shewing in a new and strong light its evidence and certainty, is derived from the universal con-

* Ferguson's institutes, part 3d. chap. 1, sect. 2d.

currence of all nations in this important principle, the existence of God.

The general sentiments of mankind point to truth. They are commonly intuitive, or necessary conceptions arising immediately from the bare inspection of nature; or forcing their evidence upon the mind, like the first truths of science, simply by the comparison of our own ideas. The concurrence of all nations, therefore, in the belief of the being of God is a proof either, that it is a native sentiment of the human heart resulting from the constitution of our nature, resting on the same foundation, and entitled to the same credit with any other of our internal sensations;—or, that it is a conclusion so clearly and necessarily flowing from the appearances of nature as to be obvious equally to the wisest and most uncultivated mind; the rapidity of the induction giving it the appearance of an instinctive principle.

To this proof it is not a sufficient objection, that many nations have acknowledged a multiplicity of gods, and that, in all nations, the multitude have entertained unworthy conceptions of the divine nature.—The natural sentiments of the human mind may be corrupted; or, being left in their original and uncultivated state, may be liable to many errors through ignorance. The principles of taste, notwithstanding their acknowledged foundation

in nature, may, in the same manner, be perverted by defective or erroneous culture; yet their error, or corruption, instead of demonstrating that there are no such principles, is, on the other hand, a proof of their existence. Many nations, misled by the analogy of human governments, conceiving that the divine administration might be conducted by subordinate agents, by a very natural infirmity of the human mind, elevated each local and imaginary divinity to the throne of divine worship. But all mankind have ever acknowledged one Supreme Deity: and the multitude of subordinate officers, if they may be called such, which error has attached to him in his government, does not destroy the evidence of the principal and original sentiment, that God exists. Our object at present is to establish this single truth. And this truth is not impaired by diversity of opinion with regard to the mode of his administration, or the nature of his perfections. These ideas requiring greater precision of thought, and greater compass of reasoning, one man, or one nation, according to the advances they have made in the cultivation of science, may reasonably be supposed to have formed more just, or more inadequate conceptions of them, than another.

The truth of the divine existence is confirmed, if such primary and palpable truths can receive additional confirmation, by the absurdity of the causes to which atheists

have been obliged to resort in order to account for the origin of things. One of their first principles is that matter is eternal, and though senseless and inert, contains the essence of all order and motion. Another, that the intelligence which evidently reigns in the universe, is the result of material organization. And another still, not less extraordinary than either of the preceding, that, from the accidental collision of atoms, have been formed globes that, from some interior impulse, have thrown themselves into orbits constructed with the most perfect mathematical exactness, and governed by laws which ensure undeviating constancy to their movements. From the same accidental collision roots and seeds have been generated, whence the whole vegetable world has been evolved, and yearly reproduced. At this age of philosophy, one would think that such principles must carry their own refutation in the very terms of their statement. Look on any mass, or congeries of matter, and let the plainest, or most ingenious understanding decide if any arrangement of its atoms, according to any known laws of material action, could sublimate it, above all could enable it to sublimate itself into sensation and reason? Or is it possible that, if one lucky cast or collision among infinite milions, should have formed an animal or vegetable, it should have been so framed as to be capable of throwing from itself continually a similar assemblage of organized

atoms, while not another extraneous cast of the same kind should ever succeed in forming a new body?

But if an atheist ask us why, since we admit the existence of a wise intelligent cause only to exclude disorder and chance from the world, are there so many unseemly examples of both in the essential structure of things, and in the revolutions of what we call providence? It is, as I conceive, a sufficient answer, to deny the existence of either, and to challenge an antagonist to produce his instance.—For what is chance? Only a name to cover our ignorance of the cause of any event. Nothing can happen by accident in the government of an infinitely wise being. All events depend upon a certain concatenation of causes. The cast of a die is as certainly governed by the laws of matter and motion as the greater movements of the planets. What is disorder in the works of nature? A name which our weakness and imperfection presumptuously imputes to the wisest designs of Heaven. To judge perfectly of the order and regularity of the universe we ought to be acquainted with the structure of the whole system, and the particular end of every movement. Without this knowledge, imaginary irregularities will ever exist; but they will exist only in the imperfection of our own understanding. To the eye of ignorance what is beyond its own ken will look like confusion.—This is certain with regard to the works of nature, that

in proportion as her laws have been more clearly developed, and her operations more distinctly understood, many of those phenomena which formerly were esteemed to be irregularities are now discovered to be governed by the most wise, certain, and permanent laws. Even those stellar deviations, which were once thought to indicate the mutual approach of their spheres, and to point to some period of ultimate destruction, have been discovered by an illustrious astromomer* to have a relation to one or more great centers of motion indicated by their approximations, and recessions, by which according to the unvarying laws of central forces, they only the more certainly provide for the perpetuity of the universe.—One conclusion will obtrude itself on every reflecting mind; that, since the greatest portion of the works of nature, contain, even to our imperfect reason, the most obvious indications of intelligence, design, and goodness, if there are any parts which we are unable to interpret in perfect coincidence with the general system, this ought to be ascribed solely to the narrow sphere to which our intellectual vision is circumscribed. If a plain but intelligent man were admitted to the magazine of a skilful mechanician in which he was witness to the most admirable proofs of the artist's intelligence and skill, what could he conclude on inspecting a more complicated machine the in-

* La Place.

tricacy of which he could not possibly comprehend, but that the seeming confusion which appeared to his senses, was attributable only to the imperfection of his own ideas? He could not doubt but that the same wisdom pervaded all the works of the same author.

It has been frequently and justly remarked that the universe is governed by general and constant laws which never change their operation according to the desires of men, or the convenience of particular parts of the system, which sometimes appear to be productive of accidental and partial ills. A tempest here, a drought there, a contagion, or an earthquake, may involve individuals in distress—but the fixed and unvarying laws of the physical world are among the greatest blessings to mankind. Among other benefits, they lay a foundation for the existence of the most useful sciences, which could have no principles on which to rest in a providence of expedients and accommodations to individual convenience. They serve to awaken enquiry, to exercise ingenuity, to encourage industry, to afford principles on which to ground a prudent foresight and precaution, and to promote the exercise of all the virtues which are assisted by the stability of nature. For a clear and luminous illustration of the utility of general laws, and for a judicious explanation and justification of the apparent and partial ills which result

from them, you will again have peculiar satisfaction in consulting Dr Paley's work on natural theology.

I proceed next to consider the attributes of the Deity more distinctly, or separately.

The divine attributes will not require an extensive illustration ; for, when once his existence is acknowledged, they recommend themselves so obviously to the common sense of mankind as hardly to admit of any controversy ; except with regard to those natural events which, in their first aspect, seem contrary to our apprehensions of his infinite goodness. These will of course require some additional considerations, after having proposed a general theory of the perfections of the Supreme Mind, to solve the difficulties which may occur on this subject to the reflections of a pious theist.

The attributes of God, then, may be arranged under two heads—the natural and the moral.—In the former are comprehended his spirituality, unity, eternity, omnipresence, power, and wisdom ;—under the latter, his holiness, justice and goodness.

The spirituality of the divine nature, is a property opposed to every form and refinement of matter; and may be regarded as distinguishing the essence of the Supreme Mind from that fine but powerful influence, the

result of the material organization of the universe, which some philosophers have substituted in the room of Deity, and made the cause of a universal necessity, or fate. It is opposed, likewise, to the opinion of those who have held the Deity to be the soul of the world; that is, a certain power, which, although intelligent, is still only a refinement of matter, a kind of spirit, or gas thrown off from the infinite system of its motions, or its original fermentations.

All just philosophy has considered matter as essentially inert, and incapable of beginning motion. Spirit, as we learn from our own experience, possesses a self-motive power, and the power of giving motion to other things. The existence, therefore, and the movements of the universe, are proofs of an original spirit who formed it, and gave it that impulse, and that system of combined motion by which its order is still preserved.

The only knowledge which we have of spirit is derived from reflection on our own minds, the essence of which we conceive to lie in thought, and volition. But it would be impious to imagine that we can thence form any adequate conception of the Divine and Infinite Spirit from whom all things proceed. By this term, therefore, applied to the Deity we can mean only to express a sub

stance wholly different from matter, simple, uncompounded, essentially active, and intelligent.

The *unity* of the Divine Nature is deducible from this reflection, that we see evident proofs of the existence of one God, and we see no evidence of more than one. It is contrary, therefore, to every principle of just reasoning to admit a plurality. This conclusion is strengthened by that unity of design apparent in all the parts of nature. It indicates one author, one purpose, one end. How far he may commit the government of particular districts of the universe to subordinate agents, in order to employ their activity, and exercise their virtues, we have no grounds on which we can form a rational judgment. Even conjecture, therefore, ought to be silent concerning it, lest we should unawares awaken a degrading spirit of superstition. On subjects so remote from the sphere of human intellect and observation, in no department of science has conjecture or hypothesis ever led philosophy one step nearer to truth. It is even doubtful if the erring lights of false science do not lead the mind farther astray than the torpid dulness of absolute ignorance.

Of the almighty power, and infinite wisdom of the Deity there can exist no doubt in the minds of those who acknowledge his being. No more can we doubt of

his eternal existence, and his universal presence, although we are not able to form distinct and definite ideas concerning his relations to infinite duration and space. I shall, therefore, not consume your time in attempting to solve the many abstruse, and probably useless, and, to human intellect, inexplicable questions, which have been raised on these subjects by ingenious men:——but proceed to consider his moral attributes, holiness, goodness and justice.

Holiness is a term used chiefly by divines, and borrowed from the sacred scriptures, to express the purity of the divine nature, and its infinite distance from all moral imperfection. It is perhaps the best and strongest word in our language to convey the idea of his unchangeable love of the eternal and essential rectitude of that moral law which he has prescribed to his rational creatures, whose outlines he has traced upon the human conscience, but the perfect rule of which is to be found only in his revealed word. And it seems further to carry in its meaning, not only a pure and immutable love of rectitude, but an infinite abhorrence of vice; that is, of the omission or violation of the duties of the moral law. But, besides this peculiar meaning of the term as expressing a single attribute of the Divine Mind, it is often used in a more comprehensive sense, to express the

aggregate, and the most complete idea of all his moral perfections.

By the attribute of goodness is meant to be expressed the disposition, or tendency of the divine nature to impart happiness to the creatures he has formed, in a way accommodated to their respective states of being. This attribute we ascribe to the Deity from the tendencies to benevolent affection which he has implanted in the human breast;—and from that order, harmony, and beauty which exist in the whole structure of the universe, and which so naturally and strongly associate themselves with the ideas of beneficence in their author, by the happiness they create in those who contemplate them. It is farther confirmed by the existence of so many tribes of creatures capable in a high degree of pleasurable sensation, and actually enjoying it in different ways. All these facts contribute to impress an irresistible conviction of the benevolence of the Creator. When we contemplate an individual animal, what an immense complexity of parts do we observe combined in one system, all contributing to the preservation and enjoyment of the creature, which manifestly indicate the will and intention of the author; and shew the pains and contrivance, if these terms may be applied to the Deity, which he has used to render that animal comfortable and happy. But, when we behold creation filled with innumerable

species of being, and, under each species, innumerable individuals, down to the minutest insect tribes, in which we severally discern the same multiplicity of organs, and the same systematic combination, and subserviency to the purposes of enjoyment, how does the evidence of the divine benignity and goodness rise in our view! The air, the earth, the sea are full of animated and happy beings. Men often overlook these examples of benevolent design, sometimes from not perceiving the immediate utility of the creatures in the system of creation, and sometimes from their extreme minuteness. But the minutest insect is equally with the largest or most rational animal, susceptible of the most exquisite sensations of happy existence. And in the eye of the infinite being,

> Who sees with equal eye, as God of all,
> A hero perish, or a sparrow fall,

there is much less difference between an insect, and a man, than our vanity inclines us to conceive.

It is well remarked, by many ingenious writers, that the benignity of the Deity is visible not only in the structure of the animal system subserving so admirably the purposes of preservation, comfort, and defence; but in annexing such pleasant sensations, beyond what mere necessity would have required, to the exercise of the different faculties and powers of animal nature. Hunger

alone might have prompted it to eat, an operation which would have been sufficient for the sustenance of life. But the Creator has added to its food a relish, which seems to have had no other purpose but to increase the pleasure of existence. The objects around us in the structure of the world might have been applied to all the purposes of utility, although they had not possessed that beauty, fragance, or harmony, which afford such superlative charms to the senses, and the imagination. There certainly never could have existed such exquisite adaptations of objects to the senses, and of the senses to their objects. if the Creator had not intended them for the ends of animal, and especially of human felicity. Not to mention in man his superior powers of moral, intellectual and social enjoyment, which open a much wider and nobler field of happiness if we had leisure to survey it.

But it is not so necessary to prove the reality of the divine goodness, which is borne in so many examples on the whole face of nature, as to account for some appearances, and to remove some objections which have been thought to contradict it in the order of divine providence. These consist in the numerous evils which are evidently mingled with good in the economy of the world.

The preponderance of good over evil in the general order of things, is acknowledged to be manifest and great. But the objectors reply, that if God were perfectly benevolent, and, at the same time, omnipotent, he would not have permitted the existence of partial evil. This is pronouncing on an infinite system from our own contracted views.—Can we say that, in a universe, benevolently constructed, there ought to be no gradation of being? Or, if gradation be admitted in perfect consistency with the infinite benignity of the Creator, is it not conceivable that a creature of superior powers of intelligence and enjoyment, may, by a certain admixture of pain, be brought in the scale of happiness to the grade of one of inferior powers, but exempt from suffering, and who shall have no complaint to prefer against the benevolence of providence? The reflection may apply to a nation, to a species of being, to a world. How far superior, then, may this world be, with all its sufferings, to other systems which may have no such evils to allay a happiness which, however, may be regulated on an inferior standard of sensibility, or of intellect! Would a man of high sensibilities, or of high intellectual powers, though they may often be the occasion of many errors, or of keen anguish, be willing to forego their pleasures, in order that he might be reduced to an apathy that would render him insensible to suffering? Let us

balance our goods against our evils, therefore our sufferings against our enjoyments, and consider ourselves as completely happy in that grade of felicity that is marked by the surplus of the one above the other. By such a calculation, how might mankind extinguish every complaint of the evils of life, and justify perfectly the benignity of the Creator? The conclusion, therefore, which each individual ought to frame with respect to himself, a true philosopher may justly infer for the whole species; unless any man should be so foolish as to imagine that existence alone gives him a claim on the beneficence of his Maker for the highest grade of felicity.

But why, it may be asked, should we be left to estimate our grade in the scale of being by the surplusage of happiness above pain? Or, why should pain exist at all in the system of a benevolent being?—Satisfactorily to answer these and a thousand other enquiries that might be instituted on this subject would probably require a knowledge of the nature, and the infinite relations of the universe, which none but the Deity himself can possess. We can, therefore, expect only from revelation the information which we desire, as far as he is pleased to impart it. But while we are compelled to resort to the feeble lights of our own reason alone for

a solution of the difficulties which spring out of the combinations of an infinite system, we must be contented with such probabilities only as it can yield us.*—If, in the scale of existence, then, there be a place for such a being as man, with just such a measure of intellect, and sensibility, and with just such principles of action, continually requiring excitement and correction; and especially, if it be conceived that he is placed in the present world, in a state of probation and discipline for a future period, and a higher condition of existence, a supposition which to philosophy is as probable, as to religion it is certain, may not all the pains which enter into the moral culture of this life, be regarded as the discipline of a wise and gracious parent, and, therefore, as essential parts of a most benevolent system? Let us contemplate the relation which the pains necessarily incident to human nature, as it is now constituted, have to the improvement of its powers, and consequently to its happiness.—The wants of man contribute to rouse that industry, and habitual

* Rejoicing, however, that when we have explored reason to the utmost, we, as christians, still enjoy the superior illumination of the sacred scriptures, whence, if we cannot derive such lights as will satisfy every enquiry of an ambitious curiosity, we may, at least, draw competent satisfaction for a humble and rational piety; particularly with regard to this great question, why human nature exists in its present state of imperfection, requiring the corrections, and discipline of the pains and sufferings which we see attached to it?

exertion of all his faculties of body and of mind, on which their vigor and perfection principally depend. A paradise where all his wants should be spontaneously supplied from the abundance of the soil, and all his senses gratified by its fragrance, its beauty and luxuriant sweets, would deteriorate the human character, and sink the noblest creature in the world into a lazy, torpid, and vicious animal. The happiness, no less than the improvement of our nature, lies chiefly in constant and useful employment, stimulated by these necessary wants. Enjoyment seldom yields pleasures equal to those which arise out of the activity requisite to procure it. The very efforts excited by pain and want, or by the apprehension of them, often produce a satisfaction, or diversion to the mind which far overbalance their evils. Want whets ingenuity; danger and suffering call into operation the virtues of courage and fortitude, that communicate a character of grandeur and nobleness to the mind which often raises it superior to the ills of life. And labor, however it might be the curse of man fallen from the perfection of a superior nature, is beyond a doubt the blessing of his present existence. Reflections of a similar nature might arise from an attentive consideration of every particular evil to which human life is exposed. And, in a moral point of view, how much more justly may we regard them as a part of the benevolent disci-

pline of our heavenly Father? They are correctors of the passions—they assist the habits of reflection,—and often recal the mind from pursuits injurious to its virtue and its true interests.

But, instead of examining in detail the various evils of life, and shewing how the goodness of God is affected in permitting their existence, I shall select only a few; believing that, if, in these, the benevolence of the divine administration can be justified even to our limited understanding, a hint may be suggested, or a clue given by which its vindication may be pursued in other cases.—Take for examples, the circumstances attending the manner of our entrance into the world, and of our departure from it, which have been thought to involve serious objections against the benignity of the Creator. With regard to the former it may be fairly maintained, that the pains of bearing, nursing, and educating children, with the diseases and dangers of infancy, which seem, at first view, to be peculiar afflictions on the human race, will be found, on examining their connexions and all their relations, to be among the chief causes of the existence of society, and the felicity of social life. If children, like the young of other animals, were able to run as soon as born, and to feed themselves, with almost no dependence on the care of a parent, the powerful ties, and sweet endearments of parental affection, and of filial duty, would

be unknown. The union and happiness of domestic society would be dissolved; and civil society, of which the domestic is the germ and the principal support, could not exist. Man would be a solitary and ferocious savage. The facility of rearing children, and their independence on a parent's care, would give the strongest encouragement to a vagrant and licentious concubinage, destructive of all the virtues, and of the dearest interests of human nature. Besides, the diseases of pregnancy, as human nature is now constituted, and the pains and dangers of child-birth, serve to endear the parents to each other, by the weakness, tenderness, and dependence of the mother; by the honor, generosity, and sympathy of the father; and an hundred fold to endear the child to the parent. And it is an acknowledged principle in human nature, that the troubles and continual solicitudes of nursing and education, together with the necessary diseases and hazards of infancy, greatly augment the strength of parental attachment, and lay the most firm and lasting foundations of the unions, subordinations, and harmonious affections, first of domestic, and afterwards of civil society. In these pains, then, which have been selected as specious objections against the benignity of the divine administration of the government of this world, we find some of the principal sources of human happiness.

As to the manner of terminating the present state of existence by death, the necessity of it arises out of the structure of our nature. Death is the only way of giving to successive generations the means of existence. If this part of the plan of divine providence must be changed, the whole order of life must necessarily be changed with it. There could be no such creature as man in the scale of being. The institution of the sexes must be destroyed —the multiplication of the race must cease. The modes of subsistence on the products of the earth, which can sustain only a definite number, must be done away; and with these, as the whole state of human life is connected together by a close unbroken chain, must cease the operations of agriculture, the interchanges of commerce, and the entire system of the present occupations and pursuits of men. Man himself would be the first to object to such a new order of things.—If death, then, be a necessary part of the human economy, and to man himself it would be undesirable to change it, if it must be accompanied with so many other changes, still more unfriendly to the wishes and the comfort of mankind, the only question that remains, is, in what manner it may be best accomplished so as to attain the most useful ends of its institution?—Even if the whole of human existence were to be terminated by death, this last act of our being, so justly formidable to our frailty and imperfection, is but a momentary

pang, which has been far overpaid by the pleasures of life; but if, as religion assures us, and philosophy renders probable, this life is only a period of discipline and probation for another state of being, and death is the avenue through which we must pass to it, certainly no method of approaching that decisive crisis could be imagined more beneficial than that which exists of attaining every good moral end connected with it—of making the descent to the grave easy to the virtuous—of impressing a salutary but not oppressive fear on all, as a useful restraint from vice—of preserving the mind, by its extreme uncertainty, always vigilant and attentive to the discharge of every duty, which is the best preparation for a tranquil exit from life—and finally, of inducing it to hold its present pleasures in a continual state of obedient resignation to the will of God, in the hope of exchanging them for such as are higher and more perfect.

To pursue the vindication of the divine goodness in the introduction of other physical evils into his general administration of the government of the world, would to you, I trust, be unnecessary.* Of the moral evils which

* On the physical evils incident to the animal creation, and particularly on that order of nature which has destined the weaker part as the prey of the more powerful, see many judicious reflections in Dr Paley's natural theology near the conclusion.

afflict the world, their origin, and their cure; and how they are made to illustrate the benignity and mercy of God to mankind, the only true, and satisfactory account is to be derived from revelation. They arise from an abuse of the passions, and of the moral liberty of man; but reason would be deplorably at a loss to find her way in the maze of doubts, and perplexities, which attend their existence in the system of a benignant Deity, if revelation did not put a filament in her hand, or extend a taper before her footsteps to conduct her through the labyrinth.——This belongs to the theological chair.

The only attribute which remains to be considered is that of justice. It is an invariable determination in the Divine Mind to render to all his creatures according to their works;—to the virtuous, reward,—to the vicious, punishment. This attribute we ascribe to God, from the dictates of conscience, and the sentiments of justice in our own breasts.—As philosophy delights to trace the most complicated effects, to the simplest principles, justice may, perhaps, be considered as only one expression of infinite benevolence, in which, by proper correctives, and restraints and examples, the injurious effects of the passions may be prevented, and individuals deterred from seeking their own enjoyments, by the sacrifice of a greater good in violating the general laws of order and happiness.

Justice has, by divines, been distinguished into two kinds,—distributive, and vindictive. The former has been already defined, and may be applied for the reformation as well as punishment of the offender; the latter is conceived to be the infliction of punishment on vice simply for its own intrinsic demerit, without respect to reformation, or any ulterior regard to a farther good end, except the general good of the universe. Conscience, in the nature of its reprehensions, makes us perceive that guilt deserves such infliction; and in its anticipations, in consequence of some atrocious acts of iniquity, often leads the criminal despairingly to fear it. These facts appear to indicate that the distinction has a real foundation in nature. And in these apprehensions, probably, we discern the source of those bloody rites of superstition which, on so many pagan altars, have dishonored the name of religion.

On this subject a theological question has been raised of great importance to religion, whether in consistency with the holiness and justice of the divine nature, the violation of the moral law, by any creature, be pardonable without a complete atonement, or full execution of its penalty? If justice be an essential attribute of God, and its claims be as necessary as his existence, the forgiveness of an offender can never be a gratuitous exer-

tion of mere mercy. From this principle results an inference which is deeply laid at the foundation of the christian religion; the necessity of complete atonement to the violated law, and vindication of the offended perfections of God, in the person of a mediator perfectly adequate to render this satisfaction, in order to the exercise of mercy and forgiveness to the human sinner. —But the discussion and determination of this question also, I refer to the decision of another chair.

LECTURE XVI.

OF THE IMMORTALITY OF THE SOUL.

The only certain evidence of this truth to be derived from revelation—Reason can accumulate a variety of probable arguments to support her hope.—Many faculties in human nature which would perish without attaining their perfection unless there were a future state in which they should be unfolded.—The immortality of the soul an article of universal belief in all ages.—This not the effect of artifice and intrigue, but of an original principle in human nature.—Not sufficient objection against the universality of this principle that some philosophers have been found who have denied it, and some nations who have blended it with many errors.—Another argument found in the desires and hopes of good men, and the fears of the vicious, especially at the approach of death.—The effect of the disbelief of this doctrine on the public morals—The unequal distribution of providence in this life.—The nature of our future existence.

IT is not sufficient that we lay a foundation for the knowledge of the theory of virtue in the knowledge of the general principles of human nature, unless we can,

at the same time, propose motives to its practice that by their grandeur and interest may be able to overcome those temptations to the dereliction of our duty which are continually springing up in the heart amidst the errors of the passions, or assailing it under the masque of the pleasures of the world. With this view I have already offered to your consideration the evidences of the being and attributes of God, from whom emanates the law of virtue, and that structure of things in our nature and in the universe, which indicates the law to our reason, that the authority of his command, the consciousness of his presence, and the apprehension of his judgment, might add to the inward sentiments of conscience their most powerful sanction. With the same view I shall now propose to you those general arguments which we derive from reason for the immortality of the soul. The authority of the law of virtue would be very feebly felt by the greater part of mankind, if the expectations, or the apprehensions of existing after this life were not shewn to rest on at least probable foundations. We must confess, however, that probability is the utmost which reason has been able to attain on this interesting subject. We must look for that full and clear persuasion on which the soul can repose with tranquil assurance in the midst of affliction, and at the approach of death, only in the sacred scriptures. But the human

mind, in its anxious longings after immortality, is inclined to make the most of those feeble lights which reason holds out to encourage its hopes. And Cicero could only say, but he says it with the enthusiasm natural to a virtuous mind, that *if he were deceived in cherishing the hope of an immortal existence, he wished not to be awakened from so agreeable a delusion.* And Socrates, in his last conversation with his friends, just before drinking the fatal hemlock, thus took his leave of them,—*you go to your ordinary occupations, I to my fate; which of us shall enjoy the happier lot is known only to the gods.*

The christian revelation has produced such a deep and general persuasion of this doctrine in the minds of its disciples, as has induced a common belief that the evidence which reason yields in its support, is much more direct and clear, than, on the most fair and candid examination, it will be found to be. As it is imparted to us by the author of our holy religion, it is closely and inseparably connected with the doctrine of the resurrection of the body, of which his own rising from the dead is the great example, and the proof. Its evidence, therefore, rests simply in the word and promise of the Saviour.—There are, however, such strong and rational probabilities, drawn both from the physical and moral principles of our nature, as merit the most serious atten-

tion of the philosopher, and independently of the authority of revelation, are calculated to administer the consolations of hope to a virtuous mind. The physical principles on which we may be entitled to build any hope, have been already stated in the sixth lecture of this system. The moral reasons which may induce an assent to the same truth, I proceed now to lay before you.

In the first place, then, if the present were the only state of human existence, the designs of the Creator in the formation of man would seem to be in a great measure frustrated; or they would not be conformable to the usual operations of his wisdom. We would behold the noblest being with which we are acquainted, just begin to evolve faculties which are never permitted to reach their full vigor, or to display their full beauty. Man is evidently possessed of talents which are progressive to an indefinite degree of improvement. Yet, no individual has ever carried any one talent, and, much less, the whole system of his natural powers, to the highest perfection of which they are susceptible: and less still has the whole race approached near to that ultimate point in the scale of being to which they are manifestly capable of arriving, and appear, in some period of their progress, to be destined. To arrest them, then, in the midst, or rather in the commencement of their career, when they are only just beginning to display those capacities which they

shall never fully unfold, seems hardly conformable to our most reasonable ideas of divine benevolence and wisdom. All other things which come under our cognizance in this world, have a point of maturity, that is the highest of which their natures are susceptible; after arriving at which they gradually decay. Other animals increase to a certain degree of strength, and sagacity, which is evidently the ultimate limit within which their nature is restricted. Their several species appear to be equal in all ages. There is a point below which they hardly ever fall, and above which they cannot rise. It is far otherwise with man. The greatest part of his powers would be lost, and he would seem to have been made in vain, if there were not another state of being in which they may unfold themselves, and attain that perfection of which they seem to be capable. Hardly, therefore, can we conceive it to be consistent with the wisdom and goodness of God to bestow on man so many incipient talents to be checked, or cut off in the very commencement of their progress—germs that are never suffered to come to their maturity. Moral and religious sentiments, in particular, do not seem to have any reasonable object; if we are to regard ourselves as being only particles of animated dust, destined to perish almost as soon as we begin to exist; and have not, beyond this life, the hope of some nearer approach to the Deity, and the expectation of some reward

from him which shall depend on the purity of our pious affections, and the integrity of our virtuous conduct in this life. The sacrifices of virtue would be without remuneration; and the noblest dispositions of the heart, cultivated with the most devout care, would be like incense burnt, and scattered by the winds, before a being who regards it not.

Another argument of no inconsiderable weight for the doctrine of immortality is derived from the general belief of mankind. Such a universal concurrence of opinion indicates some original principle of nature on which it rests; which can only be the operation of God himself in the human heart. It has formed an article of belief in all religions. It has been laid at the foundation of all the political institutions of antiquity, as well as of modern ages. And no nation has been discovered so rude and savage, who has not, along with the idea of God, united that also of the future existence of the soul.—Some philosophers ascribe this interesting phenomenon to imitation, and the influence of education.—Where principles have already a real foundation in nature, education and imitation readily concur to strengthen their influence. But when they are entirely arbitrary, although one principle may take root, and be propagated in one nation, and a different one in another, yet when have we seen such uniformity in education among all the inhabitants of the globe? These

reflections may be illustrated by a familiar example. Filial duty, and respect for age, which are natural dictates of the heart, have formed a part of the domestic culture of every people; but the arbitrary practice of making libations to the manes of departed ancestors, could never be extended, by the same influence, beyond the limits of the people who invented it.

It has been boldly asserted, but, I conceive, with even less plausibility, that the doctrine has been introduced, and obtained an influence in the world by the artifice of priests, in order to establish their authority over the multitude by the all-subduing charm of superstition; or by the craft of politicians, and the legislators of the early ages, who found no better way to render their subjects obedient, and confirm the authority of their laws, than by the power of religious fear.—But, in answer to insinuations of this kind, we may well ask when had a few priests or politicians more cunning than all the rest of mankind? Whence did they derive that superiority of mind to which the whole world has bowed with such implicit submission? Or how have the ministers of religion, and the legislators of all nations, entered into a league to pass the same deceit upon the world? Such concert among men of the remotest regions, and of the most opposite habits, opinions, and prejudices, is impossible; and such

facile and universal submission in the mass of mankind to an arbitrary opinion, by whatever authority recommended, is incredible.—But if it be true, in the next place, that the order of human society cannot be perfectly maintained without the belief of a state of future retribution, and that, therefore, the whole ingenuity of political intrigue, and the whole force of political power, have been employed to establish this sentiment among the people, this is surely an argument of no inconsiderable weight for the truth of the doctrine. Otherwise, man must have been formed under the hard necessity of being continually deceived, in order to promote his best interests; a consequence which we ought not to impute to the infinite wisdom and goodness of the Creator.

The universality of this belief, therefore, ought, I presume, to be ascribed to an original sentiment of our nature; or, at least, to a conclusion that so necessarily obtrudes itself upon the mind from the united reflections of reason, and sentiments of conscience, that it may justly be classed along with our natural, and instinctive feelings. —And I have before remarked, that these universal dictates of the human mind resulting from the natural constitution of man, may always be regarded as the operation of God, and, therefore, pointing to truth. For we cannot conceive how he should be willing to deceive his

creatures, or that it should ever be necessary for him to carry on their moral government by deception.

It is certainly no proper or sufficient objection against the universality of this opinion, and consequently the truth of the principle connected with it, that there have existed philosophers who have denied it, or whole nations who have blended with it many superstitious opinions.—A minute philosophy, attempting to plunge too far into the subtleties of speculation, is often much less to be depended on as a guide to truth than the simplest dictates of the uncultivated understanding. We have seen it, at different times, violate every conclusion, and pervert every dictate of reason and common sense. We have seen it, in the hands of the most acute metaphisicians, deny the existence of matter, though palpable to every sense:—we have seen it deny the existence of mind, employing its own ingenuity against itself:—and, we have seen it deny both body and mind, substituting, in the room of both, and of the whole substantial universe, a troop of light ideal shadows which we can trace to no origin, and from which results no consequence.* It is not surprizing, then, if a few philosophers, in the pride of speculation, and the vanity of affected singularity, should have added, to their

* It has been justly remarked that there is no opinion so extravagant which has not found some one to maintain it.

other contradictions to the common opinions of mankind, the denial of a future existence, and the immortality of the soul.

The certainty of natural truth, in the next place, ought not to be questioned or denied, on account of the errors which either speculation, or superstition has mingled with it. Nature, on many subjects, particularly those relating to morals and duty, points to the general principle, or gives the general impression of the truth, but leaves it to reason, experience, and reflection, to give it its perfect shape and form. This each man will do with more or less accuracy and precision of idea, according to the strength of his intellectual faculties, united with his virtue, or according to the prepossessions, customs, and habits of his education. From every one of these causes a degree of error, particularly in a weak, or superstitious mind, may be mingled with truth, without, however, destroying its radical principle which is found in some original dictate or instinct of nature.—Of this an analogous example was furnished in the last lecture. The instincts, or original sentiments of nature lead with undoubting assurance to the acknowledgment of the being of God; but that important principle, ignorance has impaired by admitting a plurality of gods, and superstition corrupted by imputing attributes to the divine nature unworthy his perfections.—Another example may be

furnished in the seeds of taste, which are acknowledged to have been implanted by nature; but, through neglect we may suffer them to shoot up wild; or by improper culture, their qualities may be vitiated. Yet, even the corruption of a principle is a proof of its existence; and the wildest growth of plants shews that the seed is there, which requires only a judicious cultivation to bring it to perfection.—The seeds of truth, therefore, of nature's planting, we ought not to eradicate, and cast away, because hitherto they may have grown wild, or because an unskilful husbandry may have suffered tares to be mixed with them; but, like wise planters, set ourselves to give them every advantage of culture requisite to advance them to that state of improvement for which the great Author of nature designed them.

The argument, therefore, for the immortality of the soul, drawn from the natural feelings and expectations of mankind, remains strong, notwithstanding the gloomy speculations of sceptical philosophers, and the absurd admixtures of superstitious nations.

Another of the moral reasons on which we found our belief of this doctrine is the strong desire, and the hope of good men, and the apprehensions of the vicious; which are commonly found to increase in proportion as they seem to be approaching the period of their earthly exist-

ence. The natural desire of immortality is certainly one of the strongest affections of the human heart, at least till the dominion of vicious passions have made it the interest of the guilty to fear it. Of virtue it is the most powerful motive, and the greatest consolation under the various trials of life. And on the violent and criminal passions of men there is hardly any restraint so effectual as the apprehension of a future existence, and of the retribution with which conscience always accompanies that fear. The hopes and fears of human nature, therefore, both concur to strengthen the probability of a renewed existence after this life. If this lively anticipation of a future being, in a happier state, be implanted in the hearts of good men by God himself, can we believe that his infinite benignity hath created in them desires only to disappoint them, and inspired them with hopes only to tantalize them? It would be an unworthy imputation on the divine perfection to suppose that he should convert the most pure and natural encouragements of virtue into its severest scourges. For what could be more painful to a virtuous and pious mind, than to believe that all his future and immortal hopes, which are ever the more elevated and strong in proportion to the sincerity and purity of his virtue, might turn out to be only an unreal dream?

The same conclusion is confirmed by the apprehensions of wicked men, especially under the stroke of any great

calamity, or at the approach of death. The conscience of guilt anticipates a retribution far exceeding any sufferings to which it is subject in the present life. And very few are the cases in which this salutary fear can be entirely extinguished by the hardihood of vice, or the principles of a perverted education. And certainly, it would not be serving society, or human nature, to attempt to remove from the minds of men those useful restraints which the wisdom of divine providence hath thought proper to impose upon passions, which would otherwise be dangerous to the peace of society, and to the best interests of virtue.

This argument is not a little strengthened by the effect which the disbelief of the immortality of the soul, and the doctrine of a future life, would have upon the state of public morals. The good could hardly find in the general order and distribution of providence in the present state, sufficient motives to sustain them in the continual conflicts; or to encourage the incessant efforts of virtue which are often painful and laborious, and not rarely exposed to extraordinary hazards. If the passions of men were freed from the salutary restraint of religious fear, and secrecy were, as it would then be, the effectual protection of crimes, the greatest infelicity and disorder would reign in society.—We may borrow some instruction on this subject from the courts of princes, and the capitals of wealthy and corrupted nations, where this doctrine is

treated with the greatest contempt, and moral principle is consequently most dissolved. If the whole capital were as corrupted as the court,—the entire country as the capital,—and all grades of the people were absorbed in the vortex of impiety,—the common sense of mankind, supported by the uniform testimony of all history, would pronounce such a nation on the verge of extinction. Among the principal symptoms and causes of that depravity, which generally precedes the ruin of states and empires, have justly been reckoned, by the wisest observers of human nature, contempt of religion, and disbelief of the future existence of the soul, and of those moral retributions which are always a necessary accompaniment of that doctrine. Some of the most eminent of the Roman writers ascribe the extreme corruption of the Roman manners towards the period of the republic, and the first age of the empire, to the introduction and prevalence of the epicurean philosophy, of which the final extinction of the soul at death was one of the leading principles. If these reflections be well founded, and the doctrine of immortality, with the respect for religion which naturally accompanies it, be necessary to the peace and order of human society, and the prosperity of nations, the truth of the principle is strongly implied.* It is unrea-

* See how this principle accords with that expressed by Cicero. Orat. de haruspicum responsis. Quis est tam vecors

sonable to believe that God has formed human nature in such a manner as to require that it should be governed by falsehood. We ought, on the contrary, to presume that all the plans of infinite wisdom do so correspond, that virtue and happiness, which appear to be the end of the whole, must be established by truth alone.

There appears, in the next place, such a promiscuous and unequal distribution of good and evil in the present state as gives strong ground to expect in some future period of our existence, a partition of the blessings and inflictions of divine providence more conformable to our ideas of the goodness and equity of the Supreme Ruler of the universe. If we behold here the ultimate plan of his moral government, it would be a most natural expectation to find virtue placed in such favorable circumstances that tranquility, comfort, and honor at least should be within the compass of its reasonable efforts; and that vice should be subjected to deprivations, and

qui, cum deos esse intellexerit, non intelligat eorum numine hoc tantum imperium esse natum, and auctum, and retentum? Quam volumus licet, P. C. ipsi nos amemus, tamen, nec numero Hispanos, nec robore Gallos, nes calliditate Pœnos, nec artibus Grœcos, nec denique hoc ipso hujus gentis, ac terræ domestico nativoque sensu Italos ipsos, ac Latinos, sed pietate ac religione, atque hac una sapientia, quod Deorum immortalium numine omnia regi, gubernarique perspeximus, omnes gentes, nationesque superavimus.

inflictions that should bear some proportion to the disorders and enormities occasioned by it. Contrary, however, to that order which all our ideas of reason, and of the goodness, and equity of the Deity would suggest, we often behold virtue suffering under deep and unavoidable afflictions; and those afflictions, not unfrequently, induced immediately by its firm and steady adherence to truth and duty; while vice triumphs in the rewards of baseness and treachery. Many writers professing to put external circumstances wholly out of the question, have maintained that happiness, depending entirely upon the internal state of the mind, is more equally distributed according to the virtue of individuals than is implied in the objection; and that Diogenes in his tub was really more happy than Alexander on his throne.—This vindication of the perfect equity of the present arrangements of providence, supposing them to be final, is rather plausible than substantial. A few men, by religious enthusiasm, or philosophic speculation, may reduce or exalt their feelings to almost any standard. But, when we speak generally of the happiness of human nature, it is so much connected with the sensibilities of the body, and so much with the relations of society, and with ideas resulting from its customs, habits, and opinions, which necessarily incorporate themselves with all our feelings, that the external state, and visible condition of men must

afford us a more accurate criterion by which to judge of the equalities, or inequalities of divine providence, than any interior and invisible standard of mental feeling. And by this scale, surely, we do not perceive the rewards of virtue, or the chastisements of vice, bestowed in any equitable degree according to the respective characters of men. They fall rather according to the ingenuity, and perseverance of individuals, or the defect of these talents, or according to some fortunate accident, than according to merit.

This mixed and unequal distribution of good and evil is probably better adapted to a state of probation, where virtue is to be exercised and tried by being thrown into various circumstances of prosperity and adversity, than one that should indicate a more exact discrimination of character would be. But it is contrary to all the ideas we have framed of the divine wisdom, and beneficence, to believe that these probationary sufferings are to be the final reward of virtue; or that this mixture of pleasure and pain, in which pleasure predominates, is to be the final infliction of divine justice on that vice which disarranges the order and harmony of the moral world.

From these considerations, we have the justest reason to conclude that this mixed condition of human life, and promiscuous distribution of divine providence, indicates

to us only a preparatory state of moral discipline and trial that has an ultimate reference to another and higher condition of being.

And this hope we have seen to be confirmed by the analogy of nature which seems inclined not to leave any thing imperfect, and will, therefore, not crush in the germ, or arrest in their incipient state, so many noble faculties of the human mind which are evidently capable of attaining a degree of perfection which they never arrive at, and of evolving powers which they never display in the present life.—We have seen it confirmed by the general suffrage of human nature, resting, it would seem, on an instinctive impression, or intuitive conviction of the mind, and expressed by the religious opinions of all nations.—It is further confirmed by the hopes of virtue, and the fears of guilt, especially at the approach of death.—And it is confirmed, finally, by the unequal distributions of providence in the present world.

These moral reasons, when taken separately, may not be calculated to produce entire conviction in a mind disposed to weigh every argument with scrupulous distrust; yet, when assembled together under one view, they present such a group of probabilities as can hardly be resisted by a candid and ingenious understanding: and must make even the cold scepticism of infidelity relent.

But I must repeat again that full unwavering conviction on this most interesting subject can be obtained only from revelation, which not only assures us of the fact of a future and immortal state of being, but discloses to us in some measure, wherein it consists.

On the nature of our future existence, admitting, what reason I think demonstrates, that it is, in the highest degree, probable, being so far beyond the range of our experience, we can form no precise and certain ideas. We can speak of it only in the most general terms. But, from the analogy of what actually comes under our observation of the process of nature, we have just ground to conclude that the condition of human nature will be greatly improved above its actual state in the present world, both in personal form, (if, according to the ideas of religion, we look for a reunion of the body with the soul,) and in the powers of the mind. In those transmutations which pass under our immediate review in the insect tribes, we never see them pass from one state to resume the same appearance in another, but, in each gradation in their progress, they acquire augmented powers, and are invested with new and more beautiful forms. It cannot, therefore, be unreasonable to expect a vast augmentation in the active powers of our nature, both corporeal and mental, in the quickness and vivacity of the senses, in the beauty and excursive force of the

imagination, and the penetration and energies of the understanding. And the same analogies incline us to expect the addition, or developement of many new faculties of which, in the present state, the imperfection of our reason cannot form any conception.

Nor is it improbable that, in an immortal existence, the renovated faculties of our nature will advance forward in an endless progression of improvements, whether reason incline us more to the idea of one uniform state of existence, or to the pythagorean principle of successive transmutations. And, in the infinite system of the universe there is undoubtedly an ample theatre for an interminable progress both in knowledge, and in virtue. Nor can we doubt that there, the wisdom, the power, the goodness, and equity of the divine perfections will be more conspicuously, and illustriously displayed than in the present introductory state of being.

Such, without giving any unwarranted license to the excursions of imagination, and judging only from actual analogies presented to our reason, may we presume to be a just, as far as it is extended, though most imperfect outline of that future state of being, to which virtue ardently aspires, and to the hope of which the most cool and dispassionate examination of reason deliberately affixes its seal.

LECTURE XVII.

OF THE NATURE OF VIRTUE, ITS EXCELLENCE, AND ITS SANCTIONS.

CONTENTS.

The denomination virtue, *whence derived—Three principal questions raised by metaphisical writers on this subject, concerning its nature, its excellence, and the sanctions of the moral law—Different opinions concerning the nature of virtue—The opinion of the ancients preferred who maintained that virtue is acting according to nature.—The general principles which compose human nature—The powers and faculties of the body, though the lowest in order, are, however, not to be neglected in our theories of morals.—Above these virtue requires the cultivation of the intellectual powers—next of the social and benevolent affections—and finally of the moral principles.—On the excellence of virtue the same diversity of opinion exists, as on its nature—Its excellence intrinsic, necessary, and eternal.—Any change in the natural principles of the human constitution, would have altered only the modifications, and expressions of virtue, not its essence—The sanctions of the law of virtue, or the rewards and penalties which ac-*

company obedience or disobedience.—These found in conscience, religion, and general interest—The great question agitated in the ancient schools, what is the chief good?—The opinions of the Epicureans, the Stoics, and the Peripatetics.

HAVING stated generally the principles of human nature, especially as related to our system of moral action, and exhibited to you, likewise, the most obvious evidences which reason presents to us of the being of God, and of the immortality of the soul, doctrines which give the greatest efficacy to the law of duty, it is time to come more particularly to the consideration of our duties themselves, the great end to which our preliminary discussions have been intended to prepare the way.

The performance of all our duties from proper principles and with right affections, is denominated *virtue*. But, before I enter into a particular detail of the obligations imposed upon us in our various relations, I shall make a few observations on the general subject of virtue which the metaphisical speculations of philosophers, both ancient and modern, seem to require.

Virtue is a denomination taken from a word in the latin language which signifies strength, or force,* be-

* A similar derivation is found in other languages of the correspondent term in them signifying *virtue*.

cause, in the first rude ages, when the speech of men was beginning to be formed, personal vigor, and courage, the usual accompaniments of bodily strength, were the qualities which chiefly attracted general admiration and confidence. *Virtue* was then equivalent to another phrase, *the perfection of our nature;* and this was esteemed, at that time, to consist principally in corporeal strength and activity, connected, as it was commonly supposed to be, with boldness and energy of mind.

In proportion, however, as other qualities grew into esteem in the progress of society, especially the good affections of the heart, which are so deeply laid at the foundation of social happiness, and public utility, the same term became, in time, easily transferred to express these, which were now regarded as the most estimable properties of human nature. And the transfer was the more easily made, because the highest courage is commonly united with the greatest benevolence, and with all those noble dispositions which chiefly contribute to the felicity of mankind.

At length, when the institutions of civilized society approached their highest improvements, the common happiness being placed under the protection of the laws, and individual security being less dependent, than formerly, on personal strength and bravery, the moral dispositions,

from their predominant influence on the general happiness, becoming more and more the objects of universal esteem, have now, almost exclusively, appropriated to themselves the denomination of virtue. The term may, therefore, still be regarded as expressing generally the perfection of our nature ; as, when taken singularly, it is commonly employed to signify some property which contributes to that perfection, This meaning of the term we apply by a figure, in designating any useful, and distinguishing quality of other animals, or even of inanimate substances ; as we speak familiarly of the virtues of a horse, of the virtues of a soil, of the virtues of a plant.

In the speculations of philosophers on this subject, three very general and abstracted questions have been raised;—what is the nature of virtue?—What is its excellence?—And what is its sanction?—On the first of these questions, we seek for some general principle which constitutes the essence of virtue,—as benevolence; self-love; reasonableness of action; or any other; or we enquire into the character and quality of those actions which enter into its description.—On the second, we enquire what is the true ground of our approbation, or esteem of virtue? Why it ought to be preferred to any other course of action?—The last question implying that virtue contains in itself the essence of a law, or rule of

duty, we enquire in it, by what authority it is enjoined? under what rewards or penalties it is enforced?

Of the nature of virtue, different opinions, or rather, perhaps, different modes of expressing the same truth, have been adopted by various writers. Some maintain the principle, that virtue consists in acting agreeably to the will of God; of which sentiment Dr Paley is a distinguished advocate.—Others, with Dr Campbell, insist that it is only the wisest means of promoting our own happiness.—Another class concur with professor Hutcheson in resolving virtue wholly into benevolence; making it consist in a prudent well-directed care to promote general good.—And, finally, those who delight in a very abstracted and intellectual consideration of all subjects, define virtue, agreeably to the opinion of Mr Locke, to be acting according to the reason and nature of things.

With regard to these opinions it may be remarked that there is a portion of truth in each of them; but, as general definitions of virtue, they seem to be deficient in precision and accuracy.—It is true, in the first place, that wherever we can clearly discern the will of God, whether in the structure of nature, the order of providence, or the dictates of reason and conscience, that will, being ever founded in perfect rectitude and truth,

ought to be esteemed an inviolable law by every reasonable creature. But the advocates of this opinion too frequently speak of virtue as if it were an effect of *mere will*, without sufficiently considering the essential, intrinsic, and immutable rectitude of its nature; a perfection which it partakes in common with the nature of the Deity.—With those who maintain the second and third opinions, we cannot doubt that virtue contributes both to individual and to general happiness. But this should be considered rather as an effect resulting from virtue, in consequence of the wise and benevolent constitution of man, than as constituting its nature. Nor, indeed, is the consideration of our own happiness, at the time of acting, nor the benevolent consideration of the happiness of others, always the direct and immediate motive of many a virtuous act; but frequently we are urged to it simply from the sentiments of piety, of justice, or charity, from some natural instinct, or from the authority of conscience.—When, in the last place, virtue is said to consist in acting according to the reason and nature of things, the definition, though approaching to truth, seems to be by far too general. The being and nature of things embraces the infinite relations of the system of the universe; a very minute portion only of which, can be subject to our cognizance. Such a standard of duty, expressed in such general terms, must be extremely vague,

unless, like God himself, we were intimately acquainted with the entire structure of nature. But, besides the generality of the rule, it labors under another defect. The system of things embraces physical as well as moral relations. It would make virtue, therefore, consist in skill in the arts, as well as in the practice of duty.

If the definition had been limited to our own nature; the mutual relations of its different principles to one another, and the relations of the whole to other sensible beings, I would be disposed to acquiesce in it. And, with this restriction, it would coincide, in a great measure, with that given by a large portion of the ancient philosophers, who maintained, that *virtue is living according to nature*:—that is, according to the respective dignity and importance of the different principles which enter into the composition of human nature;—according to the relations in which it is placed to other sensible beings within the sphere of its action; and, finally, according to the end for which it seems to have been formed.

Any system is then said to be perfect when it is conformed to the design of the maker, when it is possessed of all its parts, when they are arranged in the order in which they are naturally related to one another, and move in concert to accomplish the end for which they were intended. And although a machine, or a building

were deranged, so that the relations of the separate parts did not appear immediately; yet, a skilful machinist, or architect might, by a careful inspection and comparison of each part with the whole, determine, at length, its proper place, and use in the system. This analogy may easily be applied to human nature, although it be, as it is confessed to be, disordered by many criminal and irregular passions. By the proper exercise of reason, we may discern those principles which have acquired undue strength, or those, on the other hand, which are too feeble; or when the whole are in just harmony and proportion.

Let me employ another analogy for the sake of illustration. In the complicated machinery of a *time-piece*, if a few of the wheels, detached from the control of the regulator, were left to be impelled by the force of the spring, although their rapid motion, in that circumstance, would be conformable to the nature of such wheels urged by such a power, yet it would not be according to the nature of the machine. The union and subordination of the parts has been dissolved. In like manner, if a vicious man, under the impulse of passion, should abandon himself to any intemperate excess, although the disorder would be conformable to the nature of that passion acting without the government of reason and conscience, it would

not be agreeable to the whole nature of man moving as one system, according to the design of the Creator.

The preceding reflections may serve, in some measure, to explain the meaning of those who maintain this general principle, that virtue is living conformably to nature: that is, to nature, as it appears, from a careful examination of all its constituent powers and faculties, to have been its original state in the purpose and intention of the Deity; and which appears, indeed, to be the natural and proper operation of all its parts, when they all move in perfect concert and harmony with one another, according to the relations which reason evidently indicates to exist among them. Human nature obviously appears to be, at present, in a state of moral derangement; yet, as amidst the broken columns, and arches of some ruined temple, you can perceive what has been the beautiful arrangement and structure of the entire pile, so we can, even now, discern, among the disordered powers of man, what is the true glory of his moral and intellectual constitution.

For this purpose it is necessary to enter into a minute and particular examination of the constituent powers and principles of our nature, to enquire what proofs of excellence and worth they respectively contain? what indications of natural superiority and title to command accompany the sentiments of some of them? to discern which

afford the most pure, dignified, and durable enjoyments? or which, on beholding them, inspire us with the highest admiration and respect, or procure for their possessor the most genuine esteem? These enquiries, correctly answered, will point out the rank which each principle ought to hold; the culture which should be bestowed upon each; and the influence which they should respectively exert on our conduct and manners.

The general principles of our nature affected by such an investigation, may be ranged under the following heads,—the corporeal powers and appetites,—the social affections,—the intellectual faculties,—and the moral sentiments. Under each of these, however, are many subdivisions which it would be difficult to enumerate, and class in their proper order. They must be left to the reflection and experience of each person as objects occur, or occasions are presented in life, to call them into exercise.—But on the general divisions we may remark, that the faculties, propensities, and pleasures of the body are evidently the lowest in the scale, and the moral sentiments the highest. And, of the others, the social affections are, perhaps, superior in their intrinsic importance, and certainly in their influence on human happiness, to the intellectual powers.

From this transient and comparative view, although the corporeal part of our nature, its propensities and faculties, are by no means to be neglected in our theories of virtue, or in its practical details; yet are they manifestly of inferior consideration to our moral principles, to our intellectual faculties, or our social and benevolent dispositions. These demand the supreme care, and the most assiduous culture of every wise and good man, because they are the properties by which human nature is chiefly distinguished from that of the inferior animals. But it is a mistaken notion into which some ancient sects of philosophy fell, and which formerly misled many excellent men of the christian church, to suppose that the body is the seat exclusively of all vicious and corrupted passions, which, therefore, it is peculiarly meritorious, not only to restrain within prudent and virtuous bounds, but by voluntary inflictions and macerations of the flesh, totally to extinguish. On the contrary, as man is a reasonable being composed of body as well as of spirit, reason and religion both teach, that his Creator has charged him with the duty of providing for the improvement and perfection of his whole nature; and consequently for the vigor and activity of his corporeal, not less, in their proper place, than of his mental faculties.

This care is requisite to enable him to fulfil, in the best manner, many of the most useful purposes of life. And those passions and affections which are supposed to have their seat chiefly in the body, such as anger, pride, the affection of the sexes, although their ardor requires them to be subjected to the habitual control of a prudent rein, are necessary as our nature is constituted, to the highest perfection of the human character. An apostle could say, *be angry and sin not*. And, certainly, the noble and manly countenance of conscious bravery without arrogance, united with the serene tranquility of benevolence and gentleness without weakness, presents in the human form and aspect a work most worthy of God. Let me again illustrate the remark in the affection which subsists between the sexes. None of the passions are more dangerous and corrupting when not placed under the government of reason and virtue. But, when subjected to the discipline of a virtuous self-command, it contributes to energy of character, to the cultivation of humanity and politeness, and to mingle a certain generosity, and elevated sense of honor in the manners of society, which would otherwise be liable to become rude and inhuman. So that the corporeal powers, and the animal affections, although among the inferior attributes of human nature, are far from being unworthy the consideration, and the well-directed culture of a good man. On the other hand.

as they form an important portion of our compound nature, and extend an influence not inconsiderable into the action and movements of our whole sensitive, rational, and moral system, they enter essentially into every just theory of virtue. A man, however upright in his intercourse with the world, however meek in his dispositions, yet if he is vapid, and without any point, and energy in his character, if he is gross and uncultivated in his manners, if he is even negligent and slovenly in his person, and without that attention to appearance which is requisite to render him acceptable in the society of his friends, is, in proportion to the neglect, defective in true virtue. And, although a maxim of Mr Hume's *that a reasonable attention to cultivate personal vigor, activity, cleanliness, and beauty, is essential to virtue,* has been sometimes treated with ridicule; yet, has it a certain foundation in nature, and the genuine principles of philosophy. Nor can I think that it was altogether out of the view of St. Paul in giving the character of true religion, when, after enjoining *whatsoever are true, honorable, and just,* he adds, *whatsoever things are lovely, and of good report, if there be any virtue, if there be any praise, think of these things.*—On this branch of the subject I have insisted with the more particularity, because, in the theories of morals which have been proposed by various writers, it has so seldom received the consideration which it deserves.

The next class of the human powers is the intellectual, embracing, not merely the faculty of reasoning, or of laying down principles of science, and of pursuing them, through a legitimate train of inferences, to their ultimate conclusions; but the powers, likewise, of imagination and taste, and all those talents which go to form the genius, and are connected with the invention or improvement of the arts. It is indispensable to the character of virtue to cultivate these powers, which form the basis of the high distinction which human nature claims over the inferior animals, with all the assiduity that is consistent with the practical duties which in our various situations we owe to ourselves, to society, and to religion. All men, it is true, are not placed in circumstances equally favorable for the cultivation of their intellectual powers, nor do their avocations in life require, or permit an equal proportion of their time to be devoted to these refined and dignified pursuits. A great disparity, therefore, must necessarily appear in the mental employments of different men.—What is chiefly requisite in those who enjoy the fairest opportunities for the improvement of their minds, and possess the best endowments from nature, is to be aware equally of the strength and weakness of human reason. Of its strength to awaken hope, and stimulate exertion on all subjects which are within the proper range of its faculties; of

its weakness, to check the boldness of hypothetical conjecture which is so often used to the great injury of science; and especially to repress rash and presumptuous conclusions on moral and divine subjects, instead of humbly soliciting the aid of that Infinite Mind, who, we have reason to believe, will sometimes deign to impart his suggestions to those who piously and submissively wait for them.* As there is no exercise of the human faculties more favorable to virtue, than the humble, patient, and diligent cultivation of the intellectual powers; none is more unfriendly than a bold licentious indulgence of the imagination, on the one hand, or on the other, of those refinements in speculation which attempt to push the enquiries of reason beyond the sphere assigned to it by nature.

In the practical details of virtue, in the next place, the social and benevolent affections hold a rank superior

* A beautiful example of this modest exercise of reason we have in a devout heathen, the great Scipio, who, according to Aulus Gellius, never undertook any important design without deeply reflecting on it in the presence of the Deity, according to the ideas of his religion, and seeking the direction of the divine counsel, in devout meditation, and laying open his mind to the celestial influence.

P. Scipio Africanus nihil cœpit priusquam sedisset diutissime in cella Jovis, quasi acciperet inde mentem divinam, et consilia salutaria reipublicæ. Propterea solitus erat ventitare in Capitolium ante diluculum.——*A. Gel. l. 7. c. 1.*

to that of the intellectual powers. Not that virtue consists, according to the opinion of some good men, exclusively in the exercise of universal benevolence. None but the Deity can embrace an object so vast as the whole of human existence, and make it the direct and immediate scope of his actions. But in order most effectually to accomplish this universal design, he has divided it into separate and individual parts, charging each person, in the first place, with the care of his own interests, that in this way the felicity of the whole may be provided for by the individual exertions of all. But when each man has acquitted himself of this primary duty, virtue requires that the principal portion of his active energies should be employed in cultivating the affections which unite him with society, and fulfilling the duties which render it flourishing and happy by mutual co-operation, and by the reciprocal interchange of kind sentiments, and beneficent offices. These are clear, and definite objects which we can distinctly grasp in the mind, and which present to the affections a precise aim. All beyond this, when we would render the object of benevolence more expansive, is only a vague and general wish for the happiness of universal being.—The impulses of self-love are, by the constitution of our nature, so strong that the duties, or the good offices which a man performs to himself, and those who immediately depend upon him.

do not stand high in the scale of virtues; but the dereliction of them is branded with peculiar reprobation in the catalogue of crimes. Our benevolent affections, and our social duties maintain a much higher grade; and the constant claims which, under one form, or another, are made upon them in society, requires, in order to fulfil them virtuously, a large portion of life.

It would be a mistake, however, to suppose that the benevolent virtues were solely occupied with the great interests of society, or of human nature. They descend to regulate the smallest sources of social enjoyment. Attentions to please, amiable dispositions, polite and elegant manners, and all those talents or graces of mind, or conduct, which contribute to promote the harmony of society, and render men most interesting to one another, enter so deeply into the springs of social pleasure, and possess such an important influence on human happiness, as justly claim for them, though often omitted in moral systems, an elevated rank among the virtues. They especially deserve the attention of youth, who are entering into public life. They correct the asperities of the passions, they soften and sweeten the intercourses of society; and possess a most amiable reflex influence on the temper and character of those who study to cultivate them.

Finally, the highest, and noblest principles of our nature, which ought, therefore, to be cultivated with the greatest assiduity, and the most reverential respect, are its moral sentiments, embracing justice to mankind, and piety to God. These sentiments are accompanied with such a perception of dignity and authority in their own nature, and such a sense of duty and obligation on our part, as proves them to be of the highest order in the human constitution, and invested with a natural right of control over every other power. A just reverence for *them* is that which is implied in the common maxim that a man should *respect himself*. Not that arrogant claim to respect from others for our follies, and humors, which is often made by men who have no other pretence to virtue except that rash courage which is always ready to defend their vices; but that inward and habitual reverence for the dictates of reason and conscience, of honor, propriety, and truth, which is the surest distinction of a virtuous man.

The action of the whole system is then only regular, and conformable to the original plan and constitution of nature, when every movement is accompanied with an habitual sense of rectitude, and duty, governed by a respectful deference to the judge and witness in our own breast, the representative of that infinite and holy inspection to which we, and all things are subject.

The principle which I have been illustrating, of making original nature, as far as we can now discern it, the proper model of virtue, implies, in the next place, acting according to the relations which human nature sustains to all other sensible beings ; whether to God as our Creator, to mankind as our brethren, or other creatures, as yielded to our use, or placed under our power, and control. These ideas will be more particularly explained when I come to treat of the detail of moral duties in the next lecture.

Having, in these reflections, laid a foundation for understanding the general doctrine of the ancient philosophy, that *virtue consists in acting according to nature*, by pointing out its constituent principles, and by shewing their comparative importance, and their mutual relations to one another in the system, and the necessity of their moving together in harmony and concert according to their just proportions, in every course of action : it may be farther illustrated by considering shortly what indications are contained in human nature of the end for which it is designed. Every system that is wisely constructed, has all its operations so combined and regulated as to concur in the accomplishment of some useful end ; and in proportion as it attains this end with certainty and ease, it is said to be perfect according to the design of the

maker. Pursuing this analogy, if we ask, what is the end for which man has been formed? As far as human reason can dive into the purposes of nature, it seems to be, to enjoy and communicate happiness as a sensible, rational, social, and moral being. In this way he best promotes the benignant purposes of the Deity, and thereby renders due glory to him; by the practice of good morals, and by becoming the instrument of the divine beneficence to his fellow beings. The sincere aim to fulfil this end is virtue.—Against the design of his Creator, it must be confessed, man often errs: sometimes through ignorance, and mistake; but much oftener through misguided passion. He seldom errs, however, with impunity. He is commonly chastised by the reprehension of his own mind, and the painful consciousness that he has departed from the true order of nature.

Permit me then to conclude with this necessary caution: since names are apt to mislead, and it is difficult to free the mind from the influence of habitual associations among its ideas, we ought to beware of imagining that the philosophical language of *acting according to nature*, ever implies yielding to the impulse of any single passion or tendency which may happen to be strongest at the time. On the contrary, it implies the regular movement of the entire system in the just relations and proportions of all its parts, as it appears from reason to have been

originally designed by the Creator ; although left to man as a free, rational, and moral agent, to carry into full execution, for a continual exercise of his wisdom, and his virtue.

OF THE EXCELLENCE OF VIRTUE.

In the next question which occurs on this subject,—what is the excellence of virtue ? We enquire wherein its merit consists ? What is the true ground of our approbation, or esteem of it ? Why is it preferable to any other course of action ?

The same diversity of opinion has existed on this as on the last question. Some writers maintain that its excellence lies simply in its conformity to the divine will ; or that the single reason why it deserves our esteem, and is to be preferred to vice, is because God has prescribed it.—This opinion seems to give to virtue too arbitrary a complexion, and too mutable a nature ; and, apparently, implies, in the mode of expression, contrary, I presume, to the true intent of its authors, that our preference might have been equally required for some form of vice, if such had been the sovereign order of the Creator. On the contrary, virtue seems to possess as necessary an excellence as the Deity himself. In him goodness, justice, and truth, which are the source, and, as far as the human nature can resemble the divine, the pattern of virtue in

man, are equally unchangeable and eternal with his intelligence, wisdom, and power.

Reflections of this kind have laid the foundation of a second opinion, that the excellence of virtue is to be sought solely in *the reason and nature of things:* which is only another way of saying that its excellence is *intrinsic*, in *the nature of the thing*, and like the perfection of the Deity, is eternal and immutable.

The third opinion is, that its excellence consists in its tendency to promote general happiness.—And the last, that it is excellent, or is so to be esteemed by each man, merely from its relation to his own happiness.

On this subject we may, perhaps, justly pronounce, that there is in virtue, that is, in moral rectitude and goodness, an intrinsic and necessary excellence, as was shewn in our reflections on the moral faculty. It is not dependent upon *mere will*, even the will of the Deity; but rests upon the same immutable foundation with our ideas of the divine perfection. We can have no other just conception of God himself but of infinite, eternal, immutable goodness, rectitude, and truth, united with wisdom and power. And virtue in human nature is, in its degree, a transfusion of these perfections. Its excellence, therefore, consists in the essential nature of the thing itself. And that is founded in the eternal, necessary and im-

mutable perfection of God. But although I reject the abstract principle, that the excellence of virtue consists in its conformity to the will of the Creator, or that his will alone *constitutes* its excellence; yet, wherever his will is clearly indicated, whether in the structure of the universe, and the order of providence, or in the constitution of our own nature, and the relations which he has established between us and other beings, it must, from his infinite wisdom and goodness, be the surest rule of duty to us.

In support of the principle that virtue, both as to its nature and its excellence, depends wholly upon the will of God, it is demanded if he might not have formed us with other faculties, and established between us and other beings different relations from those which subsist at present? And whether, in that case, the nature of virtue must not have suffered a proportional change?—I reply, that the external acts by which those varied relations must have been expressed, would necessarily be changed; but its essence and principle, which consists in equity, and benevolence to mankind, in piety to God, and regard to the happiness of all being, must have remained unaltered. Will and power, therefore, can only alter the modifications of virtue, but do not change its nature.

OF THE SANCTION OF VIRTUE.

The third question arising on this subject; What is the sanction of virtue? implies, that it contains a law, or rule of conduct, and we ask by what authority it is enjoined? and by what rewards and penalties it is enforced? For the *sanction* of a law signifies the good which, by the constitution of the lawgiver, is made to follow obedience as its reward, and the suffering which he has annexed to disobedience as its penalty.

The authority by which this law is enjoined we find in our own breasts, and in the will of God. In the dictates of conscience we perceive an authority that is fitted to command, as well as a power that is able to punish.—The authority of conscience, however, is evidently subordinate, and points to the higher control that is placed in the will of God, to which it continually refers us.—The moral law, as I have said, possesses an intrinsic and immutable excellence on account of which it justly claims our submission and respect; but it would be dead as to any authority to compel obedience, without a divine legislator to impose it by his command, and enforce it by his power. Nothing but *will*, armed with the *power* to reward or punish, can *oblige*.

Our next enquiry, then, is, what sanctions the Supreme Legislator has annexed to his law? They are commonly

divided into those of *duty*, and *interest*. And under these heads, with a little latitude of expression, they might all, perhaps, without difficulty be arranged. A more obvious and comprehensive division, however, I shall take the liberty to adopt from my immediate predecessor, the late Dr Witherspoon, who classed them under the heads of *conscience*, of *religion*, and of *general interest*; with a very summary explanation of which I shall present you.

The sanction of conscience consists in the internal satisfaction, and self-approbation which good men perceive in upright conduct, and in the compunction, remorse, and fear which usually follow criminal actions.—The sanctions of religion consist in the natural hope of the favor of God which accompanies virtue, and the apprehensions of his displeasure which often mingle themselves with vice and disturb its tranquility. But the sanctions of religion reach beyond the present life. And, although, in a work like this, we are not permitted to avail ourselves of the lights of revelation, yet the belief of a future judgment, and our natural anticipations of some righteous retribution to virtue and to vice, seem to announce the existence of a law in the human breast, which is found in all nations, which carries forward the hopes and fears of mankind to an after-state of existence. And, often, its influence upon their actions, is not the less pow-

erful, because its ideas are obscure; and, to the vicious, especially, it presents only an unknown terror.

The question has been seriously agitated whether reason and nature direct mankind to look forward to a *corrective* and therefore only temporary suffering for vice in a future state, or to a *vindictive* justice, which will consequently be eternal.—The former opinion was embraced by the disciples of Pythagoras, who brought his doctrine from India.—The latter, especially with regard to certain grades of crime, seems to have been the more general sentiment of mankind throughout the world, pagans, as well as christians. They have been probably led to the idea of eternal sufferings from the strong compunctions of guilt which impart strong and fearful apprehensions of punishment, but suggest no definite period to it. The idea, doubtless, was strengthened by observing that many crimes draw after them, even in the present world, irreparable evils. No repentance can efface the stain which is imprinted on the character by some infamous offences, nor repair the ravages committed on the constitution by many vices. Seeing these calamities endure as long as life, it was not an unnatural apprehension that, hereafter, in a state of retribution, they would be continued as long as the existence of the offender.

The last sanction which has been stated of virtue, or the moral law, is *general interest*: that is, the happiness

which usually accompanies virtuous dispositions, and conduct—the unhappiness which naturally follows vicious pursuits, and dishonest aims.

There are, doubtless, many examples of virtue which has deeply suffered by misfortune. Misrepresentation may take from merit the esteem of the world; an adherence to truth may sometimes overwhelm an honest man through the artifices of a powerful rival. On the other hand, momentary advantages may now and then seem to be gained by a departure from moral principle. But it may be laid down as a sure and general maxim that a prudent and steady course of virtue is calculated, by a natural influence, to produce inward peace and tranquility of mind, and to lead to public respect. The occasional advantages derived from vice are more apparent than real; and seldom are they durable. When a man is once known to act from corrupt principles, they generally defeat his aims; or, if he succeeds, he loses in reputation and peace of mind, more than he acquires in wealth and power. Besides, great affluence, or extent of power, although they may often be productive of many conveniences, are not necessarily connected with happiness. True happiness, on the other hand, most certainly arises from the inward peace and self-approbation of conscious rectitude and virtue;—from moderate, constant, and

useful employment; and from the regular and virtuous exercise of all the powers and faculties of our nature, and especially of the social and benevolent affections of the heart.

Having treated of the nature, and excellence of virtue and the sanctions which the Deity has annexed to its law, particularly in the tranquility and happiness which it is fitted to impart to the virtuous mind, this seems to be the proper place to introduce to your notice the famous question which was so earnestly discussed in the ancient schools;—What is the chief good?—Having feeble and obscure conceptions of the felicity arising from the genuine affections of religion, and the clear and certain hopes of immortality, as they are understood by a christian, the great enquiry of their philosophers was, in what manner existence, with the present powers, tendencies, and prospects of human nature, might be best enjoyed? And, on this subject, after the doctrines of the pythagorean school, which entertained many pure and excellent principles of morality, blended with their imperfect ideas of a future existence, we perceive three principal sects which divided the empire of philosophy, the Epicureans, the Stoics, and the Peripatetics.

The Epicureans, who derived their name from their founder, maintained that animal, and sensible enjoy-

ments, the gratifications of our natural appetites, and our external senses, form not only the chief, but the sole happiness of man; and that what are called the intellectual pleasures are only the recollections of these, which then become somewhat more refined through the influence of the imagination. Epicurus himself was a man of moderate desires, and, consequently, maintained that moderation in every indulgence is necessary to true enjoyment.—His followers, however, availing themselves of the literal and obvious interpretation of his general principle, abused his doctrine to the grossest sensuality. And their opinions being so much accommodated to the inclinations of the greater portion of mankind, they became, in time, the most numerous sect of antiquity. For the same reason, this philosophy will always practically flourish among a luxurious people, and in a declining and corrupted state of public manners, in every nation.

The Stoics, who borrowed their denomination from the portico in which their discussions were held, maintained that true happiness lies only in the mind, and is not affected by external circumstances. They endeavored to extinguish all the finest sensibilities of human nature, from the supposition that they serve only to effeminate the soul. It was their leading maxim that there is nothing good but virtue, and nothing evil but vice.

Consequently their wise man had no wants. He possessed in his own mind, and in the acquirements of philosophy, all that is great and good in human nature. Their virtue, however, was proud, and too independent. It excluded, almost entirely, the gentle sympathies, and benevolent affections of the heart. Their philosophy was more fitted to generate heroes than to form amiable and useful men.

The Peripatetics, who received this denomination from their constant practice of walking while they communicated and received instruction, pursued a middle path between these extremes; and one, I believe, more conformed to nature and reason than either. They did not despise the moderate gratifications of sense; they cultivated the liberal pleasures of imagination and taste; they were not indifferent to the advantages of fortune, provided they were acquired with fairness and honesty. But they held virtue to be the *chief good*. And their virtue was sociable, benevolent, useful. This philosophy agrees with the account of *the nature of virtue* which I have already given. It is the exercise of all the powers of our nature in their proper proportions, and the just subordination of the inferior to the superior principles. It is the preservation of every faculty in its greatest vigor and perfection, and, thereby, maintaining it always in a state of readiness not only to be applied to its best uses,

but to derive from it, its highest enjoyments.—Over all presides the moral faculty both to direct their exercises, and to assist their enjoyments; being at the same time, itself the source of the purest and sublimest pleasures. —So that, according to this theory, taking virtue as a general rule of action, and judging from its general effects on individuals, communities, and nations, if it cannot be pronounced the only good, it is manifestly the *chiefgood.* It is the common interest of the world.

Such are the grounds on which I have made *general interest* a sanction of the moral law. I confess that the depravity of human nature, and the imperfection of human virtue in the best of men in this world, would render this sanction too feeble if it were not aided by that of religion. But religion, conscience, and general interest, taken together, form one that will necessarily possess great force on every serious and reflecting mind.

LECTURE XVIII.

OUR DUTIES CLASSED UNDER THEIR GENERAL HEADS.

CONTENTS.

The ancients having no system of public and popular moral instruction, theology, and morals, were necessarily taught in the schools of their philosophers.—The details on these subjects were therefore more ample than are usually found in the modern systems of philosophy—Morality divided in different ways,—first according to the principles from which it springs—and secondly according to the objects on which it terminates. —The former, the division of the ancients, who arranged the virtues under the heads of justice, prudence, temperance, and fortitude—The analysis of these—The latter division more commonly used by the moderns,—including the duties which we owe to God—to our fellow-men,—and to ourselves.—Our duties to God, internal and external—the internal, love, reverence, resignation—The external, visible worship, the forms of which various, but its essence embracing adoration, thanksgiving, confession, prayer—Objections answered.—Of our duties to our fellow men—of our duties to ourselves.

AMONG the ancient philosophers the principal portion of their moral systems was occupied in theological discussions, and in the detail of duties resulting from the various relations of man, domestic, social or civil. The national religion, consisting chiefly in a multifarious ceremonial, and little in doctrine, or moral precepts, had established no means of public and general instruction for the people in the principles of piety, or morals, such as christian nations enjoy in their churches. The system of duty was taught only in their schools. Its details, therefore, were necessarily explained with great minuteness, and extent in the discourses of their philosophers.* But among christians the practical duties of life, as they respect either religion, or society, are so constantly inculcated from the pulpit, and are so perfectly understood by all classes of the people, that this part of our philosophical course is, in consequence, greatly abridged. All that I shall aim at, therefore, will be to reduce our duties under general classes, so as to present a clear and systematic view of them; and to exhibit their general principles, so that the grounds and reasons of each duty may be better understood; and our ideas concerning it may, in some dubious cases, be rendered more precise and determinate.

* Of which we have admirable examples in the treatises of M. T. Cicero, de officiis, et de natura deorum.

The duties of morality may be divided in different ways, either according to the principles from which they spring, and which govern their exercise, or according to the objects on which they terminate. The former principle of division was generally adopted by the ancient philosophers, who classed them under the heads of justice, prudence, temperance, and fortitude. The latter is more commonly employed by christian writers, who arrange them under the heads of the duties which we owe to God, to our fellow-men, and to ourselves.—I shall place before you a very brief view of each of these systems.

Justice, according to the interpretation of that term by the ancients, was used in a much more comprehensive signification than it is by modern writers; and was made to embrace the duties of benevolence, as well as those of strict equity. Their rule of justice, although nowhere so clearly and concisely expressed in their writings, as in the precept of our Saviour, was in substance the same; —"whatsoever ye would that men should do unto you, do ye even so to them." *Justice*, therefore, according to their ideas, included the duties of *innocence*, which consists in abstaining from injury to others;—of *equity*, which is returning an equivalent for the good we have received;—and of *beneficence*, which implies conferring such favors on others as, in exchange of circumstances,

we could reasonably desire from them. In their moral commentaries, likewise, the parental and filial duties, piety, friendship, gratitude, candor, liberality, charity, and even civility, and politeness, were all comprehended under the head of justice. And to the same comprehensive class were referred all our public duties as citizens, or as magistrates, as well as our social and domestic.

It is a principle generally received, that the duties of justice, may be made the objects of positive institution, and of penal laws. Those of innocence and equity may certainly be required by compulsory authority, and their violation punished by the power of the magistrate. But as those of beneficence, if they are to be included under the head of justice, cannot be designated by such definite limits, it would not be safe to entrust their regulation or their punishment to any human tribunals. They can properly be enjoined, therefore, only under the sanctions of conscience and religion.

Prudence may be defined to be the pursuit of objects according to their worth, and the application of the fittest means to arrive at their possession.—It calls into action the talents of judgment, and discretion, in forming a just estimate of the value of different objects which solicit our attention, a sound consideration of the natural connection of causes and effects, with a quick perception of

occasion and opportunity, and a steady firmness of mind in seizing and applying them to their proper ends. Prudence has been pronounced by many writers to be rather a natural talent than a moral quality. And certainly, some men, by their constitutional organization, possess more than others that calm judgment and discretion which is necessary to their framing wisely the plans of conduct, and that foresight, firmness, and decision which are requisite to carrying them successfully into execution. But it is, like most other useful qualities, capable of being greatly improved by habitual reflection, and a vigilant self-command. And it is so intimately connected with morals, and so necessary to the successful issue of every important design, that true virtue will ever aim assiduously to cultivate it. A man who is deficient in this talent can seldom act to any great or useful purpose. He may often defeat the best intentions, and derange the most wholesome plans; and can rarely acquire, and never preserve, true respectability of character. An imprudent man is liable to embarrass himself in the most dishonorable difficulties, which present almost irresistable temptations to crime. And often, without foreseeing the precipice on which he is running, he may throw into confusion his own most important interests, or the interests of his dearest friends. In proportion, then, as

imprudence is a vice, is the merit of cultivating the opposite virtue.

Imprudent men we see prone to impute the disastrous consequences of their own neglect, precipitancy, or mismanagement to the arrangements of divine providence; and, with a mistaken piety, profess to trust in providence to relieve them from the effects of their own indiscretions. —This arises from a most erroneous conception of the universal government of the Supreme Being, as if it were a vacillating, and mutable disposition of events, liable to be disarranged according to the exigencies and desires of men. Divine providence, on the contrary, proceeds on fixed and invariable laws, of which prudence may avail itself, as far as they are known, for its own interest; but which never change with a weak indulgence in compassion to the errors of human folly. Men sometimes mistake the regular order of events, where the concatenation of their causes is, through ignorance, or inattention, not observed, for immediate and extraordinary interpositions of Heaven. Such fancies do no honor either to religion or philosophy.

The general virtue of prudence may be regarded as including the following considerations:—In the first place, a decent respect in our conduct, and the declaration of our opinions, to the known sentiments and feelings

of others; which may conciliate friendship, and mutual civility, that direct collision, even on trivial subjects, tends very much to destroy.—In the next place, a scrupulous attention, in our manners, and in the temper which we manifest in our social intercourse, to what our period of life, and station in society requires or permits. There is a wide difference between the decencies and proprieties which are becoming in age or in elevated rank, and those which are demanded of youth or of dependence.—A no less important consideration, in the analysis of this virtue, is a judicious regard to economy in the expenditures of living, according to the certain means which we enjoy. If this is requisite to the fulfilment of the duties of justice and benevolence, it is equally necessary to the freedom and independence of mind which every virtuous citizen should study to preserve.—To complete that character of prudence which is requisite to ensure success to the general designs, and especially the important enterprizes of life, we should combine, in the character, and habit of the mind, two apparently opposite qualities, which, however, are necessary to impart to each other a mutual and solid support,—decision, and caution. For without decision, caution becomes feebleness or timidity; and without caution, decision is apt to degenerate into rashness or obstinacy. By the former I mean that prompt and resolute choice of conduct, which seizes

occasion at the proper moment to ensure success, when indecision would be loss of opportunity. And by the latter, that calm and deliberate judgment which foresees and provides against all difficulties; which weighs well the characters of those with, or against whom we act; and balances the magnitude and importance of every undertaking with our own talents.

In this division of the virtues, in the next place, temperance implies, not merely abstinence in the use of meats and drinks, but moderation in all animal enjoyments. In the idea of temperance, likewise was included, according to the habits of thinking among the ancients, that constant and useful employment, and that degree of active and strenuous exercise, which are necessary to promote the health and vigor of the body, and to subdue its passions and appetites into a just subserviency to reason.

In the same system, in the last place, fortitude comprizes the virtues of patience, intrepidity, and constancy. By patience we mean firmness in enduring suffering,—by intrepidity, courage and resolution in encountering danger,—and by constancy, that strength of mind which enables a virtuous man to persevere, in opposition to difficulties, or temptations, in a course which he has once chosen with wisdom.

Fortitude has, like prudence, been regarded by many writers as a natural rather than a moral quality; and depending chiefly on a certain constitution of nerves. Nature has, undoubtedly, given to some men a greater constitutional firmness of mind, and hardiness of enterprize, than to others; but a composed courage in the midst of dangers, and an unshaken constancy in the midst of sufferings, are qualities which may be acquired by a virtuous energy of soul. And much of the dignity and usefulness of life depends upon their cultivation. Native timidity may be overcome, by proper culture, especially if united with the experience of suffering and danger, which ought always, perhaps, to enter into the plan of a wise and virtuous education. The weakest natures have been enabled, by the power of religion, to endure with firmness the greatest evils; and intrepidity and courage may be acquired, of which we have many examples in the school of the Stoics, by the force of principle and habit. And I doubt not, if Demosthenes had taken as much pains to cultivate the intrepidity and constancy of his mind, as he did to improve his eloquence, he might, instead of being reproached for his cowardice at Cherona, have become as great a soldier as he was an orator.

From this analysis of the virtues made by the ancients, it is obvious that, under their four heads, may be em-

braced all the practical duties of life, with all the speculative questions which philosophers have raised on the theory of virtue.

I am next to consider the more modern division of duty, as its objects are different; God, our fellow men, and ourselves.

OF OUR DUTIES TO GOD.

Our duties to God may be divided into the external, and the internal; or into those that are general, and those that are particular.—Our general duties embrace the whole compass of piety and virtue; because, as they constitute the moral law of the universe prescribed by God, conformity to their dictates is justly regarded as obedience to him. The particular duties terminate immediately on God as their object, and include both the devout affections of the heart, and the external expressions of those affections. The internal affections which are due to God, and from which, as from their natural source, flow all the streams of pious obedience in the life, are love, reverence, and resignation. Love is the active spring of universal obedience. To be sincere it ought to be supreme; and is most perfectly expressed in the injunction of the sacred scriptures; *thou shalt love the Lord thy God with all thy heart, with all thy soul, with all thy strength, and with all thy mind.* This affec-

tion respects all the attributes of the Deity, but chiefly his moral perfections, and especially that infinite goodness on which we, and all things do constantly depend.

Reverence, the next of our internal duties, is less an active than a restraining principle. It is calculated to impose a salutary check on the passions of mankind, surrounded and stimulated as they constantly are by powerful temptations to vice. This affection has respect chiefly to the infinite greatness, wisdom, power, and holiness of God. It is a principle essential to the existence of piety and virtue in creatures so imperfect, and prone to evil as mankind. From the profound degree in which it prevails in a pious mind, it is often denominated, in the sacred scriptures, the fear of God. This is a virtue which was held in peculiar honor in the early ages of the Roman commonwealth. And we learn from their most distinguished writers, that they regarded the fear of the Gods, and reverence for the sacred offices of their religion, as the basis of the public virtue, and of the prosperity of the republic.—How much more truth and importance should be attached to this principle in an enlightened christian country.

Absolute resignation to the divine will, and the wise arrangements of providence, I have mentioned, in the last place, as belonging to our internal duties.—It implies

entire confidence in the wisdom, justice, and goodness of the Infinite Mind, and a deep conviction of the narrowness of our own understanding, and the imperfection of our own views as to what is good or ill for us. Resignation, resting on these principles, begets not only a grateful acknowledgment of the manifold blessings of divine providence, but a submissive acquiescence in the will of Heaven under its most afflictive dispensations; believing that, although we may not be able to discern their ultimate relations to any beneficent end, either to ourselves, or others, yet are they all reasonable and just, and good; and necessarily springing out of the all-wise arrangements of the universal system under the government of God.—This disposition of mind is equally opposed to all discontent and repining at the course of providence, and to all vain reliance upon its aids while we are negligent of our own duties; it tends to produce that placid serenity of soul so becoming the character of resigned piety, and to awaken the active and prudent exertions which virtue requires of every good man, in dependence on God, to improve the felicity of his condition, and his honorable standing in life.

Our external duties comprize every decent outward expression of the inward and pious sentiments of the heart. They are all comprehended under the general

name of divine worship, for which, however, natural reason has not prescribed any precise and definite form. Different nations, and different sects of religion, have each adopted a peculiar ceremonial for itself. No sanctity ought to be ascribed to rites exclusively of the affections which they are designed to assist; or any farther than they are proper expressions of the devout dispositions of the soul. But all rites deserve to be regarded with respect which custom has sanctified among any people, and has so associated with their religious ideas as to be to them the most serious and affecting expression of their devotional exercises. In considering the general question of the utility of rites and forms in religion, and how they may be applied in the most effectual manner to answer the design of impressing the heart in divine worship, and aiding its pious emotions, reason will decide that the ceremonial ought to be neither too simple, nor too multifarious, or splendid. The mass of mankind are so much governed by sensible impressions, as seldom to be able to support with proper fervency, a religion that aims to be wholly intellectual, and scorns any alliance with the senses; on the other hand, the senses are apt to be so much amused with a ceremonial too splendid or multifarious, as, in time, to exclude the heart and understanding from divine worship, and to substitute in its room, only a frivolous superstition.

The essential parts of a rational worship, in whatever ceremonies it is clothed, are adoration, thanksgiving, confession, and prayer. Adoration relates to the infinite perfections of the Deity for which we ought, in devotion, to feel and express the highest veneration. Thanksgiving is employed in expressing our grateful acknowledgment of those mercies which we continually receive from him. Confession respects our manifold offences, and omissions of duty. And, finally, prayer regards those mercies of which we have need, and which we ought humbly and submissively to ask of him, either for ourselves, or for others.

These duties, being continually explained and inculcated in the public institutions of religion, are so generally understood as not to require any further illustration in this place. Two objections, however, have been so plausibly urged against the duty of divine worship in general, as it has been just stated, that they ought not, perhaps, to pass without a particular answer.

It is said, in the first place, to convey an unworthy idea of the Deity to suppose that he derives pleasure from hearing his perfections repeated, or his praises extolled by mortals, in acts of adoration, as if, by such adulatory addresses, his displeasure could be soothed, or his mercy bribed.—It is equally unworthy the divine majesty, it is

alledged, to believe that humiliating confessions from such imperfect beings can be acceptable to him who already knows and pities all their errors; or that he can require of them formal acknowledgments for acts of beneficence which it is agreeable to his nature to bestow, and for which no acknowledgments can make any requital.

To these unfair observations it may justly be replied, that it is an essential law of our nature that all high sentiments, or strong affections, necessarily seek for some means by which to express themselves. If, therefore, we feel as virtuous and pious men ought to feel towards the author of our being, to check this dutiful expression of our emotions would be to stifle the most reasonable impulses of the heart; and not to feel them would be the proof of a cold and corrupted soul.

I add, that the most natural and laudable affections, when they are suppressed, and are entirely locked up within the heart, necessarily languish, and, at length, cease to be felt. The strong and ingenuous emotions of unfeigned piety will seek for some reasonable mode of external expression, and the repeated expression of them in the acts of a visible worship will reciprocally give strength to the inward principles from which they flow. An external worship then is founded on principles of the

soundest reason, and most conformable to the laws of our moral nature. It cannot, by any person who thinks wisely of the divine nature, be supposed to be enjoined by the infinite mind for any gratification which he receives from the praises, or prostrations of a being so feeble and imperfect as man. It can arise only from that infinite wisdom and benevolence which requires our worship for its own essential rectitude, and for its own beneficial influence in cultivating in the human heart the affections and habits of virtue and piety for which it is so admirably fitted. For adoration of the divine perfections, while it impresses the pious mind with an awful reverence of the Deity, tends to elevate the tone of its moral feelings, and to assimilate them to the purity of the object of its worship.—The grateful recollection of the divine mercies in the immediate presence of God, serves to confirm the affectionate purposes of duty and obedience to him.—On the contrary, the penitent confession of sin helps strongly to arm the soul against its own weakness, and its unholy passions. And finally, the supplications which we address to the Father of mercies for the blessings which we need, either for the present life, or in the hope of a better existence, remind us continually of our dependence on him for all things, and awaken, by that remembrance, the profoundest sentiments of piety.

The second objection, which, perhaps, is more plausible, and seems supported on stronger metaphysical ground, is directed against the efficacy, and, consequently, the utility of prayer, employed as a mean of obtaining the divine favor either in our public, or private devotions.—The order of the universe, it is argued, and the eternal train of causes and effects have, from the beginning, been fixed by infinite wisdom. And the laws of wisdom are as unchangeable as those which have been ascribed to necessity, or fate.—Why then, it is demanded, should we pray? If pre-established causes naturally co-operate to the production of the event, it must take place independently of our prayers. If otherwise, we pray in vain. The breath of mortals cannot change the eternal order of things.—This is the objection placed in its strongest point of light.—To obviate it, let it be observed, that prayer can have only two ends in view; to cultivate the moral qualities of the heart, and thereby obtain those spiritual blessings which, in the order of providence, are connected with them; and to procure those natural and temporal goods which we solicit in prayer. To obtain the former, we have seen that prayer, with every other part of divine worship, possesses an obvious and acknowledged influence. The stress of the objection, therefore, bears upon the latter; but admits of this simple and unconstrained solution.—From the superiori-

ty of intellect to matter, and of the moral to the natural order of things, there is the highest probability that the physical has been created wholly in subserviency to the moral world. If this principle be admitted, will it not result as a natural consequence, that the Creator may have so adjusted the one to the other, that, foreseeing the sincere and reasonable desires of good men who are his children, the order of causes, and the train of events shall, at the proper time, and in the way most agreeable to his infinite wisdom, correspond with their prayers?

This may be regarded as a hypothetical answer to the objection. There are innumerable occasions, however, on which the answer may be drawn from the plain and obvious course of nature. How often do the events of the world manifestly depend upon moral springs? How often do we see the fortunes of individuals greatly influenced by their moral character? And the universal voice of history has almost raised it into a maxim, that the prosperity of nations is intimately linked with their virtue, and their decline as certainly associated with the corruption and disorder of the public manners. When, therefore, we reflect how much public, and individual manners are affected by the healthful state of religion, and how much this is connected with the purity of the public worship, and the sincerity of private devotion, we can hardly avoid the conclusion that, on many events,

prayers offered up to God in sincerity, with fervency, and perseverence, have an influence not less powerful, and, often, much more successful, than any other second cause. So that, whether we regard the wise, and eternal arrangements of providence, or the known and fixed order of natural and moral events, the result still recurs, that prayer, far from being an unreasonable, and hopeless service, not only has a natural and important influence on human events, but may have, as revelation assures us it has, a positive and divine efficacy. And, indeed, can any institution be more just and equitable in itself, than that God should make the bestowment of the blessings which we ask in prayer, to depend upon the existence and growth of those pious dispositions which are best cultivated in these devotional exercises?

OF OUR DUTIES TO OUR FELLOW-MEN.

Our duties to our fellow-men include a greater compass and variety than those which terminate immediately upon God. They respect the infinite relations which subsist among mankind, and they necessarily occupy much the largest portion of life. There is scarcely an action we perform which does not affect some of these relations. From the general information which prevails in a country like ours, continually enlightened by the pulpit on the practical duties of society, it would be

wholly unnecessary, in this place, to go into an extensive detail of our social offices. It will be sufficient to suggest a few subdivisions under which they may all be systematically classed.

The first and most general of these divisions may be into the duties which are negative; consisting merely in abstaining from injury, or from ever inflicting unnecessary pain,—and such as are positive, being employed only in doing actual good.—Many other classes of practical duty might admit of a similar division; but this, on account of the many and strong passions in human nature that so often impel men to mutual injury, seems particularly to require it.

The positive duties of this class may all be ranked under the heads of justice, and beneficence. But, though so simple in their principles, they are almost infinitely diversified in their details, according to the relations which we sustain to our country—to our family—to our vicinity—to our friends—to the objects of our charity—to those who are invested with authority over us—or who are subjected to our control—or, finally, according to our philanthropic relations to mankind.—On these duties volumes have been written; libraries have been filled; and still they are subjects which constantly demand our

attention, and on which we can never cease to be active, and to learn.

OF OUR DUTIES TO OURSELVES.

The duties which we owe to ourselves are as real, and, in many respects, as important as those of any other class. On these, as on the last, I shall content myself with simply enumerating the subdivisions under which all the particular details may be embraced. They relate to self-preservation—to self-enjoyment—to self-interest—and to the general cultivation and improvement of our nature.

Self-preservation includes the care of health, of liberty, and life. He is culpable who neglects his health, which ought to be diligently preserved only for the useful and virtuous purposes of living.—He is, perhaps, more culpable who barters his liberty for any pretended convenience, or compensation, or who does not strenuously defend, when it is attacked, this most noble, and precious prerogative of our nature.—And voluntarily to sacrifice life, or unnecessarily to hazard it, in a cause that is not worthy the rational and moral nature of man, if it does not flow from insanity, is an evidence of a mind precipitate and foolish, and utterly void of virtuous fortitude.

A rational self-enjoyment, in the next place, every good man is not only permitted but required to cultivate, in order that he may be rendered more grateful to his Creator, by moderately, and prudently using the blessings of divine providence. This is evidently conformable to the design of the Deity in our creation, and harmonizes with the apparent structure, and order of our nature. But in using this flattering privilege, peculiar caution is requisite, lest the force of self-love should urge indulgence beyond that restricted and frugal boundary at which prudence, and virtue should arrest it.

Self-interest, the cultivation of which belongs to this class of duties, relates to necessary provision, and comfortable accommodation, which no good man, under any pretended idea of benevolence or public spirit, ought to neglect; and, in a more extended view, it relates to the favor of God, and to eternal felicity in a future world, which should be the first concern to every truly wise man in the present.

The general cultivation and improvement of our nature, which I enumerated last among the duties which we owe to ourselves, has for its objects, as I have mentioned in the preceding lecture, our bodily powers, the faculties of the mind, and the affections of the heart. The most important trust which our Almighty Creator

has committed to man as a moral and accountable being, is himself. And the first obligation which such a gift imposes upon him is to carry it to the ultimate perfection of which it is susceptible.

Such is a very brief analysis of the general system of our duties, but sufficient, perhaps, to present to a studious and reflecting mind a key to its minute, and particular details.

LECTURE XIX.

OF ŒCONOMICS.

FIRST OF MARRIAGE, OF DIVORCE, OF ILLEGITIMATE CONNEXIONS.

CONTENTS.

Of marriage.—If polygamy be prohibited by the law of nature?—Its existence before the christian æra not inconsistent with good morals.—The monogamic institution most favorable to human nature, and obligatory on us by the positive institution of Christ, and by the wholesome laws of our country.—Anciently marriage regarded as a subject entirely of civil and political regulation—This principle not unfavorable to the strictest rules of chastity and good morals.—Of divorce —Of the command of our Saviour respecting repudiation.—The perpetuity of the marriage contract favorable to morals and happiness—Of the legitimate causes of divorce.—They ought always to be made as much as possible to favor the weaker sex.—Of infidelity to marriage vows.—Of obstinate desertion.—Of intoxication. —Of cruel treatment.—Of contrariety of temper.—Of incurable diseases.—Of mutual consent.—Of the illegal commerce of the sexes.—Its pernicious influence on

society.—Its criminality, and the cruelty of its consequences.

FAMILIES being the elementary portions of civil society, the doctrine of œconomics naturally precedes that of politics. The domestic relations, which are the subjects of disquisition in this branch of the science, are those of husband and wife, of parent and child, of master and servant. The reciprocal obligations and duties which arise out of these relations are already so well understood that they require but little elucidation from the philosophical chair. On these, as on many other practical subjects in morals, the instructions of the church have, in a great measure, superseded the necessity of those of the school. I shall, therefore, confine my enquiries, or observations, concerning them chiefly to a few speculative questions which are either more doubtful in themselves, or have been rendered so by the prejudices under which they have been viewed.

Of these relations the first in importance, as well as in its natural order, is that of husband and wife. And, on this subject, omitting, as unnecessary, all other questions, I shall limit myself simply to laying down a few principles relative to the nature, the ends, and the duration of the contract by which they are united.

Marriage is the union of the sexes under the sanction of known, and public laws. Its ends are, to promote the happiness of man, and to provide for the state a succession of useful, virtuous, and well-educated citizens. These ends would be entirely defeated by a promiscuous and uncertain commerce, which would have the most baneful influence on social order, and on the public morals. That the Creator intended the most tender and intimate unions to subsist between them, is evident from the constitution of our nature, and from the mutual sentiments by which he has attached them to one another. But the dangers with which he has thought proper to guard the chastity of the weaker sex, the helplessness of infancy in the human species, and the necessity of providing, from their earliest years, for the virtuous education of children, require that this union should be placed under the protection, and control of the laws. Otherwise, women would be exposed to the severest sufferings, and the most mortifying degradation; men would be at once licentious, and unjust; and children would be, at first, the most wretched, and afterwards the most vicious of beings.

Marriage, according to the precepts of religion and the civil institutions of the christian world, can take place only between one man, and one woman. But in consequence of the laws of Israel upon this subject, and the customs of patriarchal antiquity, it has become

a question among christian moralists, whether polygamy be contrary to the prescription of the law of nature, or only to the positive institutions of religion, and the state? Of the law of Christ there can hardly exist any doubt. The question, therefore, relates chiefly to the age anterior to the christian dispensation, and to those nations who do not enjoy the light of the gospel. I confess I cannot perceive, from the opinions, and example of the wisest men of antiquity, that the law of nature has prescribed any definite rule upon the subject, and, therefore, where religion has not taken it out of the hands of the legislator, it is to be regarded chiefly as an affair of civil and political regulation.—Monogamic institutions have been found wherever they have prevailed, to be followed by a more favorable influence, than the polygamic, on the improvement and happiness of society. And this experience affords a practical demonstration of the wisdom of the christian law; but we should be very cautious in pronouncing those, who did not enjoy the illumination of that law, to have been guilty of any crime in not conforming themselves to its dictates. Their practice was rather an error of the judgment, in miscalculating the true interest of society, than a vice of the heart. On this ground alone can I defend the venerable patriarchs of the ancient church, who are proposed to us in the sacred scriptures as the highest

examples of piety and virtue. In these opinions, likewise, I am supported by the most learned and pious writers of the reformed church, and of the primitive and apostolic age.*

The law of nature is written on the hearts of all men, and it is interpreted by conscience, enlightened by that portion of reason which we share in common with mankind. Its genuine principles are learned by collecting those moral sentiments in which all nations have concurred. By this law chastity is enjoined; but no precise rule is prescribed with regard to marriage. It is left to the regulation of society, and the public law.†

* Vide St. Ambrose speaking *of the marriage of the holy patriarchs.*—St. Aug. contra Faust. lib. 2. c. 47.—Luther, Melancthon, Bucer, consultation signed by them and others, on the application of the Landgrave of Hesse in 1539.—Doddridge's lectures 189.—Saurin, discourse sur la bible. Tom. 1. disc. 19. p. 296. Ed. Amstel. 1720.

† Some writers have very foolishly objected, that, if this were the dictate of natural reason, then might the civil law permit a man to connect himself with as many women as a vicious appetite should solicit. As well might any other vice, or folly be imputed to this source. It is supposing that legislators may be destitute of all wisdom and virtue. It is supposing that they have no concern for the interest, and happiness of their wives, sisters, or daughters. It is forgetting that each wife must have her family, and her separate maintenance. It is

It is objected to polygamy that it is unfavorable to the energies of the human mind, and the vigor and perfection of the human body;—that it tends to strengthen licentious inclinations and habits;—that it destroys the

imagining a consequence which never has happened, and never can happen in civilized society.

Moses, in some parts, at least, of his matrimonial code, appears to have proceeded on this idea, that it is a subject of civil and political regulation. Therefore we perceive several injunctions and inhibitions evidently founded on his peculiar political institutions.—In one circumstance, for example, a man is forbidden to marry the widow of his deceased brother. In another circumstance, he is commanded to marry her, under the penalty of forfeiting his legal right to the landed estate of his brother, which should devolve to the next nearest male relation of the family, who should fulfil the condition of the entail. These apparently contradictory regulations sprung out of the agrarian system established by Moses in the land of Israel. He divided the whole territory into six hundred thousand portions according to the number of the families which entered into it under the conduct of Joshua. And he ordained that these portions should descend by entail, or perpetual succession, to the legal heirs respectively of the original families, in such a manner, however, that no man should be allowed to hold two portions either by devise, inheritance, or marriage. If then the deceased had left a son to be the heir of his estate, the surviving brother who stood next the inheritance, was prohibited from marrying the widow, probably, for this reason, that no unfair means might be practised to remove the heir. But if he had died without issue, the brother was commanded to marry her, probably, out of a humane attention to her happi-

happiness of the most tender and delicate sex, and nourishes among them the most hateful passions. And on these consequences is built the ulterior conclusion, that polygamy is contrary to the law of nature.

I have no hesitation to admit as a philosopher, and a christian, that the law of one wife, as prescribed by our blessed Saviour, is most favorable to the interests of human nature, and of civil society. But it should be remembered, that, if the eastern nations are, at present, and for a long time have been, inferior in the energies both of body and mind to the people of Europe, this ought not to be ascribed to any single institution, but to the combination of an infinite variety of causes which equally affect all nations in their decline. Once Asia possessed that superiority which Europe now enjoys. And how long is it since Saracens and Turks were an

ness, and, at the same time, to preserve the lineal descent of the inheritance, otherwise, he was obliged to relinquish his title to the next male relation who should fulfil the condition.

These facts may serve to settle the question concerning the lawfulness of marrying two sisters, which has so long agitated christendom. There can be no natural immorality in marrying two sisters in succession, more than two brothers: but Moses, who had not prohibited polygamy, only prohibited the marrying of two sisters at the same time, lest the jealousies of love should divide those whom the affections of nature had so close-

overmatch for the combined powers of Europe? No certain conclusion can be drawn on this subject from such examples.

Equally uncertain is the next consequence imputed to this patriarchal institution,—that it tends to strengthen licentious inclinations and habits. Judging from the interior of the families of the patriarchs, as it is presented to us in the sacred history, nothing can be more unfounded than this reproach. And, if we take our estimate from the general manners of the east, according to the representation of the best informed travellers in Turkey, Persia, and Arabia, the women are distinguished for their modesty and reserve, and the men for the scrupulous circumspection of their deportment towards the whole sex out of the precincts of their own families. And, certainly, there is a wide difference, in the effect produced on the heart, between a vagrant commerce with mistresses, and the fixed connexions and duties of marriage formed under the superintendence of the laws, in which the union is permanent, the wife shares in the property and honors of her husband, and both are occupied in the modest and laborious cares of a household. The idea of a wife, and of the grave and serious duties of

ly united. "Thou shalt not take a wife to her sister, *besides* the other *in her life-time*, to vex her."

a family, quenches that lust,* which is only inflamed in the company of a mistress, the mere instrument of vulgar, or voluptuous passion.

But, omitting every other proof, the principle of the natural unlawfulness of the polygamic institution, derives a more plausible support from the equality which is always found to subsist between the numbers of the respective sexes, the males having been found, by the most accurate enumerations, to be nearly in the proportion of thirteen to twelve, to the females, or more exactly, perhaps, of twenty to nineteen. The design of the Author of nature, it is supposed, is evidently indicated by this ratio of the sexes, the small surplus on the side of the males being allowed for the greater wastes occasioned by their more hazardous occupations. But polygamy, in effect, destroys this ratio in the marriageable part of the species. —This is the argument; and it is, certainly, not without the appearance of great force. It may be replied, however, that it is only within a recent period that the fact of this equality has been discovered by the accuracy of modern science—It could not, therefore, even to the

* From this remark, perhaps, might be excepted the unlimited seraglios of their satraps and princes. Yet the voluptuousness of these supposed seats of sensuality cannot surpass that of the greater part of the courts of Europe.

wisest men in the patriarchal age, have formed the basis of any known law of nature.*

From these illustrations it results, that the practice of polygamy, in that age, could not be charged to those venerable men as a crime against good morals. And its immorality since the coming of Christ, the great moral legislator of the universe, rests chiefly upon his positive institution, supported by the law of the land. Before that period, marriage was regarded among all nations as a subject intirely of civil and political regulation. Nor let it be imagined that female honor and safety were, in that case, under an insecure protection; or that the

* A better reason in favor of this patriarchal institution, might, in my opinion, be adduced from the following considerations; that the distinctions of poverty and wealth which necessarily grow up in society in a course of time, destroy, in effect, that equality between the numbers of the sexes, as far as regards the *right* of marrying, on which the argument in the text is founded. Many men in society must always be too poor to allow them prudently to marry. Many must evidently be criminal in marrying, with the certain prospect before them of introducing an offspring into the world only to want, misery, and vice. So that what nature had originally made equal' moral causes, which are no less certain in their operation, have again rendered unequal. Hence, among the pious patriarchal princes, the law of marriage, and the right to a plurality of wives, might be regarded by natural reason, as being relative to rank, and fortune; that is, to the ability of maintaining so many families, rather than, strictly, to the ratio of the numbers of the respective sexes.

public sense of crimes against chastity was weak. Moses punished that class of crimes with death. And fathers, husbands, brothers, that is, the entire nation, will always be deeply interested in the honor of their wives, their daughters, and their sisters, and be disposed to guard it by the most energetic laws. Do we see, in effect, that the rights of property are less secure, or esteemed less sacred, because they are established exclusively by the civil authority of the state, and take their various modifications from the political views of the legislator? Is not the man who violates them esteemed a thief, a robber, fraudulent, unjust, and an object not less of public indignation, than of public punishment? And are the rights of chastity less sacred in the eyes of legislators, or less capable of effectual protection? The law of Christ, indeed, aims at a sublimer degree of perfection than the patriarchal or Mosaic institutions. And the high authority by which it is enjoined should impose it as an inviolable rule of action on all his disciples; and the experience of its beneficial influence among christian nations is sufficient powerfully to recommend it to all wise and virtuous legislators.

OF THE DURATION OF MARRIAGE, AND OF DIVORCE.

The next important question on this subject relates to the duration of the marriage contract. Although some

nations in the East have admitted of temporary marriages, and the experiment was again tried during the madness of the late revolution in France, yet the evident interests of society, and humanity, require that the union of husband and wife should be permanent during the common life of both. This regulation has been found to impose the most effectual restraint on licentious passions, it is the best security for domestic peace, and for the public order of society, and affords the most powerful motives, and the most favorable opportunities, for the virtuous education of children, in which the undivided efforts of both parents ought to concur.

The laws of marriage ought to be especially calculated to protect the weakness of the female sex, and to save from outrage the delicacy of their attachments. To this end no principle, perhaps, is better adapted than the perpetuity of the marriage contract.

But, under this head, the principal enquiry that has occupied civilians and moralists is, whether any causes exist which may, in consistency with virtue and good morals, dissolve this contract, and divorce the parties from each other, after it has been legally formed?

Some civilians have unreasonably multiplied the causes of divorce; and others, perhaps with as little reason, restricted them to the single one of unchastity, or infidel-

ity to the vows of marriage. This restriction they profess to derive from a humane and benevolent decision of our Saviour on a captious question proposed to him on this subject, forbidding a man to *put away his wife*, except for this reason alone. But they do not sufficiently reflect that, in this decision, the great legislator of the church is not prescribing an universal law of divorce, but merely correcting an abuse, which had grown up by time, in the exercise of a power which the laws, or customs, of the country had given to Jewish husbands. They had acquired, or usurped, the iniquitous prerogative of dismissing their wives from their families and protection, solely on their own authority, for the most trivial dislikes, or differences of opinion. This excessive and unjustifiable exercise of an undefined power, he meant, with that benevolence which characterises all his laws, to restrain. It is necessary in interpreting this law, to distinguish between the right of *repudiation* claimed by a Jewish husband, depending, as it did, merely on his own authority and caprice, which is here so justly restrained by Christ, and the right of *divorce*, depending on the impartial sentence of the law, which is exercised only through the agency, and by the authority of the public magistrate. To the former the rule of Christ, which is merely a moral prescription to regulate the conduct of individuals in an important case, applies with

the greatest humanity. The latter is an object of civil jurisprudence, and is to be governed by the constitution of the judicial department, and the principles of the national system of the administration of justice; and it does not appear that our Saviour designs, in this sentence, to prescribe any rule to legislators, and the organs of the civil law; to whom alone belongs the legal right of exercising the power of divorce. We are at liberty, then, to examine all the causes which have at any time been urged by moral writers as sufficient to dissolve a union which virtue, and a just consideration of the public good, always intends in its formation to be perpetual.

But, in this enquiry, it should be laid down as a sound moral and political principle, that divorces ought never to be permitted but in cases of evident and great necessity. Few things contribute more to promote domestic harmony, and to secure justice and kindness to the imbecility of the sex, than the obstacles which the law opposes to a dissolution of the conjugal union. In all causes of difference that may arise between a husband and a wife, when this is known, they must find a strong and mutual interest in concession and moderation. But if this high and sacred union were capable of being dissolved on slight occasions, those occasions would never be wanting to the vicious. The smallest umbrages would often be magnified into causes of the most cruel injustice.

The condition of perpetuity, besides its beneficial influence on the public morals, is a guard which reason and humanity demand for the security of the weaker sex. If the contract were transient, and uncertain, they would commit their happiness in the most essential points too often to the capricious will of men fickle in their attachments, and rendered cruel by some new passion.

In one point the laws of all nations have concurred; that infidelity to the vows of marriage by the dereliction of chastity, is a sufficient ground of dissolving the matrimonial union. This is admitted on a universal principle of law and reason;—that fraud or failure in fulfilling the condition of a contract exonerates the innocent and deceived party from its obligations. In marriage, therefore, when the rights of one of the parties are alienated and transferred to the possession of another, the contract is violated in its most essential article. And the law may justly grant a divorce to the injured party suing for it; yet on such terms, and this would be an additional security to morals, that the party offending should never enjoy the privilege of marrying again. But although infidelity be a reasonable cause of divorce, the offender ought never to be allowed to plead his own fault in order to obtain a dispensation from the bond of matrimony. Faults ought to be punished, not rewarded. And, however painful the idea of infidelity in a husband, or a wife,

may be to the jealousy of honor, or of love, yet there are situations in which it is preferable to suffer the severest pains of the heart in silence, especially for a wife, than to submit to the consequences of a forced separation.

Obstinate and continued desertion may, for a similar reason, be esteemed a justifiable ground of divorce, when it can be proved to have taken place without just cause. Such causeless and voluntary desertion defeats the end of the matrimonial contract, and is, as in the former case, a fraudulent violation, or abandonment of its conditions. As in that case, likewise, it would be contrary to good morals to yield to the offending party the right of contracting a new marriage.

To these causes I scruple not to add habitual intoxication, as defeating the principal ends of marriage; the happiness of the parties, and the proper care and education of their offspring. It it be the wife who is addicted to this vice, there can be no security for her fidelity; if it be the husband, his wife can have no defence against the grossness, or inhumanity of his treatment. She believed that she married a man, but she finds herself united only to a brute.

Cruel and barbarous treatment, on the part of the husband, is admitted by the common law, to be a reason-

able ground of the *separation* of a wife from his *bed and board*. It is, in my opinion, an adequate cause of divorce, where it can be sufficiently ascertained to the judgment of twelve competent and impartial men. Inhumanity in the husband, not less than infidelity in the wife, is a violation of all the ends and conditions of the marriage contract. If this be denied, because there is no uncertainty in the offspring in the one case, as there is in the other; I answer, that it is a vile and base idea of marriage to suppose that it is merely making a woman the vulgar instrument of giving an heir to an estate.

Other causes have been assigned by different writers, but, apparently, with less reason, as affording sufficient grounds of divorce. Among these has been given *great contrariety of temper*, which mars the mutual happiness of the parties. This cause is infinitely too vague to be designated in any law with that precision which is requisite to the due administration of justice. But, besides this inconvenience, the most ill-disposed would always have too much in their power. Of the general principle a dreadful abuse was made, at one period, during the late revolution in France.

Certain diseases, supposed to be incurable, have also been enumerated, among the adequate causes of divorce. But, not to mention the difficulty, not to say impossi-

bility of ascertaining what diseases, or whether any, are absolutely incurable, a peculiar cruelty seems to be involved in the principle. After the fortunes, and happiness of two persons have become so intimately united together as they are by marriage, is it not most unreasonable and inhuman, that because it has pleased divine providence to afflict one with severe disease, the other should possess the power, not only to add to the calamity, but to take away from the miserable sufferer, who ought to be so tenderly cherished, and protected; the last ray of consolation and hope?

The last of these imperfect and inadequate causes of divorce which I shall mention, is *mutual consent*.—To the willing, it is said, no injury is done.—Consent, I answer, may be a sufficient ground of separation; not of divorce. Divorce implies the right of marrying again in the party in whose favor it is made. This would often prove too great a temptation to the strongest, or most malignant to harrass the other into consent by intolerable vexations. This was also tried in France during that period of confusions, and was found to make confusion only more confounded.

Individual cases of hardship must undoubtedly arise from a rigid adherence to the principles above laid down. But no tribunal can be constituted in human society

which can be safely vested with the power of suspending the rule, or of judging, in all cases, of its equitable exceptions. Society, like the universe, must be governed by general laws.

Thus have I treated of the relation of marriage both before, and since the christian æra, as far as respects the equity of the polygamic, or the monogamic institutions, chiefly with the view of rescuing from licentious reproach the ancient worthies of the church, and fathers of our religion. I have endeavored, in the next place, briefly to state the causes which may, at any time, be safely and reasonably pleaded to justify the dissolution of a connexion so sacred, which has once been rightfully formed.

OF THE CRIME OF AN ILLEGAL COMMERCE OF THE SEXES.

Having spoken of the marriage contract formed under the sanctions of the civil law, and considered it, as limited by the christian law, to take place between one person only of each sex, I shall now proceed to point out the crime of any clandestine and illegal unions which form the principal offence against this most important of the domestic relations.—In proportion as loose and vagrant connexions between the sexes, exist, and are justified, or connived at by public opinion, or are pursued by private vice, marriage is regarded as inconvenient and falls into

disuse; men become profligate and enervated; women are rendered unhappy and contemptible in proportion as they are dishonored; and children, growing up without proper example and education, become ignorant and vicious; and, from all these causes, the public morals and the interests of the state suffer deep and irretrievable injury. There is no vice which men appear to be so willing to excuse to themselves; yet, none in the whole catalogue of crimes, is productive of greater evils to society. The licentious, because they do not immediately suffer from the consequences of their seductions, are found to become unfeeling, cruel, and treacherous. Remorselessly they leave the victims of their pleasure to the most exquisite sufferings, to infamy, and ruin. If these unfortunate women ever return to a sense of virtue, they are overwhelmed with anguish and shame: but if, as is too likely to be the case, a vicious appetite, or despair from the loss of character, tempt them to a life of prostitution, a fatal gulph is prepared for the public morals. But who can estimate the cruel injuries done to an unacknowledged and abandoned offspring, whom the guilty father had no right, for his own pleasure, to bring into existence, in order barbarously to give them up to want, disgrace, and vice! If violations of property are punished with imprisonment and death, what pains can be too severe for violations of chastity which draw after them a

train of so much more aggravated evils! It diminishes the guilt but little, that they are, most commonly, committed with the consent of the unhappy sufferer: it is the difference only between swindling and robbery.

Women, whose frailty deserves compassion, have usually been the sole, or the principal sufferers from this crime, by the natural dangers which grow out of the female constitution, by the severity of public opinion, and their own terrible sensations when left alone to all the consequences of their lost virtue. If the law would ever impose an effectual restraint upon an evil so pernicious to society, it must subject the aggressor sex, who are chiefly culpable, to some pains equivalent to those of which they become the occasions to their seduced and unhappy companions.

Men who would reprobate in the strongest manner the arts of seduction employed on tender and inexperienced females in the wealthier and more polished circles of life, too often feel little compunction at corrupting the virtue, and destroying the happiness of women in the inferior classes of society. The pride of rank and fortune disqualifies them from sympathising with the feelings of those who are far beneath them, as if their sensibilities were less exquisite, and the loss of character were to them a less evil, than to females of better condition. Their in-

feriority, indeed, renders them more liable to the unprincipled attempts of seduction; but the loss of virtue and of character is not less a source of extreme wretchedness, and often becomes the direful impulsion to abandoned prostitution, and, at length, to the perpetration of the deepest crimes. When women, in order to guard one virtue, the most difficult and important to be preserved, have collected the whole of female honor into a single point, that it may be the more strenuously defended, if they have been seduced to deliver up this fortress of their fame and character, they commonly abandon with it all their other virtues. And the seducer, who, by vows and protestations, has betrayed too credulous innocence, is chargeable, in the sight of Heaven, with all the anguish, and the guilt which follows. What then must be the degree of that anguish which follows the fruit of unlawful love, when woman, whose maternal feelings are so exquisite, who would survey with such pride the infant which she could honorably own, who would bend over it with such extacy, who would rush into the midst of flames to rescue it from danger, but, unlawfully become a mother, is often tempted to stifle all the feelings of nature, and, in a moment of distraction, to remove it forever from her sight, or herself to become its murderer, to hide her own disgrace!—If the deep affliction of a deluded sufferer, if the loss of so many pleasures, and so many hopes,

as accompany the innocence of a virtuous woman, if the vices, the shame and misery which follow the dereliction of virtue in the sex, can aggravate guilt, how aggravated must be the guilt of her seducer! And how base must be the heart of that man who, for a moment of thoughtless pleasure, will hazard the bringing of such evils upon one whom love should cherish, whom honor and generosity should protect!

There are men whose honor would shrink from the enormity of bringing disgrace and ruin on the innocence, and the confiding simplicity of a young woman in a decent station of life, who are little scrupulous at seducing married chastity. They encourage themselves by the idea that this crime is more secure from the disgrace of detection, and the foul dishonors which blast the fruits of unlawful love in an unmarried state.—Yes, but it is never perfectly secure. And is it not then greatly aggravated by the dishonor and affliction of a whole family, and by the anguish of a husband robbed, at once, of his honor, and his principal treasure? No reward can purchase back the peace of mind of an injured husband, and father of a family. Death would often be a preferable evil.—But, admitting that the crime could be preserved a perfect secret, is it, in any degree, less a crime on that account?—The criminality of an action is not to be estimated by the consequences which may hap-

pen to an individual in a particular case, but by those which would flow from admitting the principle of such actions as a rule of general conduct. For no individual has a right to have peculiar rules of duty, or peculiar exemptions from general rules established in favor of his passions. What then would be the effect of this moral principle, that secrecy, while it protected, also justified an adulterous commerce? To what jealousies, suspicions, distrusts, infelicities, would it not give rise? No ties of *duty*, then, would prevent the rising of a new passion in the breast of a married woman. All domestic confidence, all the harmony of society, would be destroyed.

The seduction of virgin or of married chastity, considered in the lights in which they have been placed, will generally be condemned by the reason of all men; there are not a few, however, who justify, or excuse illegal connexions with those who have already lost their virtue, or are prepared to make a mercenary sale of it. Although this may appear, to careless observers, to be less culpable than the cases which have been just mentioned, it is, nevertheless, a crime highly pernicious to the public interest, and destructive of the moral habits of the people. And a great portion of the species it necessarily renders most worthless and most miserable. Society is deeply injured by a practice which effeminates and debauches the manners of its citizens, and, especially, which discourages

marriage, and prevents the forming of regular and orderly families, which are the strength of a state, and the principal source of its prosperity. And certainly no vice more entirely depraves the mind than this low commerce of gross sensuality. It blunts the fine and delicate perceptions of the moral sense; and perhaps the greatest crimes which ever disgraced human nature have taken birth amidst the scenes of loose and profligate pleasure.

Having pointed out the criminality of any union of the sexes not authorized by the laws, under whatever form it may take place, I conclude with a brief answer to this important moral enquiry; how far does reason, and a just regard to chastity require that men should impose a restraint upon their conduct, and their passions? The rule of the gospel is most conformable to the dictates of a sound reason, that the guards of virtue ought to be placed upon the heart and the thoughts. It is of the utmost importance to preserve the imagination and the fancy chaste; it is otherwise in vain to hope to subject the manners, to the laws of modesty and virtue—a loose wit, indelicate conversation, lascivious pictures, odes, scenes which tend to inflame the passions, the visions of a sensual fancy indulged, are culpable in the next degree to actual prostitution. The law of God requires that our thoughts shall not sin; and the law of reason confirms its dictate.

LECTURE XX.

OF THE DUTIES OF PARENTS AND CHILDREN.

CONTENTS.

Peculiar duties of parents, present maintenance—education—provision for future life.—Present maintenance of small importance unless a child be educated in such arts as will enable him to maintain himself, and render him in a great measure independent of the untoward accidents of life.—Education should respect chiefly the forming of good moral and religious principles.—Objections to this branch of education—the objections answered.—Of the rights of parents—of the duties of children—their virtues connected with the national virtue, and prosperity.—Interpretation of the fifth command of the decalogue of Moses.

FROM marriage arise the next important relations of parents and children. Of these it will be necessary to take only a very brief review. The instructions of religion, the laws of our country, and the public sentiment, have left little to be learned on these heads; and they have been embarrassed by few controversies.

OF THE PECULIAR DUTIES OF PARENTS.

As parents have become the occasion of giving an involuntary existence to their offspring, they are charged by nature and religion with the care of their happiness. Their general duties, therefore, having always in view this ultimate end, may be comprised under the heads of present maintenance, education, and provision for the future comfort of life.

By maintenance is intended subsistence while they are young, and incapable of devising and using the necessary means for their own support. Nature indicates this duty by furnishing, in the breast of the mother, a rich and delicious nourishment for her infant. She further indicates it to both parents by that strong instinctive propensity which she has implanted in their hearts to cherish, protect, and assist their offspring during the imbecility of infancy. Prompted to this duty by the most powerful impulses of nature, there can, certainly, be little merit in fulfilling it; but, there is, on that very account, proportionably greater ignominy and guilt attached to its neglect. Accordingly, there are few vices against which deeper detestation is expressed by all men. A mother who abandons her infant in order to pursue her own pleasure, or through defect of natural feeling; a father who, through indolence, or vice, leaves his child to want,

or suffering, which he might be able, by virtuous exertion, to remove, is justly esteemed worse than a barbarian.

But a parent fulfils only a small part of his duty who, contented with sustaining his children during their feeble and infantile state in his own family, neglects that useful and efficient education which will enable them to make provision for their own subsistence and comfort in future life, and to transmit the same powers to the generation which may succeed them. Whatever fortune a parent, at his death, may leave to his children, he has not acquitted himself of the sacred obligation contracted at their birth, unless he has, in a government like ours, in which there is no hereditary nobility, and no entailed wealth, endeavored to render them, by an education correspondent to their condition in society, independent on fortune. Often have we occasion to behold great and afflicting reverses in the external circumstances of opulent families, and miserable are they who have not been taught with virtuous equanimity to bear them, or who have no resources in their own faculties, bodily, or mental, to apply them to other means of subsistence. The mere instinctive affection which leads a parent to maintain his child in idleness, and pleasure, or to supply his pecuniary wants, far from being a virtue, too frequently degenerates into vice, and becomes a foolish fondness that disappoints its own aim, and when it would raise them to honor, only

sinks them into insignificance and contempt. The parental affections, in order to be virtuous, ought to be regulated by a firm inflexible sense of moral obligation. It is then only that they become noble and dignified principles of action, and instead of consulting the momentary gratifications of children, through a fond imbecility of mind, pursue only their more enlarged and durable interests, to which just and prudent restraints become often the most useful, though sometimes the most painful, offices of a wise education.

Education, even as it respects the humblest orders of society, embraces a field of great importance and extent. Nature has given to man the powers of action, it is education which directs their operation:—the soil is prepared by nature, but the harvest it shall produce depends upon its culture. It is education chiefly which makes man what he is; whether it be well, or ill conducted. In the idea of education I include not only what is conveyed into the mind by direct and positive instruction, but every impression which is received directly, or incidentally, by precept, example, or intercourse with mankind, which contributes to form the character. This opens a wide scope to the attention, circumspection, and care of a virtuous parent. One of the first of parental duties is to have children initiated in some useful arts, and trained

to such habits of prudent industry, as are requisite for procuring a sure subsistence through life, without the hazard of falling, at length, as a burden on society, or the temptation of becoming injurious to it. And in the middling and superior classes it is perhaps still more necessary to awaken a generous ambition of becoming useful, or of rising to distinction in it by their virtues and their talents.

But that at which domestic education ought principally to aim, and which is greatly aided by the preceding attentions, is the moral and religious cultivation of the heart and manners. To the attainment of this primary object of parental care, it is of high importance that the mind should be early imbued with the principles of piety and virtue; and that, by a prudent, steady, and dignified discipline, the manners should be formed to a serious respect for the institutions of religion, to the exercise of the humane and benevolent virtues, and to a noble self-command imposed on all the proud, selfish, and licentious passions. By education, skilfully applied, the manners, habits, and sentiments of youth may be formed to almost any standard. But if we do not, in the earliest periods of life, take possession of the mind by good principles, maxims favorable to vicious indulgence will, almost necessarily, take birth amidst the inconsideration and the passions of youth. And if a vigilant and prudent discipline be ne-

glected, there is infinite hazard of its being led astray by the companions which inexperience, and the thoughtless impulses of pleasure, naturally incline them to select.

But the best precepts will lose their effect unless they are accompanied by a virtuous and pious example. The principle of imitation is a much more powerful instrument of morals in youth than merely depositing in the memory the general maxims of duty. A serious respect to the institutions of religion, a pure and chaste conversation, the example of strict integrity, of warm and active benevolence, of prudent and circumspect manners, especially in the presence of youth, as they are duties of all times, and of all persons, are peculiarly incumbent on parents in the education of their children. It is especially a duty to inculcate upon their tender minds just sentiments of the Divine Being,—of his infinite perfection,—of his universal government,—of his moral inspection of the actions of mankind,—and to place before them continually, in an amiable example, the beauty of virtue, the dignity of piety. Unless the law of morals be supported by the force of religious principle, it loses its most powerful control over the human mind.

It requires, however, prudence of conduct, and great amiability of temper, to render religion acceptable to youth, and to derive the full benefit to their manners from

its influence. There is sometimes a shade of austerity and gloom thrown over the face of piety by its real, but mistaken friends, which is calculated to alienate rather than allure the young mind, and inspire it with respect and love. True religion is dignified, serene, and mild; it invites cheerfulness, while it restrains levity; it promotes gravity, though an enemy to gloom; and cultivates a noble and manly devotion infinitely distant from the dark and dismal countenance of superstition; and is equally distinguished for the practice of all the social virtues, as for the serious and decent discharge of all the offices of piety. Religion should ever be made respectable and engaging by the liberality of its spirit, as well as the purity of its manners.

Some writers, influenced by their antipathy to certain principles of religion in which they had been early initiated, and the impressions, or the fears of which afterwards cost them much pains to efface, have run into the opposite and absurd extreme of maintaining that all religious instruction is pernicious, filling the mind only with prejudices, the more difficult to be eradicated because they are so deeply fixed by the force of superstitious fear. The mind, say they, ought to be left free and unembarrassed by any early prepossessions, to form, in time, as the understanding evolves its powers, its own principles. These writers, in their zeal against religious prejudice,

seem not to have recollected that the young mind, continually receiving the impressions of all objects with which it is surrounded, must necessarily be affected with prejudices of a different kind, while reason is not yet sufficiently mature to form a sound judgment of the opinions, and examples, which are continually soliciting its attention. It will naturally receive a depraved bias from the crude and false sentiments, and the pernicious examples in the midst of which it breathes as in an infected atmosphere; or ignorance will prepare a soil in which vice or a grovelling superstition will almost necessarily plant its corruption. From a fair and candid view of these circumstances, we have just ground to conclude that a moral education on the principles of a rational piety, or, if this exceed the talents of the parents, conducted on the religious principles of even any regular sect of christians, although it may be mingled with many speculative errors, is infinitely to be preferred to those accidental, and, too commonly, vicious impressions, and habits of thinking, to which uninstructed youth are exposed in their casual intercourse with society.

The next head of parental duty which I have named, regards the provision which a parent should make to assist the establishment of his children in the world, or should bequeath to them at his death. But this is necessarily affected by so many circumstances that few precise

and definite rules can be prescribed concerning it. Seldom, indeed, is there any defect on the part of parents, of a desire to accumulate fortune, and to provide for the decent and honorable introduction of their children into life. But this natural and laudable desire is often counteracted in its aims by the stronger love of indolence, ostentation, or pleasure. But no considerations are more important to the happiness of children, and their comfortable provision, than such a judicious economy in the stile of living, as will not accustom them to indulgencies, and create expectations of a future establishment in life, which must probably be disappointed. Few mortifications are so hard to be borne by the young as the being deprived of customary enjoyments to which all their tastes and habits have been formed; and being thrown down from that rank in society in which they expected, and have been accustomed to move. And whatever property he may have to bestow upon them at his death, or whatever assistance he may have it in his power to render in his life, the impartial duty of a parent forbids any capricious distinction in the distribution among his children; and in a free government, the equality and fairness of popular institutions, should discourage any extraordinary rights of primogeniture.*

* An important maxim has existed in several agricultural countries in which are found the simplest forms of civil society,

OF THE RIGHTS OF PARENTS, AND THE DUTIES OF CHILDREN.

Out of the obligations of parents to provide for the happiness of their offspring arise, on the one hand, the rights of parental authority, and, on the other, the duties of filial obedience and affection. Some ancient nations appear, from their history, to have invested parents with an extreme authority over their children, a consequence, probably, of the rudeness of their manners, and the defect of their civil institutions. The Romans, in the first ages of the republic, made every father a supreme magistrate in his family, and clothed him with the power of life and death. This was an egregious abuse of the dependence of children. No man derives from nature a right to become the occasion of existence to a helpless offspring, only to render them miserable. The rights of parents spring out of their obligations. Obligation implies every power necessary to give it effect; and implies only those powers. If, then, it be the duty of a parent, by a prudent education adapted to his condition in life, to prepare his children to be useful citizens, to cultivate their minds in

that any discrimination in the distribution of a parent's property at his death, should be in favor of the youngest son; on the idea that he must probably have received the least assistance during his father's life. In this distribution, therefore, the paternal mansion usually passes to him.

virtuous principles, and to form their manners to virtuous habits, he possesses, by the law of nature, the right of controlling their actions, and directing their pursuits so far as is requisite for the attainment of these ends. And if, before their reason has arrived at sufficient maturity to govern their own conduct with prudence, they cannot, by mild and persuasive means, be induced to apply with diligence to the regular discharge of their duties, he possesses the power of moderate coercion. But coercion, as it ought ever to have in view solely the good of the child, and to be exercised with calmness and dignity, should never be exerted to indulge caprice or passion. Barbarous corrections are not justified by any rights which nature confers on a parent. The utmost penalty to which his lawful power extends, is cutting off an incorrigible child from the privileges, and advantages of his family. But to sell his child to slavery, as is practised by some barbarian nations, or to execute upon him capital punishment for any real or supposed offence, is abhorrent from the feelings, and an enormous violation of the laws of nature. But during the minority of a child, while his immature judgment, and his inexperience, render him incapable of consulting, in the best manner, for his own interest, the parent, if he be in that situation in life which renders it necessary that he should gain his living by the strenuous exertion of his own talents bodily or mental,

may chuse a profession for his infant, and require him to give his diligent attention to acquire a competent skill in it, that he may be put in possession of an honest and sufficient resource for his future maintenance. He may, with the same view, and under the pressure of the same necessity, bind his infant to service for a limited time. But the benefit of the child can never require, and, therefore, no pretence of this kind can ever justify his being sold to perpetual bondage. We may, perhaps, lay it down as a general rule, that whatever unnecessarily opposes the happiness of a child is not within the rights of a parent. For the same reason, it is not consistent with his duty to consult the wealth and grandeur of one branch of his family, at the expense of the feelings, the comfort, and the reasonable expectations of the others.

OF THE DUTIES OF CHILDREN.

Nature lays the foundation of the duties of children in that strong instinctive affection which attaches the parent to his offspring, and which consequently both requires, and prompts, on their part, some correspondent return of dutiful attachment and love. This principle is greatly strengthened by the tedious imbecility, and dependence of children on the parent's care; during which time the force of habit, and the continual reciprocation of offices of mutual endearment, aid the transition of the affections

and augment their attractions on each side. Every pain endured for children, every solicitude called forth by their wants and their dangers, every care bestowed upon them for their protection, their provision, their education, cultivates and increases the parental affection, and demands the purest returns of filial duty and submission. And the richest returns a good son can make to a virtuous parent is his wise and successful improvement of all the means which parental affection has provided for his own honor and interest. A higher pleasure cannot be enjoyed than that delicious pride which swells the breast of a worthy parent on seeing a beloved son fulfilling his career honorably and usefully; and a higher delight cannot be tasted by an ingenuous son than the consciousness of imparting this happiness to such a parent. It is a saying of Plutarch,* it is forbidden to do injury to others; but it is unjust and impious not always to speak and act in such a manner as we know will give pleasure to our parents. And Epaminondas exhibited a genuine example of the principle of filial duty after his celebrated victory at Leuctra, when, amidst the congratulations of his friends, and the applause of all Greece, he said, that nothing in the triumphs of that day gave him so much pleasure as the consideration, that his father and mother, who were poor persons at Thebes, were still living to enjoy his

* Plut. de amor. frat.

glory.—Such a son will always delight to render his parents happy by his virtues; if they are liable to errors, he will study to cover them with the mantle of filial love; if, sometimes, they betray any weakness or caprice of temper, he will recollect how much they have endured for him; and, in their declining age, it will be peculiarly grateful to soothe their sorrows, to relieve their necessities, and to repay, in some measure, to their infirmities, the debt of his early years. The Persians, by a law, obliged children to maintain their aged, infirm, and indigent parents; a dutiful son needs no law but his own heart.

All filial duties, however, are so conjoined with a wise and virtuous education on the part of the parent, that, if this is neglected, he loses much of his claim to the affectionate obedience and deference of his child through life. A good education in sober, industrious, moral and religious principles and habits, forms the strongest tie which can subsist between parents and children. And filial duty, resting on this foundation, is not only the chief strength of domestic union, and happiness, but the surest basis of all other virtues. It is justly said by Cicero, in his oration for Planeus; fundamentum est omnium virtutum pietas in parentes.* Not only is it the source of domestic felicity and harmony in individual families, but where

* The foundation of all the virtues is filial piety.

filial piety and good family discipline, and education, come to be incorporated into the characteristic features of the national manners of any people,—as they are the basis of public virtue, they are commonly the certain pledge also of the public prosperity. These reflections will assist to furnish the true interpretation of the fifth commandment of the Mosaic decalogue, with the annexed promise, which appears to have been often but imperfectly understood. "Honor thy father and thy mother, that thy days may be long upon the land which the Lord thy God giveth thee." This precept and promise is evidently addressed to Israel as a community; and is founded upon the universal moral order of providence established over the world. Virtuous and well governed families form the basis of public order. A dutiful offspring moulded under an excellent parental education, will, in their purity, hand down the civil and religious institutions of the republic to the following race, and transmit, with the same care, the public manners uncorrupted. Thus does filial duty become the sure foundation of the public virtue, and, with it, of the *stability* and prosperity of the nation. The full import of this law, with its annexed blessing, then, may be expressed in the following periphrasis:—while the families of Israel, and it is true of every other civil community, shall preserve the domestic education and discipline prescribed in the national law,

pure, and the youth of the nation shall remain modest, docile, and dutiful, so long shall you continue to flourish as a people, in the land in which God hath planted you; for so long will continue to flourish those virtues on which the happiness and stability of nations depend.*

* It is impossible that this promise should bear a reference to individuals in their separate capacity; because long life has never been the peculiar and exclusive blessing of filial piety, though the stability of nations has been always connected with virtuous men, and national virtue with the modesty and obedience of youth. This command to youth to honor and obey their parents, with this peculiar promise annexed to it, was intimately conjoined with the system of domestic education established among that wonderful people. Nothing can exceed the care and attention of the great legislator of Israel to have all the children of the nation perfectly instructed in their religion, and their duties as citizens and as men, and to institute in every family such a faithful discipline as would most effectually secure this end. After having formed that wise and extraordinary code which embraced the whole compass of their religious, civil, and moral institutions, he adds, under the most solemn sanctions:—*And ye shall teach them to your children, speaking of them when thou sittest in thy house, and when thou walkest by the way, when thou liest down, and when thou risest up. And thou shalt write them upon the door posts of thy house, and upon thy gates.* And, for what purpose was all this pious zeal?—For the same expressed in the commandment just quoted:—*that your days may be multiplied*, that is, the days of the nation, *and the days of your children in the land which the Lord sware unto your fathers to give them as the days of heaven upon the earth.* Evidently implying that, if they should continue to maintain this holy care in the education of their fami-

The duties of children do not cease with their dependence. In the breast of an ingenuous child, the remembrance of a thousand obligations, and a thousand endearments, will last through life; and the filial affections, strengthened by time, reflection, and experience, will display themselves in innumerable and nameless delicacies of attention to the wants, the infirmities, the wishes of parents; especially in their declining years, when it often happens that, having lost the greater part of their early friendships, and, with them, their finest relish for life, they have left no other consolations but those of religion, and the affections of their children.

lies, and their children should grow up under this culture dutiful and obedient to all their instructions, their national existence and prosperity should be prolonged under the good providence of God, and be co-extensive in point of time, with their virtues.

Similar ideas with regard to the institution and discipline of youth prevailed in most of the states of antiquity, as long as they preserved the simplicity of their manners, and the energy of their character. As we see strikingly exemplified in Xenophon's account of the Persian institutions; in Livy's history of the manners of the primitive Romans; and in the picture drawn of the Spartan education by the Abbe Barthelemy. Pythagoras, who borrowed a great part of his institutions from India, established in his school a noviciate of seven years silence, in which his disciples were permitted only to listen, with respectful attention, to the precepts of their master, and to practice the lessons of submission and obedience which were prescribed to them.

LECTURE XXI.

ON THE RELATION OF MASTER AND SERVANT.

CONTENTS.

The true origin of the relation of servant, and master.—Various ways of becoming subject to service—reciprocal duties of master and servant.—At the beginning of the Christian æra, the only servants were slaves.—The difference between them—The question, whether slavery be lawful.—The causes which have been alledged for slavery,—crimes,—debt,—captivity. Their insufficiency.—The iniquity of the African commerce for slaves: Of slavery in despotic, and in free countries.—The question, whether justice now requires the universal emancipation of the slaves in the United States; or, whether it can be effected consistently with the public safety. The importance of attempting it, if it be now possible.—The obstacles, however, hardly to be surmounted.

THE next domestic relation which occurs to be considered is that of master and servant.

In the progress of society, and under the operation of laws which secure to every citizen the fruits of his own in-

dustry and skill, distinctions in property will necessarily arise. Some, by a well-directed, or fortunate industry, will accumulate wealth, which will enable them to purchase the services of others, who, by mismanagement, misfortune, or the want of address, having fallen into poverty, will be obliged to sell their labors. This is originally the only reasonable ground on which the relation of master and servant can be founded. It is bottomed upon the principles of all fair and equitable commerce. Labor is a commodity brought into the market; and the price of it must depend on the number of those, on the one hand, who desire to purchase, and of those, on the other, who are obliged to sell. In a contract thus formed, under the supreme guardianship of the laws, the servant is always secured against injustice and oppression.

A man, through the pressure of poverty, may not only be obliged to give his own services for hire; but he may reasonably subject his children to a temporary servitude for their benefit. At the same time, he has it always in his power, of which a prudent and humane parent will doubtless avail himself, to secure for them by contract, comfortable provision, and equitable treatment; and to provide for them such an education as will enable them honestly, and decently, in their station, to obtain their own living, after they shall be restored to their freedom. —If the children of the poor, are neglected by their pa-

rents, or if they have early become orphans, and are likely to fall into want, and, by the infelicity of their situation, to be led into profligate habits, and thus become a charge, or a nuisance to society, society may enter into the rights of parents, or rather, may exert a right inherent in itself, and necessary to its own preservation, and happiness, of disposing, for a limited period, of the service of these children, under equitable conditions, calculated for the mutual benefit of the master, and of the child so bound to service.

These various ways of forming the relation of master and servant, may all be considered as being founded in contract, in which an adequate price is paid by the master for the labor of the servant, and the servant repays, by his labor, the benefits he receives.

The duties of masters and servants may all be summed up in equity on the one hand, and fidelity on the other. If it be asked what equity, or fidelity requires in these relations respectively, I answer, the fulfilment of whatever lawful engagements are expressly stipulated in the contract, or are reasonably presumed to be implied in it: and these reasonable implications are always to be judged of according to the general and known customs of the country.—I say the fulfilment of all *lawful* engagements; because no contract for the performance of things in

themselves unlawful, is obligatory. It contradicts an antecedent, and superior obligation. No power can justifiably impose a command which requires the violation of any moral, or religious duty; and no subordination in rank can justify obedience.

Servants, notwithstanding the humility of their state, are susceptible of the common feelings of human nature. And although they are secured by the laws against extreme oppression, yet their dependence, which may often expose them to the insults of pride and caprice, puts their happiness very much in the power of their superiors. Hence arises a duty on the part of the master, springing out of the general obligations of humanity, to avoid all unnecessary harshness; all haughtiness and insolence of treatment and demeanor towards his domestics, and to address them, at all times, with such kindness of speech and courtesy of manner, as shall make them, as little as possible, sensible of the disadvantages of their situation in society.

Another obligation of still superior importance lies on every master, arising out of the universal law of piety and virtue; and that is, to employ the influence which his station gives him in promoting the good morals of his domestics, and to afford them such means of instruction, and to establish such a prudent discipline in his family,

as will tend to preserve them from the vices, and the temptations to which, by their state, they are peculiarly exposed. The highest duty which religion and humanity exact of a man whom Providence has placed in such a superior relation, is to protect and promote their virtue; and in this benevolent and most reasonable case he will find also his own interest. No service is so faithful as that which is governed by strict principles of morality, and religion.

When Christianity first appeared in the world, the relation of servant, as it is here explained, nowhere existed. We find in that age only masters and slaves. The mild genius of the christian religion early ameliorated the condition of that unfortunate class of men; and its benevolent influence, concurring with other causes in the progress of society in Europe, has at length entirely banished slavery from that highly civilized portion of the globe.

This abject state of human nature still exists over all the continents of Asia and Africa, and has unhappily been suffered to mingle itself with the original institutions of our own country. A slave is not, like a servant, bound by contract for a limited time, and under specified and reasonable conditions, to perform particular services; but is the absolute property of his master; and the kind and degree of his services have no other limit than his master's will.

On this subject a most important moral question presents itself: Is slavery on any ground consistent with the natural laws of justice and humanity? Three causes have been stated by different moral and political writers as sufficient to justify this degradation of human nature:—crimes,—debt,—and captivity.——Criminals of certain grades, it is true, may justly be confined to hard labor under the authority of the public magistrate, in order to repair the injuries committed by their crimes, or to inflict a salutary punishment for such as cannot be repaired. Fraudulent debtors may well be subjected to a similar correction. But it would be cruel to inflict on misfortune a penalty which should be reserved only for crime. Criminals of this grade, however, should be regarded only as servants of the public, and never subjected to the power of injured individuals. If creditors were to be constituted the masters, it would be necessary to confer on them such rigorous rights as could not fail to offend against humanity, and would afford the most dangerous examples in a free country. It was a barbarous law of the Romans which subjected the person of the debtor to the absolute power and will of the angry creditor. The enormous abuses to which it gave rise produced its repeal among a people by no means distinguished, at that period, for the humanity of their character.

Captivity, which has, in all ages, and in all countries, except among the modern nations of Europe, been the most universal cause of slavery, is the most unjust title of all to the servile subjection of the human species. It is cruel to avenge on individuals the injuries of their nation, or rather of its government. In civilized warfare generous foes will inflict no other evils on an enemy than such as they conceive to be necessary to bring the public hostilities to a just and successful termination. It is even good policy to treat prisoners with the greatest lenity which is consistent with their safe-keeping. An enemy will fight with less obstinacy against a humane nation. And captives, when permitted to labor for hire in their respective arts, or in the cultivation of the ground, may supply, in some measure, the deficiency of hands created by enlistments in the army. But to reduce them to slavery is contrary both to justice and humanity. Yet captivity in war was almost the sole ground of that extensive slavery which disgraced the policy of the Greeks and Romans, and of the barbarous rights exercised over their slaves. It was a principle with them that the conqueror had always the cruel right of putting an enemy to death; whence they concluded, with stronger reason, that he possessed the milder right of reducing him to slavery. The principle is false, and the conclusion inhuman. No law of just and generous warfare

authorizes the victor to put to death a disarmed and unresisting enemy.

Still more iniquitous is that barbarous policy which excites wars among the ignorant and savage tribes of Africa, with the view of purchasing for slaves the wretched captives. Indeed the whole of the African trade for slaves, in its principles, in its conduct, in the miseries it has introduced into an extensive region already too miserable; and in the cruel mode in which these unhappy wretches, after being torn from their country, are pinioned down in the holds of the vessels which convey them to the remotest parts of the earth, to be sold like brutes to perpetual bondage, is among the most atrocious inroads upon justice and humanity which have ever been practised in any age, or by any nation. The pretences which are made to justify it are as impudent, as the traffic is inhuman—that a civilized people have a right to compel such ignorant savages to labor for their convenience and pleasure*—that a people possessing the knowledge of the true religion may lawfully seize such gross and stupid idolaters, and transport them

* Such were the imperfect ideas of morality which prevailed among the most enlightened nations of antiquity, that Aristotle maintained that *a civilized people has a natural right to make war upon barbarians*, and, consequently, to reduce them to slavery.

to a country where they may be better instructed;* when, God knows, even this hypocritical pretence never enters into the views either of the slave-merchant, or the purchaser.—But a more plausible palliative for the practice is the idea that many of these unhappy men were slaves in their native country; and that all must have been more miserable at home, half-famished amidst their burning and barren sands, and subjected to a dark and bloody despotism, than they can be in a mild and plentiful region, among a people of polished manners. This is making the prejudices of our self-love the judge of their happiness, while at the same time, our own interest is the advocate.—There is no country, however severe the climate, and however barren the soil, from which a native is not unhappy to be exiled. The ideas, the habits, the pleasures of men, are all inseparably blended with the scenes, with the society, with all the objects which have been familiarized to them in the country which gave them birth. A Laplander prefers his snows and rocks to the most cultivated landscapes of France or England. An American savage perceives more delight in his solitary wilds, and even in the ashes of his

* This was a principle of the Romish Church in the grossest ages of her superstition: and on the pretence of this detestable principle, the Spaniards exterminated, or reduced to the most abject condition of servitude, the miserable natives of Mexico and Peru.

wigwam, than he would in the most splendid apartments of a palace.—Men deceive themselves continually by false pretences, in order to justify the slavery which is convenient for them.

There are countries, indeed, in which the very corruption of the government has rendered slavery necessary; and where it is so congenial with all the political and civil institutions and habits of the people, that it seems to lose the injustice of its nature. In a despotism, every grade of the community is already enslaved, and the prince himself is the slave of his slaves. Slaves here are not relatively that degraded race of beings which they necessarily must be in free states. They attain a degree of consequence from their utility to indolent and voluptuous lords, all whose affairs they are accustomed to manage; whose interest and pleasures are almost wholly in their power. The poorer classes of the people, in these countries, often rush to slavery with eagerness as their protection from worse evils. No condition is so oppressed and abject among them as that of a poor freeman in the vicinity of a rich lord. He is liable, from the insolence of power, to the most unjust encroachments on his rights, and the most humiliating insults in his person. But, when he foregoes his wretched freedom, for the privilege of slavery to some wealthy

satrap, interest often leads his mercenary master to protect him.

In a free country, on the other hand, the poorest man is protected by the laws; and between a freeman and a slave, there is such a wide distinction, that the slave, by comparing his state with that of a citizen, a comparison which continually meets his view, must feel his condition to be peculiarly humiliating and degraded.

The cruel and mercenary policy of those commercial nations in Europe who planted colonies in the new world, gave birth to that trade in African slaves, which, on the score of its injustice and inhumanity, merits the strongest reprobation. Hence the origin of that extensive system of slavery which exists in several of the United States. —But here our enquiries must receive a new direction. Is that slavery which was unjust in its origin, equally unjust in its continuance? All men condemn the barbarity of dragging the simple Africans from their native country. But America is the country of their descendents, and it would now be equally cruel to tear them from the soil in which they have grown up, and to send them back to Africa.* Servitude is undoubtedly a hard lot to the sen-

* And their general and indiscriminate emancipation, as we shall shew in the progress of the lecture, would be attended with many, and almost insuperable difficulties.

sibilities of freemen; but the habits and ideas of these people being accommodated to it from their infancy, it does not press with the same severity upon their feelings. And hard as their lot appears to be, it cannot be denied to be preferable in every thing, except the sense of liberty, to what it would have been, born of the same parents in the original country of their race. But that precious sense of liberty, renders tolerable to the savage poverty and wretchedness, the most barren sands, and the most howling wilderness. To confer on our American slaves, therefore, a privilege so dear to human nature; and otherwise, as far as possible, to ameliorate their condition, are certainly objects worthy a humane legislation. But our generous feelings may sometimes rush too precipitately to their end, as well as worse passions. And, in accomplishing this benevolent work, if it can be accomplished at all, in those states into the constitution and manners of which slavery is most deeply incorporated, great precaution must be used not to render their emancipation a worse evil than their servitude.—But, in the first place, private justice on the one hand, and on the other that natural selfishness which infallibly regulates the councils and decisions of the great bodies and communities of mankind,* will oppose insuperable difficulties to its exe-

* Individuals may frequently be found who are capable of rising above every selfish consideration. This is seldom the

ation.—The citizens of those states hold a property in slaves to a very large amount, acquired under the sanction of the laws. The laws, therefore, could not equitably compel them to make a sacrifice of so great value, to the convenience and comfort of any class of men. And neither justice nor humanity requires that the master, who has become the innocent possessor of that property, should impoverish himself for the benefit of his slave. On the ground of compassion for this degraded race, I do not know that the present holders are exclusively called upon to suffer the loss which must be incurred by a general emancipation.—One mode, indeed, has been suggested, in which it is conceived that the demands of justice on the part of the master, may be reconciled with the wishes of benevolence with regard to the slave; and that is, by making an equitable estimate of the value of each slave, and of the value of his labor for a year, in consequence of which, the state might bind these slaves to their present masters, as in other cases of bound servants, for a term of years, to be calculated from the preceding estimates; after which they would naturally pass to the enjoyment of liberty. To this might be added a law declaring all who should be born in a servile condition after

case of men acting together in a mass. Therefore we so often see the hardest and most cruel things done by such bodies without any compunction.

the passing of that act, free after a certain age; only allowing sufficient time by their labor to recompence their masters for the expense of their maintenance in childhood.—All that could be said of such a law would be that it would be less unjust than one proclaiming an immediate and universal emancipation. What free people would allow their legislators to dispose, in the same manner, of any other portion of their property?—But if it were free from every objection on that head, great and numerous difficulties would oppose themselves to its execution: difficulties which will not readily suggest themselves, perhaps can hardly be conceived by men who have not, at some time, been familiar with the institutions of slavery, and witnessed their effects on the habits, ideas, and whole state of society. One difficulty only I will mention, which a prudent policy, always attentive to the public safety and tranquility, will naturally oppose to such a general manumission as is here contemplated. No event can be more dangerous to a community than the sudden introduction into it of vast multitudes of persons, free in their condition, but without property, and possessing only the habits and vices of slavery. Theft, plunder, and violence, would become common modes of supplying their wants, among a people who had been used to labor only through compulsion, and whose servile principles would take off the shame of the basest actions. Delivered from their

former restraints, they would become idle and profligate. Few of them willing to labor, and fewer finding regular and constant employment, or receiving wages sufficient to support them and their children;* they would often seek their provision by plunder, and often by corrupting the fidelity of the slaves. In the natural progress of events, therefore, we should soon see property every where invaded, public safety disturbed, and even domestic peace and security constantly endangered.

From these, and many other causes, it will be evident that the emancipation of the African race in the United States, if it ever be accomplished, must necessarily be the slow and gradual work of time; but as it is an event ardently desired by the friends of humanity and liberty, the laws perhaps ought to attempt it. Yet in this attempt they will certainly have a most delicate and arduous task to perform; to facilitate manumission, and yet guard against the evils to which it is exposed; to encourage the ideas of universal liberty, and yet check the indiscreet benevolence of certain owners of slaves who, either during their life, or at their death, may be disposed to emancipate them, as an act of extraordinary merit, without having made provision to render that liberty useful to the slave,

* This would necessarily be the case, as long as slavery still subsisted; the free would seldom be employed while the master could be served by his slaves.

or safe to the public ; that is, indeed, to throw on society a multitude of idle dependents, with a mass of servile vices, which no citizen has a right to do, either for the mistaken relief of his conscience, or the display of his vanity. In a word, the laws ought, perhaps, to hold out the hope, and the means of freedom to all, yet so as, if possible, to admit those only to a participation of its privileges who shall have previously qualified themselves by good moral and industrious habits, to enjoy it in such a manner as to be beneficial to themselves, and to the state.

For this end might not the laws favor the granting of a certain *peculium** to slaves, to be employed wholly for their own benefit, which might be sufficient to produce, in a course of years, longer or shorter according to the industry and skill of each slave, a revenue, adequate to the purchase of his own freedom? In order to impose a proper check upon the avarice of masters, a certain method might be fixed by law, by which the price of any slave should be determined. This sum the most rigorous master should be obliged to accept. A benevolent master would often forego it in consideration of the former

* By this *peculium* is intended a certain portion of ground allotted to the slave for his own exclusive labor, and a reasonable portion of time allowed him each day, or each week, to cultivate it, and to bring into the market the product of his industry for his own benefit.

services rendered by his slave. It would then become a small, but valuable fund on which to commence a new course of industry, and with which to animate and assist his opening hopes. In this way liberty would be within the reach of all who possessed health, and a proper disposition to labor. Those who should be too indolent to purchase it, would not deserve it; and if it were bestowed on them, would abuse it. This seems to be the most probable means by which slaves can be introduced to the possession of freedom with such good habits as shall be at once useful to themselves, and not dangerous to the public order and safety. On this principle the claims of justice, and of a wise benevolence might be equally satisfied. None would be excluded from the reasonable hope of liberty, but the idle and undeserving; and they, no longer than till they should render themselves worthy to possess it.*

* Such an institution might be the more easily carried into effect in many of the southern states; because, so mild is the form of slavery there at present, that it is customary to exact of any field slave only a definite portion of labor in the day, called *a task*. This task is a small square of ground marked out by the overseer in the morning, which is equal for each slave, and is usually calculated according to the strength of the weakest hand in the field. To cultivate this is all that is required in the day. The strongest hands often finish their tasks before the middle of the afternoon. They then voluntarily help the weaker, if they have any particular friendships. If not, the

One danger would probably arise from liberty obtained even in this way. The prejudices which exist against a union of the whites with the blacks, would render it impossible to amalgamate the two races. The free blacks, retaining that habitual sense of inferiority acquired in servitude, and nourished by the supercilious contempt of the whites, would naturally throw themselves into the society of the slaves. Such an association would be injurious to both. It would impair the motives which should prompt the freedman to aspire to respectability by his property and his virtue; it would weaken the subordination, and corrupt the submissive duty of the slave.—One provision alone occurs to me to prevent this evil; and that is, assigning a large district out of the unappropriated lands of the United States, in which each black freedman, or freed woman, shall receive a certain portion of land in absolute property, together with such privileges as would induce them to prefer a settlement in the new territory to remaining in the vicinity of their former servitude. In order to bring the two races nearer together, and, in a course of time, to obliterate those wide distinctions which are now created by diversity of complexion, and which

overseer, or the master demands no more of them till the next morning. What an admirable opportunity, together with other portions of time which are already allowed them, for relaxation or amusement, to improve a peculium!

might be improved by prejudice, or intrigue, to nourish sentiments of mutual hostility, every white man who should marry a black woman, and every white woman who should marry a black man, and reside within the territory, might be entitled to a double portion of land. And the magistrates, for a considerable period, ought all to be appointed from the white nation.

But, other regulations upon this subject, and other advantages to be derived from the institution, it is not, perhaps, necessary to endeavor further to point out. I fear that neither the general government, nor the governments of the individual states, will feel themselves under any obligation to make great sacrifices in order to deliver this humiliated race of men from the bondage which at present degrades them, and to raise them in time to the true dignity of human nature, in a state of liberty, and self-government.

It is of high public concern that slavery should be gradually corrected, and, at length, if possible, entirely extinguished: for wherever it is incorporated with the institutions of a republic, it will be productive of many moral, and political evils. And where the citizens are not constantly occupied in the industrious pursuits of agriculture, or the exercise of arms, as was the case at Sparta, and at Rome, it tends to introduce general habits of indo-

lence and indulgence, the fruitful source of a thousand other vices, which corrupt the energies of society, and enfeeble its defensive force.

There is another view in which good policy requires that those states, in which the number of slaves greatly exceeds the free population, should adopt measures to diminish that disproportioned excrescence so dangerous to the political body. The time must come when these slaves will feel their force; and there will not be wanting among them men of a daring and enterprising genius to rouse it into action, to the great hazard of the public safety. Every revolt, and even every appearance of an insurgent and seditious spirit among the slaves, must subject them to new severities; and severity will multiply revolts. Slavery is preparing at some future period, much individual misery, and frequent and dangerous convulsions for the republic. It is a volcano which sleeps for a time only to burst at last upon the unsuspecting tranquility of the country with a more terrible destruction.*

O masters! treat your slaves, while slavery is suffered to exist, with all the mildness of which the necessary state of servitude admits; attach them to you by love; imbue

* The servile war at Rome was one of the most dangerous which ever agitated that republic; and we have lately seen with horror the convulsions of St. Domingo.

their minds in earliest youth with the principles of good morals ; admit freely to instruct them those teachers of religion, of whatever denomination, who will take pains to adapt religious ideas to their measure of understanding, and impress them on their hearts. The more of religious principle and feeling can be introduced among them, the greater security will you have for your own safety, and the safety of the republic.

LECTURE XXII.

OF POLITICAL PHILOSOPHY, OR THE PHILOSOPHY OF LEGISLATION.

CONTENTS.

Of jurisprudence.—Of rights, and their divisions.—Of property, and the different ways in which it is lawfully acquired.——Of property in land—of separate and exclusive property—the benefits of this institution—the principles which govern the original distribution of property—and its transfer—of occupancy—of labor—of the inviolability of property.

HAVING, hitherto, taken a survey of the constituent principles of human nature, of the general heads of morals, of natural theology, and of economics, I proceed to present to you a concise view of the rights, privileges, and duties of men in a state of civil society; together with the principles on which civil society is constituted, and governs its operations. Plato appears to have been the first who thus connected the doctrines of civil policy with those of morals. But, since his time, the example has been followed by many eminent writers; especially among the philosophers of modern times. In republican governments it is peculiarly incumbent on those who

conduct the liberal pursuits of youth, to introduce them to some acquaintance with the general principles of civil policy. Talents and knowledge ought always to be held at the requisition of the republic ; and the more the principles of true political science are diffused by men of letters through the body of the state, the more favorable prospects will be opened to her for the stability of her government, and the wisdom of its administration. It is not expected that, in such an elementary course of studies as is here pursued, in which the first principles of so many branches of knowledge are to be acquired in the short period of two or three years, you should have it in your power to cultivate an extensive acquaintance with the practical doctrines either of jurisprudence, or of civil policy. All that we can aim at, in this limited time, is to propose to you such simple and general principles, and open to your minds such a regular and comprehensive, but brief view of the whole science, as will enable you hereafter to pursue it to such extent as either your inclination may prompt, or your public duties may require.

This science, which may be denominated *political philosophy*, or the *philosophy of legislation*, is naturally divided into three parts, consisting, first, of the rules which regulate the conduct of men towards one another in a state of society, and the means of enforcing those rules. Secondly—the rules, or principles which give the form

to the society itself, and which direct its operations.—And lastly,—the rules which should govern the conduct of independent societies, or states towards one another.—The first, compose the science of *jurisprudence*.—The second, that of *politics*.—And the third, that of *public law*, or the *law of nature and nations*.

OF JURISPRUDENCE.

The rules of conduct of man towards man in a state of civil society must be founded on their *rights*, either derived from nature, or resulting from the will of the society.—Jurisprudence, therefore, consists of two parts,—of which the first ascertains and defines the rights of men; the second relates to the legal and authorized means of defending those rights.

OF RIGHTS.

A *right* may be defined to be the just claim which any person possesses to the free use, and full enjoyment of a thing, which no other person can justly use, possess, or change without his consent; and which may be maintained, or defended by force, or by any other means which may be, at once, necessary and effectual for the purpose.—*Right* is a term often used to express a property of actions, as well as a privilege belonging to persons. Thus we say a magistrate has acted *right* in punishing an offender: in which application it implies the conformity of

an action to some moral rule of conduct, or to the obligation of some duty.

Obligation is the correspondent term to right, and expresses the principle, or ground of some duty to be fulfilled towards those who have a right to claim it. When any man is possessed of rights either natural, or acquired, it becomes the duty of other men, or, they are under obligation, to respect them. Whence, ascertaining the rights of mankind, whether resulting from natural law, or from the compacts of society, is a necessary foundation for prescribing to citizens the rules of their conduct respectively to one another.

Wrong, is the violation of any right. And the law of defence, which is intended for the security of the citizens in the tranquil possession of the blessings of society, relates to the means of preventing,—repelling,—or repairing wrongs.

DIVISION OF RIGHTS.

Rights may be divided in different ways; according to their degree,—their objects,—or their sources. In the first view, they are perfect, or imperfect; alienable, or unalienable. In the second, they are personal or real. And, in the third, natural, or adventitious.

Perfect rights are those which, being clear and determinate, a man may employ force to obtain, or defend, ei-

ther by himself, if the violence is sudden and urgent, and redress cannot await the tardy decisions of a judicial process, or, in ordinary cases, by the tribunals, and the executive power of his country; which society, for all common and general purposes of defence, has substituted in the room of personal force.—such are the right to life, the right to personal safety, the right to property.

Imperfect rights respect objects to which a man has a just claim; but the fulfilment of them society seldom attempts to enforce by any law. Rights of this degree are, in general, strongly founded in the principles of nature, and the dictates of religion; but they are so indefinite in their limits, that they can rarely be marked with sufficient precision in human laws to be submitted to the decision of civil tribunals. They are, therefore, left to the laws of religion, and conscience, which alone can prescribe, in their full extent, the duties resulting from them, and add to them an effectual sanction. Such are the rights which a parent possesses to dutiful submission from his children, and a grateful return for the pains and affection bestowed upon them in early life; and to provision and protection if it should become necessary, in his old age. Such, reciprocally, is the right of children from their parents, to nourishment, assistance, and an education adapted to their station in society. The poor, who are unable to provide for their own subsistence, have a right

of the same kind, by the law of charity, to necessary assistance, and comfort, from those who have it in their power to aid them. To this class, likewise, is referred the right which a worthy candidate for any office of civil trust, possesses to the suffrages of his fellow citizens. These rights may exist, *foro conscientiæ;* and, in the general opinion, may be as clear as they are important; yet, wanting that precision and determinateness which is required in the objects of all laws under a free government, if they are withheld, compulsion can seldom be applied to enforce them. This is the meaning of imperfect rights on the one hand, and on the other, of imperfect and corresponding obligations; not that they are less binding on the conscience, or in the view of the Supreme Judge of the universe; but that they are not the objects of compulsory enforcement at human tribunals.—Hence civil laws embrace in their consideration, only the perfect rights of men in society; the laws of morality extend to both.

Another division of rights is into *alienable*, and *unalienable*.—The former embrace such as by their transferable nature can, and by their legal tenure may lawfully be transferred to others. Such are the rights which men hold in most kinds of property. But if the property be limited by contract, or conveyance to the *person* occupy-

ing it, or be made to depend on any *personal condition* to be fulfilled by him alone, it then becomes unalienable. —The latter consist of those rights, the possession, or exercise of which cannot, by their nature and tenure, or by the laws of morality ought not, to be transferred to others. Of the former kind, is the right of a magistrate in his office, the right of opinion in religion; of the latter is the right of a man over his own life, the right over any trust committed to a person in behalf of another, the rights of a husband, or a father. Some respectable writers, with a warm, and perhaps precipitate zeal, have ranked the rights of civil liberty in the class of those that are unalienable. And, it certainly argues a degenerate spirit in a freeman to be willing without extreme necessity, to abandon the privileges of civil liberty; and the treachery of a few who have been base enough to sell their own freedom, involving, at the same time, the honor and happiness of multitudes whom they had no right to injure, has always received, as it deserved, the deepest detestation; yet cases may be imagined, as that of the people of Sweden or Denmark, after they found it impossible to reform the evils of their aristocratic government, in which they were justified in resigning their liberties into the hands of their sovereign, in order to deliver themselves from the more atrocious despotism of a multitude of petty lords.

Rights, in the next place, may be divided, as their objects vary, into personal and real.

Personal rights relate to such things as constitute the nature and well-being of *persons*, which, in the eye of the civil law, are two-fold,—*natural* and *artificial*. By the former are meant *individual* men; and by the latter, *corporations*, or *bodies-politic*. The personal rights of individuals respect the safety, preservation, and proper use of their powers and faculties, either bodily or mental. The rights of corporations respect the integrity, and preservation of their members, their forms, and their laws. If any other person, or body, possessed the prerogative of disqualifying the individual members of such a chartered institution, or interfering with their forms of proceeding, or the laws established for conducting their own affairs, it would destroy, with their existence, all the beneficial purposes of their creation.

Real rights relate to such things as constitute the external state of a person, the use and direction of which no other person can justly exercise, or claim. They may be referred to two principal heads, *property*, and *power*; and are the same with those which will, hereafter, be enumerated under the class of *adventitious* rights.

Some writers add to the preceding heads, the right of possession, when laid upon a subject not antecedently ap-

propriated. But possession implies merely a transient property arising from actual occupancy and use, and continuing no longer than that use exists. Thus in a common, a man, by virtue of possession enjoys a certain property in that portion of it on which he is actually pasturing his cattle. A fisherman enjoys the right of possession over that part of a river, or lake which he occupies with his seine. The same kind of property barbarian and savage tribes enjoy in those extensive and uncultivated territories which they continually use for their subsistence by hunting, or the actual range of their flocks.

The last division of rights which we make is, according to their sources, into the *natural* and *adventitious*, or, those which result from the constitution of human nature, and those which accrue from the necessities and conventions of society. Most of the natural rights of man are the same with those which have already been mentioned under the title of personal, such as a right to life, and liberty; to a free use of a man's own powers, and talents; to a participation of the common benefits of air and water; and to the entire control over the products of his own labor or skill. A parent has, likewise, a natural right of authority over his infant child. All other examples of power, and of property, belong to the class of adventitious rights.

Adventitious rights are such as, not belonging originally and universally to man, from the constitution of his nature, accrue to him only in consequence of the conventions of society. They refer to whatever may be conferred by the will of others, or may be acquired by compact with them; and are comprehended under the heads of *property*, or the right to permanent and exclusive use and enjoyment; and *power*, or the right to command the obedience, and control the actions of other men.

It is an object of importance in the science of jurisprudence to point out the means by which men may justly acquire the rights either of property, or of power.

OF PROPERTY.

Since the earth, and its natural products, must have been originally common, and all men had an equal right to improve the soil, or to gather its fruits, for their own benefit, it becomes a moral, and a civil question of some interest, whence arises the right of parcelling out the surface into separate and exclusive property? And how far may that right justly be extended?—It is contended by many respectable writers, among others, by Mr Locke, that, as nothing can be more peculiarly a man's own than the exertions of his own faculties, whether of ingenuity or of labor, when these exertions are employed upon a subject originally common, they equitably remove it out

of that primitive and unappropriated state, and constitute a property in the individual exclusive and indefeasible. And the property arising from this cause, is the more entire and complete in proportion as the labor and skill bestowed upon the subject form the greater part of its value in its new state: which is the case of cultivated soil, compared with natural rude and unappropriated forest or marsh. This reasoning appears sound and conclusive as far as the labor and ingenuity of man is actively employed, and as long as it continues to be exerted. But as it can extend only to a very narrow compass, and to a very short duration, it does not seem to afford a sufficient foundation for the rights of property in land to the extent in which they actually exist. We must search a little deeper, therefore, for the right of parcelling out the surface of the earth among separate and exclusive proprietors. There can be little doubt, from the wisdom and intelligence displayed in the general structure of the world, and from the peculiar attributes of human nature, that this globe was formed for the use and happiness of man; and was committed to the direction and control of his reason to be disposed of in that manner which seems to him best adapted for promoting its utility, and rendering it a commodious and comfortable habitation for the greatest numbers of the human race. This general and obvious principle involves the right of distributing it

in separate property, under some form of division, as being infinitely better adapted for these ends than its original condition of community. For it may be received as a certain maxim, that the worst state in which the earth can exist, and the farthest removed from the apparent design of the Author of nature, is that of a common. It prevents the improvement of the soil, the multiplication of mankind, and the introduction and growth of almost all the arts which contribute to the accommodation of the life of man, and of the principles of science which expand the sphere of his knowledge.

The right of establishing separate and exclusive property, especially in land, must result from the utility of the institution. It contributes a thousand fold to increase the products of the soil in climates of moderate fertility and temperature, and, in the same proportion, to augment the numbers of the human species. All industry, either in collecting and nourishing herds of useful animals, or in cultivating the earth, must cease, when it is known that others may enter at pleasure, and enjoy in indolence the produce of your labors. It is only when property is certain, and its fruits are rendered secure to the proprietor, that he is encouraged, by every exertion, to improve its value and to multiply its produce. And the multiplication of the means of living contributes to multiply life itself. Thus the earth is made more effectually to con-

duce to the ends of its original destination. Without the institution of property hardly ever should we see even its natural fruits permitted to arrive at maturity. Agreeably to these reflections, wherever the primitive community of the soil, is suffered to subsist, as among the aboriginal inhabitants of America, the population is necessarily extremely sparse, and the beasts are found to multiply infinitely faster than the men.

The establishment of separate property, promotes, also, the tranquility of society ; and tends to the introduction and cultivation of all the useful and ornamental arts which contribute so greatly to the accommodation and embellishment of human life.

From every view, therefore, which we can take of the origin of property, and the grounds of its separate and exclusive appropriation, it is justified equally by the evident intention of divine providence ; and by its beneficial influence on the order, improvement, and happiness of human society.

OF THE INDIVIDUAL RIGHT OF PROPERTY, OR THE TITLE OF EACH MAN TO HIS ESTATE ORIGINALLY.

Of the general right of mankind to appropriate and divide the surface of the earth among them for the purposes of subsistence, there can be no doubt : but the question

arises, whence is derived the title of each man to his particular share in the division? The earth, in its original state, like the ocean, was common. Each man had a right to use it, in order to procure from it his own subsistence; but natural justice required that this right should be exercised so as not to interfere with the equal rights of others. Where every man was his own judge, and acted on his own impulse, this would necessarily be extremely difficult, and would afford occasion to innumerable controversies concerning the limits of their respective rights of range, and the priority of occupation of particular districts. After the inhabitants, therefore, should have become too numerous on a certain territory, to employ it according to their primitive and common rights without frequent and dangerous collisions, it would naturally occur to the prudent among them, as the most obvious means of remedying these evils, to agree to throw their general rights into a common fund to be divided among them individually, or by families, according to some principles of convenience. This important act might have been executed by common consent, or regulated according to the will of those who should have been vested by the general assembly with supreme authority for this purpose. In either case, that division of the land adopted by them, must have become the connecting principle of their government, and formed the basis of their civil constitution. The constitu-

tion, therefore, or fundamental law of the nation, is the sole foundation of the exclusive rights of property to the citizens, in their separate bounded portions of the soil. Imagined convenience, and the benefit of society, is commonly the original rule or measure which governs the law of the division. And the precise, and definite rights derived, in this manner, from the will of the society, or of the sovereign, in whom the society has vested all its powers, are substituted in the room of those primitive and common rights derived from nature which are only general and indefinite. Hence the tenure of landed property is various in different countries, according to the ideas of the people, or of their legislators. But, whatever the partition of the soil may have originally been, it usually becomes greatly changed in the course of time, in consequence of devises, contracts, and the infinite divisions and transfers of property which are continually taking place in society.

OF THE PRINCIPLES WHICH GOVERN THE DISTRIBUTION AND TRANSFER OF PROPERTY.

In the original distribution of property there are some principles which usually govern the opinions of mankind besides the mere will of society, and which serve to direct that will. The chief of these are *prior occupation*, or *labor* primarily bestowed on any unappropriated sub-

ject. And, in the progress of society, the most common grounds of the transfer of property are devise, gift, or bargain and sale, all of which are usually considered under the general head of *contract*. To these means of acquiring property some writers have, perhaps incautiously, added *forfeiture*; because when an injury is committed, the guilty person is bound to make reparation, and thereby forfeits, or transfers to the injured what had before been his right. But this is only substituting one species of property in the room of another: unless we basely consider personal injuries, or wounded reputation, in some instances as subjects of barter, or sale. Forfeiture is, besides, so limited in its effect that hardly can it be justly regarded as one of the sources of property.

OF OCCUPANCY.

The right of occupancy can take place with regard to such things only as before were common, and unappropriated, such as the air, the sea, or lands which have not yet been parcelled out among separate owners by express, or implied compact. In subjects of this nature, each man has a property in that portion which he holds in actual occupation; and no man can, without injury, deprive him of the free and unmolested use of it. But as it is impossible for one person to occupy the whole atmosphere, ocean, or forest, and as others possess equal rights with

himself, his privilege, or title of property becomes limited by natural justice, to what he is at present employing in actual use. But the laws of almost all governments, from some considerations of public utility, have concurred in the general principle of extending the rights of prior occupation beyond immediate possession and use, to what will be convenient for the purposes of society.

The principle of convenience has likewise been applied by independent nations, sometimes by implicit agreement, and sometimes by explicit compact, to regulate their respective rights of use, or property, in seas, rivers, bays, or certain districts of the ocean, and in newly discovered lands; which, without such convention, must have been subjected to the general principle, limiting rights to actual occupancy, and possession.

OF LABOR.

Labor forms another, and still juster title to property. By it is intended any exertion of our talents, or any effort of industry, corporeal or mental, by which a thing is discovered that was not known before,—fabricated that did not exist before,—or receives, from some change in its form, an augmented value. The title acquired by this means is a necessary result of the natural right which every man possesses to the use of his own faculties, and the enjoyment of their fruits. The productions of a man's

ingenuity and skill are his property, which he may employ, or dispose of for his own benefit. The work of his hands forms a title to property, if it is employed on a subject before unappropriated, or on an appropriated subject, with the consent of the owner. But if, without such consent, any labor be added to a subject belonging to another, it is lost to the laborer, inasmuch as it ought not to change the original propriety of a thing which has not been alienated. But, if it be of such a nature that it may be separated from the original subject, the author of the work has a right to remove it, and hold it for his own use. But, if no separation can be made without injury to the subject, the original proprietor must be suffered to enjoy the benefit of the whole. Any change in this rule can only be made with the consent of the proprietor.

Property which does not accrue from one or the other of the sources just mentioned, and is not the effect of devise or gift, is the consequence of contract or convention, the forms of which are generally prescribed in the laws of society.—It will be considered in the next lecture.

All property, except that resulting from prior occupation of unappropriated subjects, may be considered as founded in labor; inasmuch as it is labor which gives the principal value to all things. Property derived from contract is only the exchange of one species of labor for

another; and that which accrues from devise, or gift, is but the transfer, without an equivalent, of things which have been rendered valuable by the labor of others.

One of the first principles in the establishment of separate and individual property, was its inviolability; which implies that the portion of each citizen should be sacred, and protected by the laws from the intrusion of every other person, without the consent of the proprietor. Yet, in this distribution, every society reserves to itself certain rights for the common good, which seem to limit this inviolability; but only to enhance the value, and increase the security of that which remains. It retains the sovereign prerogative of laying out roads, of cutting canals, of establishing ferries and bridges across rivers for the public interest, and convenience. And in performing these acts, it may, by its sole authority, take the necessary proportion of the property of any private citizens, always, however, making reasonable compensation for what it shall so employ. This reservation of public right is always presumed in the distribution of the territory in private property. And, upon the most equitable grounds, for, as the property of individuals is rendered secure and valuable only by the will and power of the public, the public has an undoubted right to derive an advantage from the protection it extends. It is usual also for the public to assert a property in certain minerals, and medi-

cinal springs. On the same principle, it may claim a provisional right to useful inventions, or discoveries for the public benefit, paying to the original inventor, or discoverer an adequate and liberal reward. For, although it be acknowleged that he has a natural right to the full use, and fruits of his own talents, or good fortune; yet, it is the power, and wealth of society which can render them of any value to him; and it merits this acknowlegement.

Another exception to the inviolability of property may deserve to be mentioned, although it be in itself of small importance, from the rarity of the occasions on which it is called into exercise. It is well known to jurists under the head of the *rights of necessity*. They are such as from the extreme urgency of their claims cannot be delayed, yet, from the ambiguity of their circumstances cannot easily be designated with precision in any general law. It is necessary therefore that they be left to each man's reason and conscience to direct his conduct at the moment of action; but, as they must afterwards be judged of at the tribunal of the public, they ought to be justified by the palpable extremity of the case. A man may put another, who assails his life, to death on the spot, without waiting the decision of a tribunal which would come too late for his protection. A man ready to starve with hunger or to perish with cold, may justifiably take the first food, clothing or shelter he can find. A house, the

demolition of which would stop the progress of a destructive flame, may, on the same ground, be torn down. As society was instituted for the greatest common benefit, individual interest in such cases, must give way to a greater good. In examples of the nature of the last, however, restitution to the particular sufferer ought, as far as possible, to be made by the community. But this restitution cannot be required to extend to the full value of the property destroyed; only to its value estimated by a liberal appraisement in the imminent hazard in which it stood.

Such are the principles on which the distribution of property has been originally made in society. Its transfer, or exchange among citizens by contract, which in the end, so greatly varies its relations, will be considered in the following lecture.

LECTURE XXIII.

OF CONTRACT.

The nature of a contract, and the principles that should govern its formation—Of the distinction of contracts—Of testamentary devise—Of exceptions to contracts.—The obligation of truth considered under the head of contracts.—Of the forms necessary to authenticate contracts, and render them complete in law.—Of subscription—of seals—of oaths—of vows.—Of the rights of command.—Of police.

I HAVE already considered prior occupation, and personal labor, by which last is meant any exertion of our own talents, bodily or mental, as means of acquiring property. I come now to place before you the nature and conditions of *contracts*, which are the most ample source of the acquisition, transfer, and exchanges of property in society, and the subject of the greatest portion of her civil code. —A contract is a promise explicitly made either by words, or by signs, calculated and designed to excite an expectation of the performance of some service, or the transfer of some rights. An expectation thus excited, considering the necessity there is for this mutual confidence in society, reasonably creates a reliance on its ful-

filment as forming part of the expectant's estate. A fraudulent failure to fulfil it, therefore, is equivalent to purloining such a portion of his property.

A promise, when clearly and distinctly made, although it may not be attended with all the civil forms required by the laws of the state, is, however, equally obligatory on the conscience of a good man with a formal contract: but when invested with its legal forms, it becomes a ground of compulsory obligation. It is then converted into a species of property; and the violation of it forms an injury which is justly punishable by the civil magistrate.

It is of importance that, on this subject, whether we contemplate it as moralists, or civilians, we frame precise and equitable principles for its regulation.

1. In the first place, contracts should regard only such things as are both possible, and lawful.—If the object of the contract is, at the time, impossible, and the impossibility be known to both parties, it is an act of madness. If it be known to one of them only, who may derive a profit from it, it is an act of fraud. If the impossibility arises after the contract has been made, and not from any fault of the parties, that agreement, indeed, is void, but the parties are exempt alike from the charge of folly, and crime. If the contract respects an object which, in its nature, is unlawful, it is, by its very terms, void; because virtue,

duty, honor, truth, are prior obligations on human nature. If the unlawfulness was not known at the time of entering into the contract, or if it arose afterwards, as in the engagement made by Herod to the daughter of Herodias, the knowlege of this fact immediately dissolves the obligation.

2. To render a contract perfect it is necessary that there be not only a promise on one side, but acceptance on the other. In a beneficent contract acceptance may commonly be presumed; but the promise should be explicitly made to the beneficiary, otherwise it is no more than a simple resolution in the mind of a benefactor which can create no expectation, and may be retracted at pleasure. But in an onerous contract, where duties are to be performed on each side, there is required a mutual promise, and mutual acceptance.

3. A contract may be made by signs as well as by words, if the signs are such as are calculated, and evidently intended, to excite the expectation of another that a certain service shall be performed, or a certain benefit conferred, such as raising the hand, or using any other appointed signal for testifying assent to the declared terms of any obligation.

4. A man may stipulate in his own person, or by an agent whom he has regularly authorized to act for him in

the case. He may be bound by the act of a servant in such affairs as servants are known usually to transact; and, especially, in such affairs as he has been known repeatedly to commit to the management of a particular servant.

5. Custom, when generally received and known, may be a ground of obligation, or constitute a contract; although, not formal and explicit, nevertheless, implied and real. A parent, for example, sending a child to a place of education, by that act, binds himself to comply with all the customary regulations of the institution as far as they immediately concern him. A great part of our conventions or compacts in society rest merely on the customs of the country.

6. As there may frequently exist some ambiguity in the expression of instruments of writing, which are not drawn with a particular and minute attention, to the order and meaning of words, it is an important and necessary rule, in the interpretation of contracts, to give to those words their most usual signification, in common discourse; or that signification in which it will appear, from the body of the instrument, and from other concurrent circumstances, they were intended to be used.

7. An ultimate rule upon the subject of contracts is derived from the principle which constitutes their moral

obligation, which is the expectation reasonably excited by them, or the reliance founded upon them; whence it results, that no contract can justly be supposed to exist, or can be admitted in the civil laws of a country to have any force, which is entered into with a person insane, or with one who is under guardianship, or who, from any circumstances, cannot be supposed to have a free will of his own, or an independent right to execute its stipulations. In these cases, no just reliance can be supposed to be created, no reasonable expectation raised.

OF THE DISTINCTION OF CONTRACTS.

After the general rules which have been just stated on the subject of contracts, and their validity in law, or the equity of conscience, I proceed briefly to point out their several distinctions, or the heads under which they may be respectively arranged.

Contracts taken *generally*, may be divided into absolute or conditional, single, or reciprocal.—Conditional contracts are such as make the execution depend upon some condition to be performed by the person who is to receive the benefit,—on some action of another,—on some service to be rendered,—or some fortuitous event which is to take place hereafter. Absolute contracts are such as are expressed without any such limitation on the fulfilment of their stipulations.—Reciprocal contracts imply

obligations and promises of services to be performed, or rights to be transferred on each side, as in all contracts of bargain and sale.—Single contracts, on the other hand, which are sometimes called gratuitous, contain an obligation only on one side, of some favor to be bestowed, or some right to be transferred, which requires simply acceptance on the part of the obligee. Such is the deed of gift for some portion of his real property, which a man may bestow on his friend, or devote to public, or charitable uses, during his life.—Testamentary devise, however, is the principal example of this species of contract, both on account of the frequency of its occurrence, and the importance of the objects affected by it.—On this subject, a question has been proposed by civilians of no small importance in the philosophy of legislation; and that is, whether the power which a citizen enjoys of disposing of his property by testamentary devise, according to his pleasure, be a right resulting from the law of nature, or purely an adventitious right derived from the will of society. Certain it is that the right of constituting wills for the transmission and distribution of a man's property after his death was first introduced into Rome by the decemviral law. Tacitus says it was unknown to the Germans, and from the period of the conquest in England this privilege was not completely enjoyed by a great part of the freeholders of that nation till within the last three

centuries.—The following principle on that subject, is universally admitted, that the personal property which any man has acquired by his own industry, or fabricated by his own labor and skill, may, conformably to the law of nature, be disposed of in full property at his death, in any way which will most gratify his domestic affections, or friendly attachments. But, because the distribution of the land in separate propriety, and the whole system of *real estate*, is the operation only of social law, it is contended by many ingenious writers that the power which creates the property has the sole right to direct the transmission of it after the demise of each occupant. The death of the occupier, they suppose, returns the soil back to its primitive state of community, to be re-apportioned by the law of society. Examples of the exercise of this power often occur in the ages of feudal aristocracy in Europe. The same end may be accomplished by instituting a certain line of descent for landed property, independent of the particular will of the last owner. As we see exemplified in the absurd rule established in England for the succession of real estate in the ruder ages of that kingdom; and which can, even now, be corrected only by regular testamentary devise, which, within a short period, has been introduced for the remedy of this evil.*

* Such as that parents can in no case inherit even if the estate should be lost for want of an heir. That the remotest rela-

Another and more humane example we have in the rule of the Roman law for the distribution of the personal property of intestates.*

Although it is true that real estate rests upon a different footing from personal property, and is wholly the consequence of the will, and the peculiar organization of civil society, yet, according to the distribution, and species of tenure of landed property which has been established in any country, I am unwilling to believe that the testamentary control over these adventitious rights, ought to be in any degree more restricted, or less full and absolute, than over the natural rights which each man possesses to the labor of his own hands. Civil society, like the providence of nature, should make the rights which it confers perfect. So that, although natural and adventitious rights differ in the sources from which they are derived, there should be no difference in the powers which they bestow. This is necessary, equally, for the happi-

tion of the male line, shall supplant the nearest of kin by the female; and other barbarous regulations of the same kind.

* Of personal property the Roman law assigned one third to the widow, and two thirds to the children; if there were no children, one half was assigned to the widow, the other half to the nearest of kin. Where the intestate had left neither widow, nor lineal descendants, the whole property passed to the next in the scale of kindred, and equally to those of equal degrees, whether by the male, or female line.

ness of the citizens, and the encouragement of industry, that, after the cares, the expense, or toil they have bestowed in the acquisition of their property, they may be able at last to gratify the fondest affections of their hearts in the dispositions which they make of it. This principle is recognized in the civil laws of our own country, in the arrangements which they have made for the distribution of the property of those who are either so negligent, or so unfortunate as to die intestate: they have endeavored to consult, as far as possible, the general affections of human nature upon that subject. Notwithstanding this general and salutary provision of law, however, most men will have some particular wishes with regard to their affairs which cannot be embraced in any common regulation. For these ends, every citizen has it in his power perfectly to provide by his own testamentary arrangements.—On the question, therefore, which gave rise to these reflections, I conclude, that all that species of property which is stiled real estate, is the effect purely of the conventions of society. In a state of nature it could not exist. But, when those rights have been incorporated into the very constitution of the republic, and identified with the person of the proprietor, then the power of transmitting them by testamentary devise, or in any other way of transferring them under the restrictions and limitations under which they have been originally created, is a re-

sult of natural law, by which any man may transfer, according to his own inclination, rights of which he is fully possessed. The last will and testament of a free citizen, therefore, forms a gratuitous contract of the highest authority and importance.

Contracts may be farther subdivided, and distinguished into contracts of sale,—contracts of hazard, such as that useful one of insurance, or that dangerous one of gaming —contracts of service—of commissions—of partnership—of lending money upon interest; concerning all which there are many legal provisions established, and there have existed many moral disquisitions, which it would be tedious, and unnecessary to detail in this period of your studies. They are left to your future experience, and intercourse with the world.

OF EXCEPTIONS TO CONTRACTS.

There are four just exceptions to the validity of contracts. They are void when either fraud, or unjust force has been employed to obtain them; or when they respect things unlawful to be done, or impossible in their nature to be executed. Of the latter I have spoken already.—Of fraud, which is any deception used by one party to surprize a promise from another, we may observe that it invalidates a contract, in the first place, because deceit is itself an injury, and merits punishment instead of being

permitted to receive a benefit; and in the next place, because there can be no just expectation raised in the party who employs the artifice, that the other will fulfil a promise so insidiously obtained, when the imposition shall be discovered.

Unjust force, which, in like manner, invalidates a contract, consists in any violence, or menace employed by a person, who is not invested with any adequate civil authority for the purpose, to extort from another a promise of advantage. A contract obtained by such unjustifiable means is void for the same reasons which invalidate fraud. Force is an injury, and never can excite any reasonable expectation of fulfilment, as soon as the duress is removed.

The laws, however, may in certain cases, compel one citizen to enter into an equitable contract with another, by the agency of the public magistrate, and these compulsory stipulations shall notwithstanding be binding upon the coerced party. The exception of force, does not annul the conventions of independent nations; for, between them, contracts must be held to be obligatory, for the sake of the peace of the world, although extorted by force, or by fear; unless the oppression be so extreme as palpably to justify resistance, in the general opinion of mankind, as soon as the weaker power shall have acquired sufficient strength to break her ties.

OF THE OBLIGATION OF TRUTH.

Under the head of contracts it has been usual to consider the obligation of truth in narration and discourse in general, as well as in the more particular circumstance of explicit promises. The question is introduced in this place, on the principle which has been laid down by many writers, that all speech implies, in its nature, an indirect contract with those whom we address, that we will utter nothing but truth. There is, however, no need of this fiction to establish its obligation. It rests upon the same foundation, with the obligation of contracts themselves; that is, the sentiments of human nature,—and the interests and happiness of society. No man can utter a deliberate falsehood without some compunction of heart, some feeling of shame and self-reproach. And, certainly, if men could not rely on the veracity of each other in the common intercourse as well as the more solemn transactions of life, and were not even impelled to yield this confidence by a powerful natural instinct, all social relation would be immediately dissolved. On this double foundation the general obligation of truth in narration seems firmly to rest. Contracts and oaths may give it an additional sanction, but, in a virtuous mind, it needs no other authority than the voice of nature.

Connected with this, are commonly considered two other moral questions which are of more immediate prac-

tical importance—the first is, wherein the essence of a lie consists? And the second, whether there can arise any occasion which may justify a departure from the truth?—To the first of these enquiries I answer with the greater part of moral writers, that a lie is any departure in words from the reality of things, made with an intention to deceive.—It is any equivocation, likewise, in which a sentence is intentionally so constructed that the literal and grammatical meaning shall vary from the customary and popular sense of the same words; or, from that sense of them in which it is known, and intended that they shall be taken.—It is further, any action which, from the common relation established between actions and designs, is calculated to mislead; as in that villainous decoy which has sometimes been practised by armed vessels at sea, hanging out signals of distress to allure defenceless merchant ships within their power.—Or, finally, it is any omission of a material circumstance in a narrative, where we profess to relate, and others have a right to be informed of, the whole truth.—From these definitions it results that the essence of a lie lies in the intention to deceive. Where no deception, therefore, is designed, or expected to be operated, as in parables, fables, or customary compliments, or in the common practice of a prisoner at the bar pleading *not guilty*, no falsehood is ever imputed.

With regard to the second question, many circumstances have been ingeniously stated, and many delicate situations imagined, in which it has been supposed to be innocent, or even laudable to depart from the truth; others have been proposed, of certainly a very dubious aspect, to which the wisest men have found it difficult to give a precise, and definite answer. For example, the little deceptions often used towards the sick to support their spirits, and assist their cures, or lies told to a madman, or a robber to divert him from a fatal design. But those mirthful tales of falsehood invented merely for the amusement of company, or to try their credulity, are of much more doubtful morality, when employed in the most ingenious form; but, as they are usually practised, a man can hardly condescend to such artifices without degrading his character. The custom of directing a servant to deny his master or mistress being at home, to avoid seeing a visitor, was, when first introduced, a palpable immorality, till custom made it at length be understood as only a mode of expressing particular engagement. It is, however, an unnecessary departure from the ingenuousness of truth, which might, no less inoffensively, be simply expressed. Cicero informs us* how Scipio Nassica ridiculed this custom which, it seems, had been introduced at Rome. Scipio, on a certain day, paying a visit to the poet Ennius, was

* Cicero 2 de orat. n 276.

denied by a servant maid who had been instructed to say he was not at home. Ennius, in his turn, went to pay his compliments to the senator, who called out to his servant as the poet was entering, Tell him that I am not at home.—What! says Ennius, when I hear your voice within there?—Very high indeed! replied Scipio. The other day, I believed your maid, when she told me you were abroad; and now, forsooth, you won't believe me myself.

A general rule has been laid down upon this subject by some eminent writers, and, among others, by Dr Paley, with a great appearance of equity;—that, as the virtue, or the vice of actions depends, in a great measure, upon the utility, or the injury of their consequences, whenever the benefit of the immediate consequence of a departure from truth, as the rescuing of an innocent life from the fury, or iniquity of an assassin, or robber, evidently, and greatly exceeds the remote consequences of the example, in such cases, but in no others, can it be justified. The application of this rule to individual instances can hardly be made with precision in any regulations of law. It must be left to each man's moral feelings, and to his sense of accountability to his Supreme Judge.

Some persons possess a constitutional and unhappy tendency to an excessive indulgence of fancy in their narra-

tions, and others an acquired habit of exaggeration on every subject which is expected to excite particular interest, or surprize in their hearers. Few propensities detract more from the credit and respectability of character; and there are few which have been found, in experience, to be more incurable.—Most men, in the negligent narratives which they make of the ordinary anecdotes and histories which are constantly circulating through society, are prone to make some addition to what they have heard, so that in passing from one to another, they become so magnified and distorted as often to lose all resemblance to the truth. These negligences in narration are frequently productive of effects so unfriendly to the happiness of social life, especially in the circulation of the anecdotes of slander, as to rank them among the highest offences, not only against charity, but justice. And every good man should lay it down as a sacred and inviolable rule to himself, never to suffer his imagination, his passions, or his uncharitable negligences to color, or to add, in the smallest degree, to what he has heard from the purest sources in the intercourse of society, and especially to those historical narratives that can, in any way, affect injuriously the reputation of others.

Having made this digression on the obligation of truth and the other incidental questions connected with it, I

return again directly to the subject of *contract*, and to the means of *authenticating* it, and rendering it *complete*.

I have said before, that any signs, or expressions by which we communicate an intention, and lead others to depend upon its accomplishment, so that any injury or painful disappointment would result from failing to fulfil it, is a *contract* binding in conscience. But to render it complete, certain forms are necessary in each country, according to the prescription of its laws, for giving to the instrument more perfect authenticity. If it is merely a verbal contract, it is requisite that the words in which it is expressed be clear and precise in their meaning, and that they be confirmed by the testimony of one, or more, competent witnesses.—If it be a written covenant it must be authenticated by the customary signature of the contracting party, or parties. Besides the signature, there is usually required the testimony of one, two, and sometimes of three subscribing witnesses. By the civil, or Roman law, two witnesses at least, are required to substantiate, or prove a contract. But by the common law of England, which is generally received in the legal proceedings of the United States, one witness is sufficient; except, in some instances, wherein, by express statute, more are required. The statute of frauds, for example, requires that the devise of lands should be attested by three subscribing witnesses. And, in a few cases, the precautions of the

civil law are adopted by the common law; as in the rules concerning the distribution of the estates of intestates,—and in maritime causes, in which two witnesses are made necessary. The same rule is adopted in America in those courts which have been substituted in the room of the spiritual courts in England.*

The law, by an ancient custom, demands, as an additional security, the seals of the contracting parties. A seal is, generally, some sign, or symbol engraved upon stone or metal, and impressed upon wax, or wafer, intended, in some way, to designate the person, or community by whom it is used. Before the use of writing became common, they, probably, served instead of the signature of the name, as those marks at present do which are added by persons, who cannot write, to their names written by another.

The name was written by a *clerus* or clerk, that is, a *learned man*, as, in those days, they were esteemed to be who could write, and the seal was added by the contracting party as his distinguishing *mark*. After the talent of writing became more generally diffused among society, and almost every man was capable of inscribing his own name, still the seal was, by custom, continued to be added, and was by law made indispensable.

* As in the court of the ordinary,—the orphan's court,—the chancery, and admiralty court.

As seals, by the commonness of their use, among the lowest as well as the highest classes of citizens, have lost in a great measure, their distinguishing character, and those appropriate emblems, such as coats of arms, or peculiar devices, by which families, offices, or individuals were designated, are but rarely employed, it has been allowed that any impression made with any instrument, provided it be made on wax or wafer, shall serve the purpose of a seal. A seal, in its present form is certainly not requisite to the validity of a contract on any principles of reason; it is still required however by statute in all cases of *specialties*, as they are called, through deference to ancient custom, for which the law has always, and perhaps justly, been remarkable. This annexation is now made not merely for the purpose of more precisely designating the person of the contracting party, but carries in it a kind of hieroglyphic signification, implying, that, as those things which are closed, finished, and bound up, are, for greater security, usually sealed, so the persons, engaged in this contract which is finished and closed, are hereby bound, and solemnly pledged for its faithful fulfilment.

In ancient ages, oaths were much employed in the ratification of contracts. They are a solemn appeal to God for the sincerity of our purpose, involving an imprecation of his judgments on any fraudulent failure in our agreements. They were frequently accompanied with other

ceremonies such as festivals, and the mutual exchange of gifts to add publicity and solemnity to the transaction: or with the erection of pillars, or other durable monuments to perpetuate its memory. With these were often blended other acts of religion, as libations, sacrifices, invocations. The Greeks were accustomed to divide a lamb destined for sacrifice, into two parts, between which the contracting parties successively passed: whence was derived their phrase for confirming an agreement, *temnein horkon*. The Latins, on the other hand, made use of a different phrase, *ferire factum*, from their custom, on similar occasions, of knocking down a victim before the altar: from which has been borrowed that familiar expression among us of *striking a bargain*.

Oaths were anciently the more necessary in confirming contracts of all kinds, because, writing being little known, it became requisite, by the impressions of religion on the heart, to supply the want of the authentic and durable evidences afforded by letters. And the very defective forms of jurisprudence in those rude ages required the more efficient aids of religious fear to give authority to the regulations of civil society. Occasions, likewise more frequently occurred, between equal and independent parties who were amenable to no common tribunal, of entering into mutual compacts, from the numbers of petty princes, or heads of independent families, or clans who

resided in the vicinity of one another. In that state of society in which arts and letters are advanced to a considerable degree of perfection, such means of ratifying contracts are less necessary, and are consequently little employed. Oaths, at present, are principally used on any public emergency, in declarations of allegiance to the civil authority of the state, or as pledges, on entering into offices of important trust, for the faithful performance of their duties.

A vow, which, in some respects, is analagous to an oath, is simply a contract, or obligation under which any individual voluntarily chuses to bring himself to God. Few vows are required by rational religion. In making them, a man ought to be very cautious, and deliberate, but, when made, he ought sacredly to fulfil them. With them civil society has no concern. They are transactions solely between God, and the individual.

Of the general rights of men in society I have now treated, particularly of those of property, and the means of acquiring it, by labor and by contract. I should next consider the rights of *command*, either over the personal service of individuals, or the civil obedience of men in a constituted state of society. The former has already been a subject of discussion under the head of *economics;* the latter I shall reserve to be more particularly explained when I come to treat of the constitution of civil govern-

ment; and shall conclude this lecture with a few observations on the subject

OF POLICE,

which consists in the limitation and direction of men in the use of their respective rights in society, so that the exercise of the rights belonging to one citizen, shall not impede or interfere with those belonging to any other. It relates to the manner in which the arts may be practised,—to the conveniences of travelling, and passing and re-passing along the streets and public ways,—to the order of markets,—to the times and manner of holding all assemblies of the people,—to the conveyance of intelligence,—to the regulations for the convenient management of all commercial business. And in this last subject, the laws of police have their principal operation and effect. The details of police are very multifarious, and in their minute arrangements can be learned only by experience.

As the objects of this class of laws, or the actions to which they refer, have no natural morality, or immorality attached to them, but become lawful or unlawful only in consequence of legal permission, or prohibition, men have, in general, but a slight sense of the evil of violating them. The regulations of police, therefore, ought to be made with great prudence and moderation; they should be seen manifestly to conduce to the convenience of the whole

body of citizens; and the vigilance of the magistrate should supply what is wanting to their exact and faithful execution in the strength of the general sentiment of right and wrong as it respects the obligation of these laws.

LECTURE XXIV.

OF THE DEFENCE OF CIVIL RIGHTS.

CONTENTS.

The means of defending men's rights in society—Of preventing wrongs by the general influence of education—by the protection and encouragement of religion—Of the means of repelling, or repairing wrongs;—in a state of nature—in a state of civil society—Of the constitution of the civil tribunals—Of the separation of the judiciary from the executive, and legislative power—Of the independence of the judges secured by the permanency of their appointment to office, and by the ampleness and security of their provision—Their appointment being made by the executive—their removal should depend on the legislative, in consequence only of malversation in office established before the highest judicatory in the nation—In a free government the judges should be few—in an absolute monarchy they should be numerous—and in a despotism the supreme judiciary power should be united with the highest offices of religion—The purity of the administration of justice aided by the publicity of its proceedings—Various co-ordinate courts should ultimately terminate in one supreme tribunal.—Of circuit

courts—of juries to co-operate with the judges, thereby uniting, in the constitution of the tribunals, the best provision for impartiality and wisdom.—Of the power to remove trials during the prevalence of violent party passions.

THE second part of jurisprudence relates to the means of defending those rights which nature, or the laws of society, have bestowed on the citizen. They consist in preventing, in repelling, or in repairing wrongs. These ends, which are among the most important in civil society, can be effectually accomplished only by a wise legislation, and a prompt and faithful administration of the laws. The prevention of crimes may generally be attempted with the most favorable hopes of success by providing for the good education of the citizens,—by protecting and encouraging religion,—and by the salutary example of the public justice.

Wrongs should be repelled or repaired by an impartial administration of wise and just laws,—by obliging the citizens to fulfil their contracts,—and by arresting meditated and punishing actual crimes.

OF PREVENTING CRIMES.

For promoting the tranquility, order, and happiness of society, no provision can be more effectual than imparting

the means of instruction to every class of the people, particularly with regard to their moral, and social duties, and the method of transacting all their ordinary affairs with promptness and intelligence. That degree of knowlege which, in a free country, may be imparted, by a prudent legislation, to the poorest orders of the citizens, contributes to exalt the moral feeling of the public, and heightens the love of order, and abhorrence of crimes. And by an honorable provision for cultivating the higher branches of science, there will always be prepared a most useful class capable of directing with wisdom and prudence the operations of government. And although they should never be called to bear an immediate part in the active labors of legislation, or the administration of the laws, they will serve as so many fountains of light distributed through society, to shed the irradiations of moral and political truth among the people, and with them, the love of virtue and of order. The rays, it is true, may often strike feebly upon dull and uninstructed minds, yet will they diffuse a general twilight, which is infintely more friendly to public virtue, and social happiness, than the gross manners, and rude and untamed passions which generally accompany national ignorance, and the total destitution of science.

Another, and important mean, for the prevention of crimes in a community, consists in the protection and en-

couragement given to religion. Religious knowlege tends to civilize the mind, and religious fear often holds a powerful control over the violent passions of the most vicious of mankind. To the influence of religion have all wise legislators in antiquity resorted, to lay the foundations of society most securely, and to promote its civilization. The rites with which the people continually approached its altars, impressed the public mind with a salutary reverence for those divine powers which were believed to preside over the world, and were the avengers of crimes. The christian religion adds principle to ceremony, and instruction to the rites of devotion, and seizes on the soul by the double power of religious illumination, and religious awe. As we possess, however, a public and generally acknowleged code of religious doctrine which every man is able to interpret for himself, it is, perhaps, not desirable that any peculiar exposition of it should be prescribed by the authority of the civil government. Every citizen should be permitted to use, and sacredly protected in using, his own right of opinion, and in the privilege of associating with any others of corresponding sentiments, for offering their common devotions to the Deity. A sentiment of religion is deeply implanted in human nature; and it is justly to be expected that each man will be as solicitous to preserve the privilege of expressing it according to his own understanding, or the dictates of his own heart,

as the government can be to enjoin it. By trusting to individual feeling and opinion, there can be no danger that religion, so necessary to the existence, so useful to the ultimate improvement of civil society, should perish. The variety of sects will even be useful by their mutual emulation, to preserve alive that pious zeal and that vigilant moral discipline over their internal manners, which will, in the best manner, aid the public virtue in the great mass of society. With the temporary follies of enthusiasm which will sometimes spring up amidst an unenlightened populace, the government has no concern. They turn the mind to religious reflection, and, if not intemperately opposed, they always subside, in time, into some more sober and useful form of religion connected with regular morals. The encouragement, therefore, which good policy requires the civil government to extend to this subject, is to protect every man in the sacred rights of religious opinion, and every denomination in the forms of its own worship, and its internal discipline over its own members. In this liberal indulgence to all sects, the state requires no other guard for its tranquility, against any tumultuary efforts of enthusiasm, than effectual prevention of individual zeal from restraining, or interfering with the civil privileges of their fellow-citizens.

OF REPELLING, AND REPAIRING WRONGS.

Having considered the general means of preventing crimes, and introducing peace and order into society, as far as it may be expected in this imperfect state of human nature; permit me next to observe, that the object of its laws, when crimes, or wrongs do actually exist, embraces the means of repelling, or repairing them.

When men are unconnected with one another by any civil or political tie, a condition which is usually denominated a *state of nature*, they may, with their own hands, repel or punish the wrongs offered, or inflicted, by the injustice of others. But, in a regular state of civil society, individuals have given up the right of avenging themselves to the power of the magistrate, and to the tribunals established for that purpose; except only, in those cases in which it is impossible, from the suddenness and emergency of the case, to interpose the aid of the civil power to prevent an injury; or where the relief afforded by the law is so palpably and totally inadequate to the wrong that is likely to be endured, that all the world will justify the act—then a man is permitted to defend himself.

On this branch of jurisprudence, therefore, which respects the defence of the rights of the citizen, we are to attend chiefly to the constitution of the tribunals for the administration of the laws,—to the principles by which

those tribunals should govern themselves in pronouncing their decrees,—to the evidence of crimes.—the design, the proportion, and the nature of punishments.

OF THE CONSTITUTION OF THE TRIBUNALS.

The first maxim in the constitution of the tribunals is, that the judiciary power should be separated in its exercise, from the executive, and legislative, as far as the necessary union, and harmony of movement in all the departments of government will permit. The union of all these functions in an individual ruler, or in a single body of men, necessarily constitutes a *despotism*; which is commonly the more violent in its operations in proportion as the numbers of that body are increased, a principle which we have seen terribly exemplified in the late national assembly of France. The union of the judiciary power with either of the others, produces a formidable approach to tyranny. Connected with the executive, it would afford a dangerous opportunity to a capricious or designing chief magistrate to exercise an arbitrary dominion, and to increase his powers in the state to a dangerous magnitude, by forming unjust and cruel decisions against all who were opposed to his views, or obnoxious to his friends. A rigorous execution, immediately following an arbitrary decree, would leave to the sufferer no hope, or means of redress. But however contrary to all sound principles of legislation such a junction would be, the union of the ju-

diciary functions with the legislative would be still more unfavorable to the administration of justice, and the security of the citizen. There would be no uniformity in the law, and, therefore, no clear and permanent rule of conduct for the people; because every decree in judgment would be equivalent to a new law, or, if it were necessary to give more formality to the precedent, it would be only requisite to sanction it by a law. The public code would be continually changing with the various cases which should come for their determination, before the judges who would also be the legislators. It could hardly be expected of human nature that they should not along with their decrees often mix their own prejudices, and passions. Having all powers, they would be under no control. Legal decisions, would, in many cases, be unavoidably affected by the partialities of the judges; and would too often, suffer a sinister influence from the predominant factions which should, at any time, exist in the state. A door would thus be opened to endless litigation, and to the most iniquitous perversions of equity—and the people would learn to fear, not the impartial and inflexible majesty of the laws, but the prepossessions, the caprice, or venality of the judge.

But when that distinction, which political wisdom has pointed out, between the respective departments, is faithfully preserved, and the legislature enacts the law, which

judicial skill interprets, and applies to its proper object, there is infinitely greater probability, that the application will be made with impartiality and justice. The law must then be framed under the view of general circumstances, and not under the bias of particular prepossessions, or the party attachments of the moment. The general principles of equity must prevail in the law, as far as they are understood by the legislators, when it is framed without any reference to the peculiar interests of individuals; and the same reason must remove from the interpretation of it all the biasses of enmity, or friendship. For the judges being amenable to public opinion, and to the legislature, who will naturally be tenacious of the right exposition of their own decrees, must interpret it strictly according to its letter. As they have no power to frame, they have no privilege to modify the law. This restriction is a necessary result of the separation of the judicial from the legislative power. And although it is true that the rigorous confinement of the judge to the literal exposition of the law must be productive of individual cases of hardship, inasmuch as it is beyond the powers of human sagacity to frame rules, on general principles, which can embrace with precision, the perfect equity of every litigated question; yet suffering this individual hardship is preferable to investing the judge with the prerogative of bending the law, even to the most consummate ideas

of justice which would be constituting him legislator as well as judge. When the law is fixed, the citizens may, at least, understand their duty, and conform themselves to its prescriptions. Having a known, and uniform rule before them, they have it in their power accordingly to regulate their conduct, and take care of their own interests. No citizen will have reason to fear the tyranny of office, or the injustice of passion. The same protection, and defence is equally extended to all.

Another political principle of the highest importance in the constitution of the civil tribunals of a free state is, that, not only should the actual exercise of the judicial functions be distinct from those of the executive, and legislative, but, that all temptation to an undue subserviency to the one, or the other, may be removed from the judges, provision should be made in the constitution, as far as possible, for their complete independence upon both. Being appointed to be the incorruptible interpreters of the law, it would be improper that they should be exposed to any bias in their decisions, such as dependence on either of those bodies would naturally tend to induce. One of the first requisites in order to secure that unbiassed freedom of mind which the important duties of their department require, will be found in their permanent tenure of office. When a judge feels himself secure in his station,

whatever primary sentiments of gratitude, towards a prince, or executive magistrate, for his appointment, may influence him, he speedily perceives his mind erect, and intent upon his own respectability in his office, which can be acquired only by a virtuous and dignified discharge of its functions. In a republic like ours, in which the men who hold the executive, and legislative departments of the state are frequently changed by the public suffrages, this independence of mind is the more speedily attained; which would be greatly impaired, or totally destroyed, if his continuance in the office of judge depended on the will of the temporary faction in power.—As an additional provision in favor of justice, the permanency of his judicial station should depend only on one condition; fidelity in the execution of its duties, which, to the virtue and the talents that a judge ought to possess, will ever place his honors, and emoluments in perfect security.

It is a question of great importance, and of some difficulty in the science of politics, to determine in what hands the appointment of judges should be placed, so as, at the same time, to secure competent talents in the office, and to avoid the danger of a dependent influence. The people are, in general, inadequate judges of the qualities which are requisite in the administration of the laws, it would be dangerous, therefore, to commit the filling of the judiciary department to popular election; and it would, in that

case also, be subject to the worst of all influence, that of the predominant parties, or passions, which might at any time agitate the state. Perhaps the wisest policy in a balanced government, like that of the United States, is to make their appointment depend on the executive department, and their removal, on the application of the representatives of the people, grounded on evidence, before a competent tribunal, of their malversation in office. The judges would never feel themselves secure, if their removal depended on a mere act of the legislature. There are frequently seasons, when acts of that kind can be pushed through such an assembly by the force of faction, or by a popular prejudice which may be artfully raised against the wisest and most upright men. But when the charges against them, as is wisely ordained in our civil constitution, must be submitted to a judicial investigation before the highest tribunal of the nation,* it is scarcely possible that an upright judge should be overborne by calumny, or faction; and he may securely rest in the consciousness of his own virtue. The judiciary department, therefore, having equal reason, by their appointment on the one hand, and their apprehensions of a removal from office on the other, to respect both the executive, and legislative branches of government, they will be exempted from an undue influence from either.

* The senate of the United States

Virtue and conscious integrity will be the shield of their independence, and of that freedom, and tranquility of mind, so indispensable in their arduous station.

To render the independence of the judiciary complete, it is requisite that their stipendiary provision be as independent, and permanent as their official existence. It is observed by a very good writer, that *a power over a man's subsistence amounts to a power over his will.* If that department, therefore, were to receive its provision only by occasional grants from the legislature, who preside over all the fiscal concerns of the nation, which might consequently be varied according to favor or prejudice, it would create a dependence which might often prove unfavorable to the interests of public justice. The constitution of the United States, aware of this danger, has with equal wisdom and justice provided, that *the judges shall, at stated times, receive for their services a compensation which shall not be diminished during their continuance in office.* The variation in the value of money, or, sometimes, in the general habits of living, may occasionally indicate the necessity of an augmentation in their compensation; but, at no time, shall their just expectation, at entering into their office, be disappointed by any diminution which might create a sense of dependence.

It is equally necessary, with the same view, that the administration of justice be rendered respectable by the

ampleness of its provision; that no suspicion may exist of corruption; that men of the highest talents may be invited to the bench of justice; and the tribunal of the laws be invested at once with the majesty of wisdom, and the sacredness of unsuspected integrity. A small tax this, which the public pays for the preservation of the rights of the citizens, the purity of the fountains of justice, and the tranquil and secure state of property, and industry.

Another political maxim which has been established by experience, as well as by reason, is, that, in a free government, the members which compose the supreme judiciary body of the state ought not to consist of a large number. Numerous bodies are seldom capable of the slow and patient investigations which liberty demands. They are liable, besides, to be influenced by the popular passions which may, at any time, agitate the public mind. And there is undoubtedly a defect in the constitution of the department for the administration of justice, in which the responsibility of the judge ought to be of the highest grade, when this salutary check on human frailty is greatly lessened by dividing that responsibility among large numbers. This maxim, so useful and necessary in governments in which the highest degree of liberty exists, ought to be reversed in absolute monarchies which are not tempered by a proper mixture of republican restraints. Here the supreme depositary of the laws ought to be nu-

merous. The influence of a monarch over a large assembly is less than over a very small body. The ardor of popular passions, and even some degree of faction, may be useful in such an assembly, to prevent too great servility to power. Of this the parliament of Paris, before the late revolution, often exhibited striking examples, in the independence of their spirit, and their resistance to the arbitrary views of the monarch. In a despotic government the head of the judiciary should always be invested with the supreme offices of religion. It is necessary by the supposed divinity of his functions, to overawe the despot himself. In such states, the Sultan, or the Schah may trample on the liberties, and sport with the lives of his subjects; but it is always dangerous to touch religion, or, with a profane hand, to insult the sacredness of its ministers.

The purity of the administration of justice, in the next place, is greatly assisted by the publicity of all proceedings in its courts. The public eye, and the fear of public reproach, will ever form a powerful check on any discretionary latitude in the interpretation of the law which a judge might be disposed to assume. And especially when the eyes, and ears of all those who are conversant in the profession, and are, probably, not less skilled in the jurisprudence of their country than himself, are open to every step in his progress. This will necessarily prove an im-

portant security for the faithful application of the law to its proper ends, the correction of wrongs, and an efficacious protection of the civil rights of the citizens.

In the judiciary system in states of considerable extent, it is generally necessary for the more convenient administration of justice, to establish various courts of concurrent, or co-ordinate jurisdiction. In all such cases, it is absolutely requisite, on principles of the soundest juridical policy, that there be constituted one supreme tribunal to which appeals may be brought from the courts below, if any probable cause exist of doubt, or error in their decisions. Unless these various courts were ultimately united in one head possessing a sufficient control over their adjudications, they would establish different rules of proceeding, and different interpretations of the law within their respective departments; and two causes, similarly circumstanced, might receive opposite determinations as they should come for adjudication before one court, or another. Such collisions would unavoidably introduce confusion into the jurisprudence of the country, injurious to the rights, and the peace of the citizens. The inconsistency, and opposition of rights and claims, which would naturally result from such a system, will be restrained, or corrected by the establishment of a superior, and controling authority, always consistent with itself in its decrees, which will, in time, produce a uniform rule

of decision in all the rest. A supreme court is requisite, likewise, to confine the jurisdiction of the other, and co-ordinate tribunals within their proper limits. That love of power, which is so congenial to human nature, and the confidence of each in its own superior wisdom, would prompt the respective courts to enlarge their separate jurisdictions, and thus produce uncertainty in the rights and tenure of property; unless one supreme power be admitted which shall have authority to compose every controversy.

Circuit, or itinerary courts, appointed for different districts of an extended state, in which the different members of the supreme judicatory should be required respectively to preside, would relieve many of the difficulties, or dangers attending co-ordinate and independent courts, at once, by bringing justice near to the doors of the citizens, and saving the necessity, or temptation of expense, delay, and uncertainty by frequent appeals. The judge, having employed his life in the study and administration of the laws, would naturally have acquired the confidence of the people, and of the parties at the bar; and being practised in all the principles and forms of the supreme court, the universal fountain of justice to the state, the same principles and forms would of course be introduced into the courts of the several districts; so that one uniform

system of law would pervade every part of the political body.

The next consideration in the constitution of the tribunals that should engage our attention, is the means of uniting, as far as is practicable to human imperfection, a perfect knowlege and interpretation of the law, with the most fair and impartial application of it to each case as it may be varied by its attending facts and circumstances. This union, was attempted in the Roman jurisprudence by combining the judices along with the prætor in the formation of their courts of justice, and in that of Great-Britain, and the United States of America, by using the assistance of the jury along with the judge who presides upon the bench. In the judges, or presidents of the tribunals, provision is supposed to be made for the perfect knowlege of the laws, and a profound acquaintance with the whole science of jurisprudence. But, as they must possess the ordinary passions, prepossessions, and foibles of men, enjoying, as they do, a fixed official station, these foibles, whatever they are, must be generally known, so that, if the dispensation of justice were deposited wholly in their hands, they would, almost necessarily, be exposed to the continual solicitations of parties, and to every kind of artful intrigue, or interested address; against which it is not easy for human nature to preserve a firm and unbiassed

impartiality. The jury, who are, in some measure, assessors with the judge, and are selected on the spot, and wholly for the occasion, may reasonably be supposed to be free from this kind of influence, and to possess that indifference to the cause, and parties at the bar, which will be peculiarly favorable to the fairness of their decision; especially, as their verdict respects only the facts on which the sentence of the law is founded, and to which their judgments, uninstructed in legal science, are perfectly competent.* Men, chosen only for the occasion, will most probably be exempted from the influence of intrigue, and from all the prepossessions which would often assail, and

* The jury, which enters into the constitution of our civil tribunals, is by its peculiar office, appointed to determine only on matters of fact. The judges decide on all points of law. Yet a *general verdict* of *guilty*, or not *guilty*, pronounced by the jury, often involves a mixed proposition of *law* and *fact*, and the jury, of course, assumes the prerogative of pronouncing on the whole. But they are directed as to the law by the court. Sometimes, indeed, instigated by some headstrong member, they presume to disregard this direction, and oppose the opinion of the judge. In that case the court may set aside the verdict, and award a new trial. In the history of legal proceedings in England there have been instances in which three successive verdicts on the same question have been rejected, and the cause submitted to a new investigation. According to the strictness, therefore, of our judiciary constitution, the facts alone, on which the decision of guilt or innocence is founded, are to be ascertained, and determined by the jury, and the law is to be pronounced by the judge.

might sometimes be able to reach the integrity of the permanent judges.

Juries are attended with another advantage to the community; that, selected immediately from the body of the people, and possessing their sentiments and feelings, they will naturally prove the most upright guardians of their rights and liberties; equally concerned to defend the innocent, because they may themselves be exposed to unjust accusation, and to punish the guilty for the sake of general order. Although they are not supposed to be learned in the law, they are capable of understanding its rules as they are expounded from the bench, and of perceiving their application to the facts before them. To unite the highest wisdom of jurisprudence with the most unbiassed integrity in judging, no institution has hitherto been devised in civil society which contributes so certainly as such a constitution of the tribunals.*

The present article I conclude with the judicious remark of Dr Paley. "This admirable contrivance, unites

* A maxim, however, of the greatest importance to be observed, if there are different orders of citizens in a state, is, that the jury should always be of the peers, or of the same rank in society with the accused. Without a strict observance of this condition, there would often be reason to fear the want of an impartial distribution of justice. The accused would consider himself in the hands of his enemies.

"the wisdom of a fixed, with the integrity of a casual "judicature, and avoids, in a great measure, the inconve- "niences of both. The judge imparts to the jury, the ben- "efit of his erudition and experience; the jury, by their "disinterestedness, check any corrupt partialities which "previous application may have produced in the judge. "If the determination were left to the judge, the party "might suffer under the superior interest of his adversa- "ry: if it were left to the uninstructed jury, his rights "would be in still greater danger from the ignorance of "those who were to decide upon them. The present wise "admixture of chance and choice in the constitution of the "court, in which his cause is tried, guards him equally "against the fear of injury from either of these causes."*

To one danger juries are sometimes exposed from the natural sympathy of mankind with their sect in religion, their party in politics, or whatever principle of union with a particular class in society, creates a distinction between them and their fellow-citizens. When any popular, or party passion becomes warm and violent in a particular district, it is often difficult to find in that place an impartial jury. The prejudices for, or against individuals may be highly unfriendly to an equal administration of justice. In such instances, however, the danger may generally be

† Paley's Mor. and Pol. Phil. p. 379—80—Ed. Bost. 1795.

obviated by a power, properly lodged, to remove the trial ot a different county, or district of the state, in which the same parties, and prejudices are not found to exist.

Finally, to render the constitution of the court, and the defence of the people's rights complete, it is an important privilege which should be permitted to every party, to employ as counsel, in maintaining their cause, and explaining for them all the laws which have any bearing upon it, the assistance of men, who have, by time, and study, made themselves thoroughly acquainted with these voluminous guards of the public liberty.

LECTURE XXV.

GENERAL PRINCIPLES BY WHICH THE TRIBUNALS OUGHT TO BE GOVERNED IN PRONOUNCING THEIR DECREES—AND OF CRIMINAL JURISPRUDENCE.

CONTENTS.

Rules by which the courts should be governed in interpreting the laws, and pronouncing their decrees—of precedents and law reports—of the use of analogies in explaining and applying the law—of the simplicity of the rules of morality—and the multiplicity of civil laws—of the unanimity of the jury—of courts of equity—of criminal jurisprudence—of the evidence of crimes—of the design of punishment in civil society—of the proportion of punishments—of the nature of punishments—of the multiplicity of capital punishments—of the ends of punishments—of sanguinary punishments.

HAVING already proposed several important maxims respecting the constitution of the tribunals of justice, I proceed now to lay down some general principles by which these tribunals ought to be governed in pronouncing their decrees.

The great and comprehensive principle, indeed, which embraces and penetrates the whole, is that, in interpreting each law, the court should rigidly adhere to its spirit and meaning, as far as, by its obvious expression, with other accompanying circumstances, it can be clearly ascertained; or, which is the same thing, as far as the will and intention of the legislator in enacting it can be known.—The following rules on this subject have been prudently adopted in the courts of England, and America.

1. To construe the law according to the plain meaning of the words in which it is expressed, giving to those words their common, and received signification.

2. When the language of the law happens not to be precise, but is of equivocal signification, then, in order to discover the intention of the legislator, the law is to be consulted as it stood before this act was framed,—the evil, or defect proposed to be remedied by it is to be examined, and such construction given to the whole, as will most effectually reach this remedy. The title and preamble of the law often point to its meaning, and are very properly resorted to in order to explain its enacting clause.

3. When once a judicial determination on the meaning and extent of a statute has taken place, it then forms a precedent by which all future decisions on the same or similar points will be, in a great measure, directed. When

such adjudication has been made, although it be not on the very law in question; yet if it be on the meaning and extent of the same, or similar expressions in other statutes, it is to be regarded as a good rule to guide the courts in their interpretation.

These principles are requisite to restrain the caprices or partialities that may exist in the minds of the judges towards the parties at the bar, or with respect to the question litigated before them. They are no less requisite to prevent the variableness, and uncertainty which would be introduced into the law of the land if each judge, in pronouncing his decrees, were left to be governed merely by his own, perhaps prejudiced, sense of what is just and equitable, in each case which is presented for his decision.

It is true, no human foresight can anticipate all the cases which may arise, and come into litigation under each particular law. The utmost sagacity of legislators, therefore, cannot prevent their laws, in individual instances, from operating hardly under a rigid and literal interpretation. Of some of these examples the hardship might, doubtless, be alleviated, if greater latitude were allowed the judges in expounding the law; and they were permitted sometimes to forsake the regular course of precedents, and follow their own sense of equity. But

fixed and known laws, and an invariable rule of judging are of more importance to the peace and order of society than can be the equity, or hardship of many single decisions. When the law, and the decrees of the tribunals are fixed and uniform, every citizen will, of course, have it in his power to conform his actions to them, the rule being clearly known: and, for the same reason, many unnecessary, and disquieting litigations among the citizens will be precluded. But, if the judges are permitted, in any degree, to modify the established standard according to their own apprehensions of perfect right, in particular cases, immediately the laws become unsettled,—the justice of the country is involved in obscurity,—no limits can be prescribed to the variableness, and the contradictory decisions of different tribunals,—and endless litigation will be invited from the hopes which each man will entertain of being able to gain, or blind the opinion of his judge.

In almost every law which is framed, there necessarily arises, through the defect of the human understanding, which cannot foresee all the infinite shapes of human action, some ambiguity in its application to many individual cases. This evil is attempted to be corrected in the course of legal adjudications. When a new case occurs which is not marked with sufficient precision in the statute, it is the

duty of the judiciary to endeavor to give it as far as it may be done by their decree, that application which is most congenial with its spirit and intention, and which, combining all circumstances, will form the best and clearest rule of legal justice in all future and similar instances. A point, thus determined, serves, as far as other cases, by resemblance, or analogy, can be affected by it, to remove the ambiguity of the law, and to form a rule hereafter to direct the judgment of the courts. And it is a maxim in judicial proceedings, founded on principles both of wisdom and justice, that the rule, once established, should be rigidly adhered to; and especially after it has been confirmed by repeated adjudication, unless there should be discovered in it some manifest departure from the letter, or the spirit of the law which it professes to explain and enforce.

New cases, invested with different circumstances, must frequently occur in an extended country, and amidst a numerous population. These must be decided with the same caution, and, when decided, become new precedents to govern the decrees of future tribunals. Hence originate the numerous volumes of reports with which the jurisprudence of a free country is, almost necessarily, incumbered. The vast variety of these reports, with the reasons on which the respective adjudications have been founded, serve greatly to increase the extent and intrica-

cy of the law as a science ; and render it absolutely requisite that the judges should be profound lawyers, and not only deeply versed in legal principles, but extensively acquainted with the records of reports which are the history of legal adjudications. On the same reason is grounded the nesessity of having the law opened, and explained at the bar, and the judgments which have been awarded in cases, similar to that in actual controversy, recited, and compared by men who have made the science generally the study and employment of their lives.

Not unfrequently, a considerable embarrassment arises to the court itself from the difficulty of determining under what law, or precedent a particular case, which is diverse in some material circumstance, from all former examples, may be brought. Perhaps it cannot be precisely brought under any ; and the court is obliged to have recourse to certain principles of analogy to find a sufficient resemblance between the present, and any former cases to afford grounds of a consistent decision in conformity with the general train of legal proceedings. A question may frequently have some resemblance to others which have already been adjudged. And, it may possess an analogy, in various respects, to several cases which, taken in all their circumstances, are very different from one another. In quoting, and comparing these analagous cases consists a great part of the contention of the bar. And, in apply-

ing them dexterously, a lawyer displays his ingenuity and skill. The rule of decision to the court will be, the aptness, the strength, and number of analogies on one side, more than on the other. And its wisdom is seen in comparing and reconciling analogies with one another, or in making such discriminations as will save the authority of all the rules alledged in the cause; or, in yielding only to the strongest.

It is an enquiry frequently made, even by the judicious part of society, whence this rigid adherence to precedents?—It is necessary equally, for the stability of the law, and the tranquility of the citizens. It is absolutely requisite, in a free country, that the discretion of judges be restricted by positive rules which no impulses of favor, or opposition, shall dare to violate, or bend to the purposes of private passion. And no less necessary is it for the general peace, order, and contentment of the country, that each member of the community should, in every event, certainly expect the same decision in his own case which has ever been rendered to others in similar circumstances. By a judicious adherence to precedents, while justice is rendered to the parties, in the individual question before the judges, an important check is imposed on imprudent litigation, arising out of the same, or like subjects of controversy, in all time to come. As long as any uncertainty exists with regard to the issue of con-

troverted questions of right, or property, the self-love, and pride of mankind will be ready to disturb the quiet of society by their unfair, or malignant suits at law. This litigious spirit is in train to be repressed, by every decision which contributes to fix immutably a new point in the law.

It seems, to many persons, strange and unaccountable, that, since the moral duties of mankind are few and simple, and the whole theory of justice and morality may be embraced in a volume small, and intelligible to the most ordinary understanding, the laws of almost all nations should, notwithstanding, be extended into such ample volumes, and the administration of justice be esteemed such a difficult science, and be, in fact, such a tedious labor. And it has been erroneously conceived, by some immature politicians, that the work of legislation has been artfully magnified, and the whole structure and process of our courts of justice have been artificially complicated and intangled for the benefit of a particular order of men. They have, accordingly, entertained many crude projects in their fancies, for simplifying our civil codes, and reforming the whole order of our judicial systems. That some amendments, if wisely attempted, might be introduced into both, is probable. But in the rage for simplifying, there is great danger that justice would be rendered more uncertain, and the settled order of society, and,

the tenure of property would, in time, be miserably disturbed. Besides, the true ground of objection to the multiplicity of our laws, and the tedious process of our civil courts, is mistaken. It is not denied, that the knowledge of the moral duties of men in a state of nature, or of civil society, is a very simple science; and its details are reducible within a small compass. When the actions and intentions of men are distinctly known and fairly stated, a fact which is always supposed in every theory of morals, then the conclusions, that is, the grounds of approbation or condemnation, are plain, explicit, and definite. But it is impossible to apply the same simple process in the administration of the laws of the land. Here the fact, that is, the action which is in question before a civil tribunal, is hardly ever distinctly known till sought out by a long process of enquiry, and frequently by a detail of inferences drawn from imperfect circumstances, from dubious and contending evidence, and elicited from contrasted probabilities, which must exercise the ingenuity of the bar, the judgment and candor of the bench; whence it arises that the decisions of justice cannot always be clearly, and immediately pronounced. The laws of the land, necessarily aiming to reach all the oblique, and equivocal actions of men, often obliged to bring to light those which are most occult, and, amidst the innumerable disguises of human conduct, and intention, to search out the true mind

and purpose of the action, must employ, for these ends, a vast multiplicity of provisions, which must consequently lay open an immense field of litigation. But after the *fact*, in consequence of these previous investigations, stands manifest in its full and perfect shape, the application of the principles of justice are not more obscure and uncertain than are the plain rules of morality in our domestic, and social relations. The theory of morals, when the fact on one side, and the rule on the other, are distinctly presented to view, offers simple and obvious conclusions ; the difficulty and uncertainty of the practical application of the rules of justice in civil tribunals arises from the involution, and complication of human actions, under the studied arts of disguise.

But this does, by no means, express the whole reason of the multiplicity of laws in civil society. In the infinite relations, and connexions of men in this extended intercourse, public expediency requires a vast number of definite rules to be fixed for the transaction of its complicated affairs ; rules, frequently, which involve no natural morality or immorality, and are only necessary because some rule ought to be prescribed for the general convenience. We may take, for example, the rules of inheritance, or of the distribution of the property, real or personal, of intestates. There are many things necessary to the order and benefit of society which are not fixed with precision by

any natural law of justice, which must therefore be prescribed by the positive rules of society : as, for instance, that precise period in the life of man at which he shall be competent to receive or bind his estate. There are many questions, likewise, with regard to the rights of property which depend on transfers, agreements, customs that have existed in periods long antecedent to the birth of the present proprietor. But, it would be impossible here to enumerate the various causes which contribute to multiply the regulations of civil society, to introduce uncertainty, or doubt in the application of the law, or necessary delays in its administration. These must be left to your future studies, or future experience in the intercourses of life. But it ought particularly to be borne in mind, that it is infinitely dangerous for projectors, ignorant of the principles of civil, and political society, by attempting to introduce an ideal perfection into its order, to depart too far from ancient and established usages. Despotism delights in the simplicity of its civil code. It gives more scope to the discretionary authority of its judges, who are its princes. But liberty requires a multiplicity of laws to defend her ; and her laws are her shield and buckler.

As a still greater security to liberty, and the equity of legal decisions, we have seen that the jury has been added to our tribunals as a species of co-adjutors to the bench,

to assist in determining the facts involved in the question, to which the judge points out the application of the law. An important and distinctive principle in the use of juries, which takes place in the jurisprudence of Great-Britain, and the United States, consists in requiring a perfect unanimity in their verdict. The propriety of this rule, certainly, does not immediately appear; especially, as unanimity is frequently procured by a species of compulsion, confining the jury in their chamber, till, by a certain compromise of opinions, they are tapered down, at length, to such a coincidence as may consent to be embraced in a common verdict. The principle of unanimity, indeed, has been found, on some occasions, favorable to lenity in criminal prosecutions; and sometimes it has induced a divided jury to receive an opinion from the maturer, and better informed judgment of the bench. But, perhaps, after all, the principle of unanimity in these juridical verdicts, would be better exchanged for that of some certain majority.

Because the rigid letter of the law is not always the most favorable to exact justice, and it is incompetent to juries to determine questions of right, it is sometimes useful, to institute a tribunal of equity, which may correct, in some measure, the errors of the law; or, as Montesquieu says, interpret the law in favor of herself, who

always aims at the public good, and intends the most perfect justice to every citizen.—To such an idea of a court corresponded the tribunals of centumvirs at Rome, and the courts of chancery, and exchequer in England.

The perfect distinction between these courts, and courts of common law, is hardly understood by the greater part of the ordinary practitioners at the bar, and has not been clearly explained except by a few of the most eminent legal writers. A competent knowledge of this subject can be acquired only by consulting the best expositors of the English, or American law. But as these respectable authors have stated the difference to consist chiefly in the mode of proof permitted in the courts of equity, in the mode of trial, and the mode of granting relief, I confess I have not been able to see the necessity of two separate tribunals, when the good effects of both seem to be equally attainable by investing the courts of common law, on proper occasions, with chancery powers.*

* As far as respects the mode of *proof*, a court of equity may administer a purgatory oath to the party concerned, in order to reach such circumstances relative to a depending cause, as rest wholly within his private knowledge. And, with regard to the mode of trial, this court may grant a commission to take the written testimony, on oath, of witnesses who may be in foreign countries, or who may be too remote, or too infirm, or, from peculiar causes, may be unable to attend at the place where the court sits. And, finally, on the mode of granting relief,—on the

OF CRIMINAL JURISPRUDENCE.

In treating of the *defence of the rights* of the citizens, which consists in the protection of their property, and their personal safety, the subject which next requires your attention, after the constitution of the tribunals of justice, is the criminal jurisprudence of a country. This head includes the prosecution of crimes, and the design, the proportion, and the nature of the punishments by which they are to be restrained, or chastised. And, on this subject it should ever be remembered, that it is not less necessary, for the security of the citizen, that crimes should be detected and punished, than it is requisite for the preservation of liberty, and the general happiness, that no man should be punished before he is convicted of guilt; that is, of some action that is injurious to his fellow-citizen, and, that is clearly and definitely forbidden by the laws. Equally inconsistent with the principles of liberty would it be that any citizen, before conviction, should be subjected to confinement, or restraint in his person; except on probable presumptions of guilt; when the constraint should not, in any case, proceed farther than may be necessary to hold him to trial.

compelling the fulfilment of executory agreements, the construction of securities, &c. See Blackstone's Commentaries, book iii. ch. 27.

OF THE EVIDENCE OF CRIMES.

Conviction of guilt can justly be grounded only upon evidence. Evidence is two-fold, direct, and circumstantial; the former consisting in the attestation of a witness to his personal knowledge of the fact; the latter, of such circumstances as usually accompany the action in question, and which, happening at the times, and places, and in the combinations in which they are said to have taken place, strongly imply the existence of the fact.

The testimony, whether it partake of the former species of evidence, or of the latter, ought ever to be required on the oath, or solemn affirmation of the witness, implying an appeal to the knowledge and justice of Almighty God; because the sentiment of religion is reasonably presumed to confirm the sentiment of truth in mankind, and to afford an additional pledge to society for the verity of the evidence.

In the case of direct evidence, the law commonly requires the attestation of, at least, two witnesses to the same fact. If the evidence be circumstantial, it requires this attestation to two or more successive facts belonging to the same train of circumstances, and all bearing an evident reference to one ultimate fact.

Two witnesses are, for the best reason, required to substantiate the principal fact, when the question rests

upon direct evidence; for, although the testimony of one man, of known, and undoubted integrity, outweighs, in its intrinsic value, and will outweigh, in the public opinion, that of many men of suspected character; yet, as the law cannot estimate, with precision, the characters of witnesses, and some general rule, which may be relied on, is necessary to be fixed, the rule of two has been adopted as the safest, and best. One witness may often be liable to be corruptly practised upon; two are not equally subject to a sinister influence. And if their testimony be perverted by any interested motives, it is difficult to make the stories of two persons cohere, in all their parts, in support of a falsehood. But to require a greater number of witnesses to authenticate a fact judicially, as was done at Athens where three were required by their courts, would, on many occasions, impede the course of justice, and defeat the intention of the law, which aims at the discovery, and the salutary restraint and correction of crimes. Although the law cannot designate the characters of witnesses, and the degree of credit which ought to be yielded to their testimony respectively, yet will they necessarily be taken into the estimation of the judges, and the jury, and cannot fail to have their influence on the ultimate sentence of the court. The nature of the thing, and the intention of law, demand, that the court should

possess some discretion on this subject, especially in favor of the accused.

There are some occult crimes that, from their nature, can seldom admit of proof from two, or more witnesses, which, however, the interests of society require to be vigilantly detected, and rigorously punished. With regard to these crimes, the testimony of one witness, supported by strong corroborating circumstances, may, under the prudent guards which the law provides, become a reasonable ground of conviction.

There are two principles in requiring evidence which ought ever to be sacredly adhered to in the humane laws of a civilized nation. The first is, that no man should be compelled to give evidence against himself. A law requiring such testimony would be doing violence to nature, which is always a pernicious principle in legislation, and is productive of many unhappy effects wherever it is practised, in civil or domestic society. Among other fatal consequences, it tends to debauch morals by offering powerful temptations to the violation of truth. In the oaths of evidence, therefore, administered by the court, this exception is always understood to be implied.—The second is, that evidence ought never to be extorted by torture. This barbarous and irrational method of question has obtained in most rude ages, and uncivilized nations. And it

is but lately that it has been disused in some of the polished countries of Europe.—Torture has, certainly, no relation to truth ; but only to a man's power of enduring pain.

On the remaining subjects under the head of jurisprudence, I shall content myself with very few and general observations, as it is not the object of these lectures to make complete jurists, but to sketch such an outline, and present to you such comprehensive principles, as may lead your future enquiries and be hereafter filled up with advantage by study and experience.

OF THE DESIGN OF PUNISHMENTS IN CIVIL SOCIETY.

The most perfect idea of justice in apportioning punishment to guilt is the infliction of pains in exact proportion to the moral depravity of the offender. But this supposes a knowledge of the actions of men, and of the dispositions and tendencies of the human heart, beyond the sagacity and penetration of human tribunals, and is the prerogative of that wisdom and power alone which regulates the moral system of the universe. The penal codes of civil communities ought to have reference only to the peace and order of the state. Crimes are punishable by them just so far as the *public good* is concerned. This is the proper *end* of all civil penalties; and this *end* indicates the proper measure of punishment for the

various offences which disturb the order and tranquility of society. Taking this principle for our guide, these pains must relate either to the reparation to be made to the sufferer by any crime,—to the reformation of the criminal,—or to the restraint of future crimes in the community, by the salutary example of the public justice. —Reparation is the object principally in the view of the law, and reformation, or restraint, only in a secondary degree, if at all, in decrees compelling the fulfilment of contracts,—in damages or fines assessed for slander;—and for injuries arising from personal violence.—The reformation of the offender is chiefly in view, and other ends only incidentally, in those punishments which consist in solitary confinement, either with, or without the addition of hard labor: The labor being added, or omitted by different legislators with the same view; either to prepare the criminal for some industrious occupation when the period of his punishment shall expire, by the habits of employment during his confinement; or to incline him to seek for employment, by the pain of absolute idleness, united with the self-compunction which naturally springs up in the breast of an unoccupied culprit, during the same period. The general restraint of crimes, and the necessity of inspiring a salutary caution and fear in those who are inclined to commit them, is the end in

all capital executions, and in those penalties which consist in public disgrace, and shame.

OF THE PROPORTION OF PUNISHMENTS.

The end for which the pains of the law are inflicted, should serve, in some degree, to regulate their proportion to the various offences they are destined to correct. The severity of their pains is not always to be measured by the actual depravity of heart indicated by the crime, or the circumstances attending its commission, but to be determined by other considerations immediately relative to the public good. For example, the facility with which certain acts injurious to the peace of society, or the property of the citizens, may be committed, may require a proportionably severer penalty to restrain them. Therefore the stealing of sheep, and of horses has been punished with greater rigor by the English law, and by the law of several of the United States, than many simple felonies which intrinsically cannot be regarded as less criminal than these. For the same reason, stealing out of a shop, is subjected to a higher penalty, than from a dwelling-house, although the immorality of the latter, if estimated by the hardened dispositions which lead to its perpetration, is, perhaps, greater than that of the shop-lifter.—The difficulty of detection is generally considered by the law as affording ground for increasing the rigor of the

penalty. But, where injuries may generally be guarded against by a reasonable degree of precaution and care, the law seldom punishes with severity. Hence violations of trust, although justly considered among the most culpable of human actions, are generally passed over with comparatively light animadversion. But where a trust must necessarily be reposed, as in a servant in your family, and no ordinary precaution can guard you against the injurious effects of his unfaithfulness, there the penalty again rises in its severity.

There are certain aggravations in the commission of crimes which are ever regarded as reasonable causes for increasing the rigor of the law. For example, their bold, and frequent repetition; or their being accompanied with circumstances of cruelty, or a hardened disregard of the moral feelings of nature. They are proofs of such malignant depravity of heart as is highly dangerous to the peace and safety of society, and ought to subject the culprits to the heavier pains.

Among the aggravations of crimes we may place in the first rank, combinations for their perpetration. These are accompanied with so much higher alarm, and greater danger to the public peace, than any effort of individual outrage could be, that such combinations merit to be punished with an exemplary justice. And, among gangs

of combined villains, it would be good policy in the law to make a discrimination between the ringleaders, or foremost actors in any criminal design, and the rest of the band. Such discriminations will frequently contribute to the more effectual detection of the most culpable, and to break the spirit of union which connects them. It will serve at the same time, to impose some check on the formation of similar combinations, and the execution of their iniquitous purposes, from the difficulty of finding those among them who will be hardy enough to encounter so much greater risks than their companions.

Crimes accompanied with terror to others, or with violence to their persons, and especially with danger to life, have so much more pernicious an effect on the public peace, and on all the most valuable ends for which men enter into society, than simple thefts, or frauds, that they require to be repressed by a severer hand. On this principle, burglaries perpetrated in the night are justly subjected by the law to a higher penalty than the same actions committed in the day.

Among frauds, forgeries have generally the most pernicious influence on society; and among forgeries those which affect the ordinary medium of commercial circulation, such as bank notes, or bills of exchange, are more

pernicious than those which consist in falsifying bonds, mortgages, and such specialties as are not usually transferred from hand to hand, and may, therefore, be easily detected.

But the highest species of crimes is of those which affect the life of a citizen. These have been punished capitally by the laws of all nations. Some political theorists, under a mistaken feeling of humanity, have proposed the abolition of capital punishments from the criminal code universally, even for the crime of murder. This false lenity would, probably, prove much more destructive to human life than the law which inflicts death for this highest offence against the peace of society. For one murderer who might be reclaimed by solitary confinement, and labor, or by any other private expedient, ten would be invited to this cruel indulgence of their malignant passions, by the hope of impunity. For, to the most depraved part of society, a punishment removed from the public view, and, therefore, soon forgotten, and which should be known not to affect the life of the criminal, would be regarded as an impunity for guilt. And certainly it cannot be desirable to expend the wealth, and energies of society in the, almost, hopeless task of reclaiming one hardened offender, at the imminent hazard of the lives of many valuable citizens. But, if it would be impolitic wholly to expunge capital punishments from

the criminal jurisprudence of the state; it is not less an offence against reason and justice, to inflict death, with the British law, on crimes of various degrees of malignity. It appears to be doing violence to humanity, and the common sentiments of mankind, to force crimes of the most different grades, under one denomination, for the sake of inflicting upon them a disproportioned punishment. Thus, in the laws of England, and, in some instances, in our own, which are borrowed from them, the abused name of felony is made to involve a multitude of crimes which have no relation to one another, but this unhappy designation of name which serves to sweep them all equally into the snare of death.—Many of the British jurists vindicate, or excuse, this solecism in legislation, by saying that all these crimes, in their highest grade, deserve an utter excision from the benefits of civil society, and society has no severer penalty than death for the most atrocious offences. If there are many degrees of depravity indicated by different felonies, and there seems to be an unnecessary cruelty in subjecting some of the mildest of these to the severest sentence of the law, it is said the constitution has provided a remedy for the most obnoxious of these examples, by the power of reprieve vested in the supreme executive magistrate. It is said, by these politicians, that it is useful to the state that all these criminals should lie under the fear of death de-

nounced by the law: and, at the same time, that the chief executive authority of the nation should have it in his power to provide for the interests of humanity by occasionally rescuing a criminal of an inferior order from too severe a fate.—I question, however, the wisdom of the law, or the validity of the apology.

A great desideratum in the science of jurisprudence, which, however, has hardly ever been attempted, is a proper scale of crimes and punishments. And he would deserve well of his country who should introduce such an improvement into its legislation.

OF THE NATURE OF PUNISHMENTS.

In the structure of the penal code of states, it is the indication of a wise and prudent policy to derive its punishments as much as possible from the nature of the crimes they are destined to correct. The proportion between the one, and the other, will, by this mean, be the better preserved; the justice of the punishment will be the more obvious, both to the criminal and the public, springing, as it is made to do, out of the nature of the offence; and its effect, either as a corrective, or an example, will be proportionably more useful.

In reference to this subject, crimes may be divided into three principal classes,—1, crimes against morals,—

2, crimes against the public tranquility, which, however, do not directly affect the security of individuals,—3, and lastly, crimes which immediately violate that security.—In this partition, I do not include offences against religion simply; that is, for denying its doctrines, or dissenting from the ritual of its worship. For, although most nations have interfered imprudently, and often iniquitously, with the rights of religious opinion, and worship, they are not properly objects of civil jurisdiction; but, relating wholly to spiritual ideas, and men's spiritual concerns, they should be left to the moral and corrective discipline of the respective religious societies. But it should be carefully borne in mind, that this principle does not exempt from adequate, and severe reprehension, all attempts made by profligate persons, or enthusiastic sects, to restrain the freedom of religious opinion, or to disturb the order of religious devotion among any denomination of men who profess to be employed in the worship of Almighty God. Such acts are crimes against the public tranquility, and the security of the citizen, and, as such, they are proper subjects of civil pains. At the same time, no pretence of religious worship shall ever be admitted as a justifiable plea to cover any illegal, or immoral act from the penalty of the law.

Crimes against morals, restricting this definition merely to those immoralities which are not accompanied with

any acts of violence, or injury to others, may be punished by disgrace, by fines, and, perhaps, in some instances, by confinement and labor.

Crimes against public tranquility may be chastised by imprisonment, solitude, exile, confiscation; and by all such correctives as are fitted to subdue, and tame restless and turbulent spirits.—But, on this subject, it is worthy of remark, that a great error is often committed in the punishment of seditious and libellous writings. Writings of this nature are generally grateful to the populace; and there is, commonly at least, a party in the state who are ready to applaud them, and to receive their authors with favor. To raise them to pillories, therefore, and to other public situations of disgrace, is essentially defeating the end of correction. It attracts the sympathy, and excites the attachment of their partizans: and the sufferers are more gratified by the testimonies of the public applause which surround them, than mortified by the stigma attempted to be inflicted by the law. The laws, and the magistrates, are both, by this means, exposed to insult and contempt.

The penalties of crimes, in like manner, which violate the security of the citizen in his person, or his property, may be drawn from the nature of the offence. They are a kind of retaliation by which society requires damages.

or injuries which have been done to a fellow-citizen, to be compensated by some equivalent; or they result from an act of the society by which it refuses security and protection to those who have violated the security which the law would extend to every member of the community.

The *lex talionis* of the Mosaic code, appears, on many subjects, to be such an obvious measure of equity, that it seems wonderful that it should not have been more introduced into the jurisprudence of christian nations. Some of the pains naturally arising from this rule, might, no doubt, be frequently commuted with advantage by consent of the injured party. For example, the loss of a member, by which a poor man had been enabled to procure his subsistence, might be commuted for an annuity, which might secure to him, during life, a sufficient, and liberal provision.

OF THE MULTIPLICITY OF CAPITAL PUNISHMENTS.

It argues some defect of wisdom, and good policy, in a state, when its jurisprudence is burdened with many capital offences. There is great risk that the government become hateful to the humanity of the people. Or another risk, perhaps not less injurious to society, is, lest the public compassion be so much interested for the criminals that many of them shall be suffered to escape. Every criminal that escapes the penalty of the law forms

a new encouragement to crimes. The execution of the law, in time, becomes a lottery, in which every culprit is prone to count the chances in his own favor. Almost every nation, in the very early stages of her career towards civilization, finds it necessary to infuse great severity into her penal code in order to repress the rude passions of men not yet softened by literature and the arts; but if the same severity be retained in her laws after she has attained a high degree of refinement in her sentiments and manners, it is requisite, for the sake of humanity, that a power of reprieve be lodged in some department of the government, capable of exercising it with a wise discretion. But perhaps the wisest policy is to make few offences capital, and then the law inexorable.

OF THE ENDS OF PUNISHMENT.

The penalties of the law, it is said, have, besides *reparation* to the sufferers by crimes, two ends in view, *correction* and *example*. The latter purpose alone can be served by capital punishments. Correction is most effectually promoted by solitary confinement; especially if combined with constant labor in some industrious profession. A vicious man can ill bear reflection on himself: and the reflections of solitude have often been found the most powerful means of reformation. On the other hand, public disgrace only hardens guilt, and renders villainy but the more incurable.

OF SANGUINARY PUNISHMENTS.

Civil society was not instituted for the purpose of exercising an atrocious vengeance on those unhappy men who are so thoughtless, or so wicked, as to disturb its peace. The greatness and strength of the nation should render it superior to cruelty in the administration of its laws, which is the property only of weakness, and the uncertain possession of power. But in a republic, sanguinary punishments are peculiarly dangerous. They demonstrate, and they hasten the decay of the public virtue, which is the only secure foundation of the public prosperity. If ever the state is obliged to resort to severity, as may sometimes be the case in tumultuary seasons of insurrection, and treason, as few victims as possible should be subjected to the axe of the law; and the republic should immediately return to her usual mildness and lenity.—The extent, and severity of the proscriptions of Sylla, though made in the name of the public good, and directed principally against a low and turbulent faction, hastened the ruin of Roman liberty.

LECTURE XXVI.

OF POLITICS.

CONTENTS.

Of the general principles of government relating to the constitution of states.—The same form of government not calculated for every nation—Of the different forms of government, and the springs of their action—Of laws relative to the constitution of the government—Of laws relative to despotism—to monarchy—Of the body of nobility in a monarchy—Of the judiciary body.—Of the nobles in an aristocracy—Of a permanent magistracy in that government invested with extraordinary powers, to detect and restrain the ambitious projects of the nobles—An excellent aristocratical institution—Of laws relative to a democracy—Of the classification of the citizens by Servius Tullus, and by Solon—Of a senate as a preparatory council; or as an integral part of the political constitution—The question, whether a democracy ought to be simple or representative?—If representative, whether the popular suffrage ought to be universal, or limited?—Of limitation to the possession of real estate—Of regulating the times, places, and manner of voting—Whether the votes ought to be given openly or by ballot?

THE next branch of the philosophy of legislation which presents itself to our consideration, comprehends those general principles of government which relate to the constitution of states, and to the great objects of national policy, such as taxation, population, revenue, and commerce, constituting peculiarly the science of polities; or of the forms, and regulations of the civil communities of mankind.

When Solon was asked if he had given the Athenians the best civil institutions, he replied, *that he had given them the best they were able to bear.* This answer points to a principle which lies at the foundation of political science; that the forms of civil government ought to be varied according to the character and manners of the people for whom they are designed, as well as according to all those exterior circumstances of climate, or geographical description, such as waters, mountains, plains, &c. which have any influence upon the occupations, habits, and spirit of the country. It results hence, that no single form of government is to be considered as absolutely, and universally best: but the perfection of any civil institution is wholly a relative idea to the state of the nation to which it is adapted. A wise policy must have relation to so many circumstances both in the interior, and external state of the people to be regulated by

it, that those forms which might be evidently best for one nation, may be among the worst for another.

Yet there can be no doubt that there are some political institutions, where they can be prudently adopted, which are more favorable than others to equal liberty, to all the great, or useful exertions of the human faculties, and to the happiness of the citizen. Fortunate it is for any people, when their previous state has prepared them to receive such forms of government as have been constructed on principles of the soundest political reason; or when, like Lycurgus, the talents of a legislator have been able to accommodate to his intended institutions the habits, manners, and sentiments of a whole nation.

I purpose, in the first place, to make a few observations on the principal forms of civil government which have existed among mankind, and on the springs of action, respectively, which govern their operations. I shall afterwards point out some of the great objects of national policy which its legislators ought profoundly to understand, in order that they may be able, with the greatest success, to promote the public interests entrusted to their vigilance and wisdom.

OF THE DIFFERENT FORMS OF GOVERNMENT, AND THE SPRINGS OF THEIR ACTION.

The different simple forms of political institution, which have existed in the world, out of which all others

have been compounded, are, as has been mentioned in a former lecture, despotism, civilized monarchy, aristocracy, and democracy. The principal features which discriminate these forms of government from one another, were then pointed out. I shall, at present, only add a few remarks on the different springs by which the operations of these governments are respectively actuated.

A great writer, whose opinions have received almost the authority of axioms in political science, has reduced these springs to four, fear, honor, moderation, and virtue. In a despotism, fear of the despot, or a dismaying apprehension of his power, and his passions, is the principle of obedience in every order of the state, from his ministers, down to the lowest of his people, who are all equally his slaves.—In a monarchy, a certain love of distinction attaches his subjects to the prince, who is the fountain of honor; and, by creating a universal zeal to serve him, becomes the actuating spirit of the government. Honor is an ennobling principle, which often elevates the mind to great and beneficial enterprize, and infuses into the character of a nation a high portion of energy, in the cultivation of the arts, as well as of war. Its sentiments are not always coincident with the dictates of the moral faculty; yet are they found, in many instances, useful auxiliaries to virtue. Honor, although supremely devoted to the service of the prince, forms to itself laws which the prince

himself cannot violate. No authority can oblige a man of honor to commit an action which, by these laws, is held to be dishonorable, or unworthy his rank and station. In this view, it is a principle of political action infinitely superior to the servile fear of despotic states. For, although many of its rules are capricious, and admit of a union of its generous qualities with vices of a particular description, yet they always aim at a certain pitch of morals, and are generally favorable to a certain degree of civil liberty in the government.

In those states in which the supreme power is lodged in the body of the people, the principle of the government is said, by the same great political writer, to be virtue. This principle, as it is explained by him, is the general preference of the public, to private interest. And, united with this, it involves the love, and strong attachment of the people to the democracy itself, as being the form of government best calculated to promote the public good, and most friendly to public morals. It is justly denominated virtue; not only because genuine public spirit is itself one of the chief virtues, but is intimately associated with frugality, temperance, justice, piety, respect for religion, and all those noble qualities, most immediately related to the great interests of the community. When these decline, public spirit speedily follows the declension, and the national glory and happiness sink with them.

In aristocracies a degree of public virtue may exist; but it is rather the love of the *aristocracy*, than of the *people*. A high spirit of virtue, such as has been before described, can hardly subsist, or be of long duration in those states in which the ranks and fortunes of men are so extremely unequal. The nobles will be haughty, and the people envious. Equal civil rights are not known in such a government. The establishment of the privileges of the people would be regarded as inconsistent with the prerogatives of the nobility. Even the prosperity of that humiliated body is apt to be considered as obnoxious to the dignity, and dangerous to the security of their lords. Such a people will seldom be heartily attached to a government in which they are almost annihilated; and they have continually before their eyes petty princes, but little elevated above themselves, who, yet, are their absolute masters. The highest virtue, therefore, which can be expected in this form of constitution, and which, indeed, is necessary to render it tolerable, is mutual relaxation in the spirit and claims on each side, in these great parties. The people will more easily be brought into this temper when they find a spirit of moderation prevailing among the nobles.

It is natural for the lower class to look for this example first among their superiors. This condescension is

becoming their rank, and the refinements of their education. Moderation, therefore, of the nobility among themselves, in the arrogance of their spirit; and towards their inferiors in the insolence of their claims, is the proper spring of this government.

When a legislator has conceived the idea of his *constitution*, and of the *spring* by which it is to be set in motion, the whole system of his laws will, of course, be modelled according to these principles.

OF LAWS RELATIVE TO THE CONSTITUTION.

The first class of laws is of those which define and establish the *form of government*, and compose the *constitution* of the state. In a constitution in which any secure provision is made for the happiness, or the liberties of the people, its boundaries ought to be fixed with precision, and its powers, accurately defined and distributed, that there may be no doubt in the rulers with respect to their authority, nor in the people with respect to their privileges; and that the authority, and duties of one branch of the magistracy may not clash, or interfere with those of another.

OF LAWS RELATIVE TO MONARCHY.

The fundamental laws of monarchy, are those which vest the supreme authority in the prince, and establish

his prerogative. Thus far they agree with the principle of a despotic state. But in order to mingle a portion of liberty in the constitution, which is essential to a civilized monarchy, but is excluded under a despotism, it is necessary that there should exist in the state an intermediate body between the prince and the people, possessed of privileges and powers independent on the will of the sovereign. Their dignity, and the decided weight of influence, attached to hereditary rank and wealth, will concur to impose no inconsiderable check upon arbitrary power. The laws, therefore, which ascertain, and fix the privileges of the class of the nobles, are, likewise, fundamental to this constitution.

A distinction of great importance between a despotism and civilized monarchy is, that the latter enjoys known, written, and fixed laws; under the former, the will of the sovereign is the law. A despotic state, therefore, can hardly be said to enjoy a constitution. Its powers and privileges are all thrown into one mass, and absorbed by the throne.

In order that the law may be rendered fixed in a monarchy, and freed from the variableness and uncertainty of the prince's humor and will, it is of high importance there should be established a body of men, distinguished for integrity, and knowledge, such as existed in France,

previous to the late revolution, who may be the interpreters, and, in some measure, the fountain of the laws,—whose office it shall be to give form to the civil code,—to expunge from it those laws which are no longer proper,—to revive those which are obsolete, but useful,—to propose to the prince new ones for his adoption, which may be conducive to the benefit of the state, and to prevent the introduction of such as are contradictory to the established code, or inconsistent with the ancient privileges of any order of the monarchy. Another fundamental institution, therefore, in this form of government, is the establishment of such a depository of the laws. Happy is it for the state, when either accident, or political wisdom, and foresight, has been able to fix this body in such a manner as to contribute to the freedom and security of the citizen. The nobility are generally too indolent, and too ignorant of law, for a trust of this nature. A body appointed by the monarch, and wholly dependent on the influence of the crown, would be still less fitted for the task. It would be, in effect, making the will of the prince the law. The best depository, says the author of the spirit of laws, is a body of men taken from the midst of the people, but advanced, by their office, to a middle rank between the nobility and the inferior orders of the state.

A portion of liberty may be introduced into this government by the manner of creating and modelling the ordi-

nary courts of justice. The fundamental institutions of the monarchy ought to render the tribunals as independent as the nature of the government will permit. Fixed laws, and independent judges, will create an idea of security in the citizens for their persons, and property, and, in so far, a sense of liberty, under the most arbitrary constitution of civil policy.

Above all, it should be an invariable maxim of the state, that this administration of the laws be not retained in the hands of the prince, nor committed to his courtiers, who are but the minions of his power and will. This organization of the tribunals would justly render the monarch formidable to his subjects; whereas it is of supreme importance to his interest, and his happiness, to acquire their confidence and love, by keeping his power out of their view.

Why, it may be asked, do we speak of fixed laws and fundamental institutions in a monarchy, in which the power of the prince is supreme?—It knows no effectual limits, it is said, but those which it is pleased to prescribe to itself.—Be it so.—But those limits, being once established, acquire, by time, great strength in the opinions of the people, and in the ideas of the prince himself. And he cannot, afterwards, easily or safely violate them, even if he were tyrannically inclined. Manners, customs, an-

cient usages, become so incorporated into the state, and manner of thinking of a people, especially, if they have been accustomed to enjoy any portion of liberty of thought and action, that it is hazardous to infringe them. And when they are supported by the opulence, and influence of a powerful nobility, they acquire such stability, as justly to entitle them to the name of *laws*. They are not mere forms to cover the horrors of despotic power; but afford real and substantial grounds on which the subject may rest the foundation of his property, and his sense of personal security.

OF LAWS RELATIVE TO ARISTOCRACY.

In an aristocracy, the first order of laws is of those which ascertain the body of the nobility; thereby defining those who have a right to be rulers, and those who must necessarily be subjects.

It is a pernicious aristocratical institution which permits all the nobles, in right of their birth, to be legislators and magistrates. The oppression of the people then becomes extreme. On the other hand, when only a small part of their body can, at any one period, be raised to the senate, the selection affords a much fairer prospect that the government will be managed with equity, and a liberal regard to the natural rights of the people. For, by this means, becoming, in their turn, subjects of the laws,

their own condition is, in some measure, assimilated to that of the mass of the community. A sympathy with the lower orders, will be created by their own experience, which will naturally be productive of greater mildness, and humanity in the administration of the powers of government. And it should be received as an axiomatic principle in that form of civil policy, that, the greater the disproportion is between the numbers of the senate, and the whole body of the nobles, the greater will be the freedom, and the happiness of the people.

The institution is the best possible, when the people, as well as the nobles, partake in the election of the senate, and the magistrates.

The necessity of controlling the ambition of the noble families, and of early detecting and punishing conspiracies against the state, which are more frequent and formidable in this form of government than in most others, requires a body of magistracy for the purpose to be established by the fundamental laws of the republic. In the exercise of this authority against powerful nobles, it is necessary that these magistrates be invested with such great, and discretionary powers as, in their operation, may sometimes prove tyrannical. Without such high and uncontrollable authority, the institution of the censors at Rome, of the ephori at Sparta, and the state in-

quisitors at Venice, could not effect the purpose of their institution against such great criminals.

There may sometimes exist particular crises of public danger in democratic republics, in which it may be requisite, for the general safety, to invest an individual citizen with unlimited powers, like those conferred on the dictators at Rome. The duration of these powers, however, being limited to a very short period, the government soon returns to its regular, and accustomed channels. But, in aristocracies, the ambition and pride of the great families often render their passions, enterprizes, and factious pursuits, hereditary, and perpetual. To check an evil attended with such continual danger to the state, she is obliged to have recourse to a perpetual magistracy. The great wealth, and powerful influence of the nobility tends to make them haughty, obstinate, and intractable. It is dangerous to become their accuser. And the ordinary tribunals are too weak to punish them. This magistracy, therefore, should be able to avail itself of secret means of information; nor should it be fettered in its judgments by tedious forms, and delays, but have it in its power, by the promptness, and severity of its punishments, to apply a cure to this inherent vice of the constitution.

As the great distinctions of wealth, with the almost exclusive means of acquiring it, possessed by the senato-

rian order, above the common mass of the people, are the sources of the principal disorders of this state, it is of importance that the laws should apply some palliatives to the evil, which, because it is too inveterate to be directly attacked, or entirely extirpated, may be hoped, in time, by a silent and imperceptible progress, to relieve some of its worst effects. Accordingly, Montesquieu remarks, that it would be a good aristocratical institution, to make a certain degree of wealth, acquired by a commoner, confer nobility; and, at the same time, to preclude the nobles from commercial pursuits. For, when they are permitted to become merchants, their rank, and opulence forms an almost exclusive monopoly in their favor; and a vulgar citizen, embarked in trade, must enter into a most unequal competition with them. It is of use, by such regulations, at once to restrain the cupidity of the higher orders of the state, and to open to the people a prospect of rising, by their industry, above their original rank.

But, perhaps, one of the most effectual, and, at the same time, least invidious checks to the accumulation of exorbitant wealth in one family, and the arrogant pretensions to which it is apt to give rise, is the posthumous division of great estates according to some legal and equitable rule, prescribed by the legislator. This may be accomplished, partly by the prudent regulations of the law

concerning inheritances, and testamentary settlements; and partly by custom, over which the ideas of the law possess, in time, an important influence.

OF LAWS RELATIVE TO DEMOCRACY.

In a Democracy the people frame the laws by which they themselves are to be governed. In a constitution of this kind, in which the people, in person, are to deliberate and decide, and perform all the functions of legislation, as was the case in most of the ancient republics, the fundamental institutions of the state should secure to the body of the citizens the right of deliberating, and voting; and particularly define the manner in which this right shall be exercised. The constitution should point out the authority by which the public assemblies shall be called, —the times and places of their convening,—the order to be observed in them,—and the manner in which all questions shall be proposed, and issued. As this is the way in which the people, in whom all power resides, exercise their sovereignty, the right cannot be too strongly asserted, nor the mode of exercising it too clearly defined.

As large assemblies of the people, the mass of whom are ignorant and turbulent, are liable to be inflamed by the address and arts of factious orators, and hurried, by momentary impulses, into measures unjust, cruel, and contrary to their own interests, the ancient legislators

endeavored, as far as possible, to prevent these tumultuary movements, by the peculiar order introduced into the elections. The famous division of the Roman people into six classes, made by Servius Tullus for this purpose, is so well known as to need no illustration. By this political arrangement none of the citizens were deprived of their rights of suffrage; but they were so artificially disposed, that property, and information must generally prevail over ignorance, and poverty. The Athenians were divided by Solon into four classes, according to their property; one object of which division was to limit the eligibility of citizens to offices which required information, or involved any important public trust; while the elective franchise was sacredly preserved to every citizen. It was a principle with Solon that citizens, of the lowest grade in the republic, may, from public fame, or their own observation of the actions of their fellow-citizens, be able to chuse a magistrate, although they are wholly unqualified to discharge the functions of the magistracy. In consequence of this principle, he ordained that the public magistrates should be eligible out of the three former classes only; but judges in legal trials, an order equivalent to our juries, might be chosen out of the last of the four classes, comprehending that numerous body who were destitute of real property.

In a simple democracy, in which the people decide all things in person, a senate to digest and prepare the business for the public assemblies is an institution of singular utility. It often prevents the precipitancy and rashness to which such assemblies are prone, when the introduction of business to their deliberation is left to accident, or the caprice of individuals, and its decision to the heated impulse of the moment. It imposes some check on the dangerous arts of demagogues, whose success depends upon being able to inflame the passions of the populace, and often on taking them by surprize.

The institutions which have been just named, of the classification of the citizens, and of a senate of previous deliberation, are superfluous in republics where the people do not discuss their political questions, and make their legislative decisions in the general assembly, but by their representatives. A representative body will usually possess more temper and wisdom, than any unpurified, popular mass. Still, however, a senate, not as a preparatory organ, but as an integral part of the legislature, is useful, and perhaps necessary in every wise, and well-ordered government. A single body of legislators, especially if it be numerous, and act without having its measures subject to revision, is often liable to the influence of popular passions, to sudden impulses, and to factious intrigue. A senate, as a second branch in the legislature, is calcu-

lated in a great degree to prevent, or correct those evils, not only by the superior age which the laws may require in its members, and by the manner of its appointment, which may be made more favorable to the selection of the wisdom and experience of the nation, than can be done in popular elections, but simply by the circumstance of its being a separate body. The same violent impulse, or the same factious influence will probably seldom operate in an equal degree upon both assemblies at the same time. The moderation and prudence of the one, when factions do exist, will frequently restrain the impetuosity and rashness of the other. The same men can hardly be supposed to acquire a leading influence in both. And different leaders, admitting that they are equally governed by ambitious, or by mercenary views, will seldom find their interests coincide. Mutual opposition will therefore impose a powerful, and mutual restraint on all improper designs ; and hardly leave them any other point of union but the public good.

Whether a democracy ought to be simple, or representative in its structure, will depend in a great measure on its territorial extent. If it be confined to a single city, and its environs, we may pronounce it, as a general rule, that the government ought to be simple, and the legislative power be vested in the general assembly of the citizens. If it be placed in a selected body of representatives, ex-

cept for the general purpose of preparing business to be laid before the assembled citizens, the facility with which a turbulent populace can be collected at any time, by designing men to dictate their imperious will on subjects already submitted to the discussion of the legislature, will give to their irregular and violent meetings a decided influence over every important legislative deliberation. The people, acting in person in such republics, would soon absorb into their own assemblies, all the powers which they had pretended to commit to the assembly of their representatives. Hence the little states of Greece never resorted to the principle of representation, except in their confederated capacity in the council of the amphyctions, when the fear of some formidable neighboring power compelled certain states to enter into a mutual league for their common defence. For the same reason we have seen, during the turbulent period of the revolution in France, the national assembly of that ephemeral republic, so often controlled in its deliberations by the mob of Paris.

It is a political question of no small importance, as the way in which it shall be answered, may affect the tranquility of the state, and the wisdom of its government,—whether the election of the representatives, and of the officers to fill any magistracy which may be in the gift of the people, shall be made by a universal, or limited suf-

frage ; and, if limited, what shall be the qualifications of the electors ?—Universal suffrage is always dangerous, at least in the course of time, to the tranquility of the state, and to the prudence of its administration. The mass of the populace is necessarily ignorant ; and, through ignorance, exposed to have their opinions easily misled, and their passions inflamed by the insidious arts, and the violent harangues of unprincipled and ambitious citizens. The popular and fickle tides raised by these arts will often have an undue influence over the opinions and actions of their subservient representatives. Either the people will chuse men who are deeply tinctured with their own prejudices, or inflamed with their own passions ; or the representative, who is humbly ambitious to gain their precarious favor, and keep his place in the government, will be disposed tamely to yield his opinion to their violent and variable impulse. The character of the representative assembly under the influence of such electors will be gradually deteriorated, and sink, in point of information and respectability, towards the level of their uninformed constituents. The probability of obtaining a wise, and judicious representation will be much increased by restricting the elective franchise by some rule of property. The restriction established in most of the United States to a sum so small that the poorest laborer may justly estimate the use of his hands for a few days, at a

higher rate, is, at once, an acknowledgment of the political justice of the principle, and an utter evasion of the benefit which might be derived from it. It is obviously throwing open the rights of suffrage to the broadest universality. The whole purpose of limiting these rights, if it have any meaning, is to place the elective powers of the community in the hands of those who, by their property, have the most ample means of information, and the deepest interest in the public welfare: at the same time, in order to escape the rocks of aristocracy, the qualifications to entitle a citizen to vote, ought to be made so liberal as to include in the electoral class the greatest numbers which may be consistent with the true interests of the state. To accomplish this end, that standard of property should be chosen which is most visible and fixed, and, in its nature, most intimately connects the interests of the proprietor with those of the republic. Money alone, or the ordinary, circulating signs of value, are so easily transferable to any other country, and are, besides, so much out of the view of the public, and afford such an uncertain ratio of wealth, that they seem to be very unfitly chosen as the electoral criterion. But land being the basis of the republic, from the products of which the citizens must necessarily be supported, property in the soil seems the best criterion of that active citizenship on which election and representation ought to be founded. The requi-

sition of real property, moreover, to enjoy the right of voting lessens that vast, and indefinite multitude which would otherwise claim the franchise, and which, from their numbers, would be so easily thrown into tumult, and agitated by any dominant and popular passion. A very dense, and uninformed population, which possesses a share in the elective privilege, will, on all those occasions which greatly agitate the public mind, as elections for the legislatures and governors of the country always do, contain in itself a strong tendency to turbulence and disorder. This tendency is much restrained by a thin population; or, what amounts to the same thing in effect, restricting the number of electors, by requiring the qualification of real property to the exercise of the franchise. Hence it is, that the great political movements in the United States of America have been distinguished by a coolness of temper which has rarely been found, in similar circumstances, in other countries. The sparseness of our population has prevented that excitement to the passions which is created in great assemblies roused into a ferment by the interests of a nation. That moderation, which has been so much our own boast, and the wonder of other nations, has arisen principally from the circumstance just named, together with its natural consequence, the general political information of the popular mass. Time, and the multiplication of our citizens, will produce a change, it is to be fear-

ed, less favorable to this peculiar boast of our country. A selected electoral class, distinguished by a fixed property in the soil, besides affording the opportunity of better information in that body, and the certainty of a stronger union of individual, with the public interest, will contain in itself a powerful principle of tranquility and moderation in all the interior movements of the state, by the sparseness of that portion of the population which possesses an immediate and strongly exciting connexion with the government by its elective franchises. In this respect the state of Virginia possesses, at present, the best organized system of any republic in the American confederacy. And it requires no uncommon political sagacity to foresee that many of the other states will, hereafter, regret the want of a like restrictive qualification in their electoral body.

As the sovereignty of the people in a democratical form of government is exercised by a vote, it should be among the primary and fundamental laws of such a state to regulate the times, the places, and the manner of giving in their suffrages.

On this subject, the principal question among politicians has been, whether the popular vote should be taken openly, or by ballot?—Perhaps all offices which are in the gift of the people, whether legislative or executive,

should be conferred by open vote. With them a degree of intrigue is useful; otherwise, their public affections are prone to become torpid, and inactive.

In the legislative body, likewise, all laws should be enacted by the most open and public vote, that the people may know in what manner they are served. On the other hand, all offices bestowed by the legislature ought to be given by ballot. A selected assembly like this, being supposed to be more capable, than the multitude, of judging with candor and prudence of the merits of different candidates for places of public trust, intrigue would here be improper. Every legislator, ought to be most free, and exempted from any bias, but that created by talents, and virtue, in exercising his judgment.

LECTURE XXVII.

OF THE RELATION OF A GOVERNMENT TO THE SPIRIT AND MANNERS OF A PEOPLE—OF THE CORRUPTION OF ITS PRINCIPLE—OF FRUGALITY, &c.

CONTENTS.

Of the spirit of a people, and the relation which a government ought to bear to it—Of the influence of laws to effect a change in the spirit and manners of the people—Of the laws of education—Of the corruption of the spirit of a government, or the principle of the constitution—Of the corruption of the principle of monarchy—Of the corruption of democracy—Of frugality, and the means of promoting it.

A VARIETY of concurring circumstances, continuing to operate upon a nation for a long time, contribute to form what is called its *spirit*, and to give a national and distinctive character to its manners. Among these the peculiar occupations of the people,—their poverty or wealth,—the extent of the territory,—the face and fertility of the country,—the climate,—proximity to other nations,—preceding revolutions of government,—prevalent ideas of morals, or religion; in a word, whatever can affect their external, or internal state, have a

peculiar influence on the ultimate effect. Whenever a nation has acquired fixed manners and customs, and a distinguishing character, and spirit, the government, and the laws ought to regard them with respect, and never attempt too directly to contradict them, or too violently to change them. Laws, otherwise the best, may become tyrannical; for that tyranny is no less real which attempts to control our opinions, or which violates our manners, than that which affects our lives, or our property. The efforts of legislators, and rulers to contradict the spirit of a people have frequently been productive of so many political evils, that it is eligible to submit to some imperfections in the government, rather than aim at too great theoretic perfection. It is better to bear with some partial evils in the laws, than to hazard a convulsion by attempting to reform too much. This forms the explanation of those declarations in the sacred scriptures in which it is said that God permitted certain evils in the civil and political state of the Jewish nation, on account of the *hardness* of their hearts,—that is, the inveteracy of certain habits and customs which civil rulers can seldom attack without encountering greater risks, or suffering greater evils than would arise from their continuance. The same reflection unfolds, and vindicates the meaning of Moses, when, speaking in the name of God, he says, I have given them statutes that were not good,—though relatively wise,

as they respected the state, and progress in civility and manners of that nation, they were not absolutely perfect. An example of which imperfection, that finds its justification in the same principle, is seen in the sanguinary penal laws of that great legislator. A people who have not made great advances in the refinements of civilization, who are comparatively rude in their manners, and prompt to violence, require the restraints of a severe criminal code. This maxim we find verified in the legislation of all nations in the early periods of their existence. A scale of punishments proportioned to the malignity of crimes is beyond the legislative philosophy of such a people, except so far as the simple principle of retaliation can be applied. For a corrective code, they have neither the skill to frame one, nor the patience necessary to carry it into execution.

The principle may be still farther illustrated by a reference to people of different characters and pursuits. The laws adapted to a nation wholly devoted to the cultivation of the soil, would be little fitted to another exclusively occupied in the adventurous risks, and extensive designs of commerce. Israel, or Sparta could not have prudently exchanged their civil, or political systems with Tyre, or with Rhodes. Laws suited to French levity, and vanity, would ill assort with Spanish gravity and pride. The institutions of Athens would have overturned Spar-

ta; and an attempt to introduce the code of Lycurgus at Athens would have produced a civil revolution. In the century before the last, we have seen England attempt to establish a republic; but her manners were not adapted to such a change, and, after yielding for a season to the power of a bold usurper, she was obliged, at last, to take refuge again in the monarchy she had thought to abandon. It remains yet to be proved whether the manners and spirit of the French nation can support the democracy at which they are aiming; or, whether they will not, after infinite miseries and convulsions, be obliged to have recourse again to their exiled nobility, and royal family, or must have the ferocity of their passions repressed by the iron hand of some more powerful despot that shall spring out of the flames of this volcano.*

As laws, whether political, or civil, ought to be relative, to a certain degree, to the spirit and manners of a nation; it is sometimes desirable, likewise, to introduce a gradual change into the public manners; to which the laws may sometimes be made to operate by a reflex influence. But, as manners, ancient customs, and habitual

* These lectures were prepared in the years 1793—4, and the author was stigmatized by some indiscreet zealots, for not possessing that ardent spirit of liberty which could entertain no doubt of the success of that extraordinary revolution; and that the world was unquestionably going to be regenerated, in the phrase of the day, by the conciergerie, and the guillotine.

ideas are very precious to a nation, and become intimately blended with all their pleasures, and even with all their sentiments of rectitude and morality, a law should seldom aim directly at producing such an important change; but rather study to attain its object by an indirect influence, which, though more tedious in its operation, will, in the end, by uniting the general opinion in its favor, be more sure in its effect. If a legislator, for example, should wish to establish universal liberty in a country in which domestic slavery at present exists, a direct law for that purpose would probably produce a convulsion in the state, and overturn the authority of the government. Whereas the same end might, perhaps, be more effectually accomplished in the progress of time, by encouraging the humanity of individuals, under such restrictions as the safety of the state might require, to emancipate their slaves, till example should, at length, grow into custom; or, still more certainly, by favoring the establishment of a peculium, by the improvement of which every industrious slave might be enabled, after a reasonable period, to purchase his freedom.

Manners and customs, however, are better changed by example than by law. But that example ought to be gradual and insinuating, exhibited by those who are calculated to attract the respect of the public, and should never openly shock the prejudices of a people, or directly wound

their sentiments of propriety. Montesquieu remarks that when the Czar Peter 1st attempted, by an ordinance, to shave the beards, and change the dress of his Russians, he had nearly excited a revolt: But, when he invited the ladies to court, dressed in the stile of Europe, and encouraged his courtiers, by his favor, to imitate the European habits and manners, he attained his purpose without violence.

But if a legislator desires to accommodate the ideas of his people to the institutions he intends to establish, or to give to those institutions the greatest stability and duration of which human laws are susceptible, no mean can be found so effectual as a proper direction of the public education. The ancient legislators seem perfectly to have comprehended the full force of education. And, upon this foundation, they, almost all, concurred to rest the stability of their laws. But as their republics were generally of small extent, their systems of education were accordingly calculated to their confined limits, and could hardly have been reduced to practice over an extended territory. But, without confining our view to those gymnastic models which they present to us, it is a duty of high importance in the legislature of each state to provide for the general information of the citizens in the principles of virtue and good morals, and in the whole system of their

civil and social duties. The means of useful instruction should be made accessible to every member of the community. But, besides that universal information which should convey the knowledge of their moral, and their civil duties to the lowest orders of the citizens, it is perhaps of not less importance that an easy access should be opened to a knowledge of all the liberal arts, and to the higher branches of science to those who have inclination and leisure to pursue them. And colleges and academies devoted to the cultivation of the principles of universal literature, might be regarded as so many elementary schools for training a constant succession of wise and enlightened statesmen for the republic, and fountains of a diffusive illumination that should contribute to its glory and happiness. A well informed people, moulded in the habits of virtue, cannot easily be enslaved. But no department of knowledge can be of more importance to the citizen, or more beneficial to the state, than that of the civil constitution under which he lives, and of the great outlines of the laws by which he is governed. And it would be a work worthy the wisdom of the legislature of a free and enlightened people to provide for the compilation of an elementary work of this kind, which should form a part of the instruction in every primary school within the state. Understanding the principles of the government, attaches the citizen more firmly to them.

and awakens his vigilance to their preservation. The knowledge of the laws, as far as they are understood, increases his love of justice. The simple elements of the jurisprudence of the republic,—those elements especially, which are connected with all the ordinary transactions of society, should form a necessary branch of the education of a citizen, from the highest to the lowest order of schools in the state.

The policy of the great Jewish legislator on this subject was admirable. He incorporated his political, and civil institutions with the laws of religion. The people were enjoined continually to read them in private, and they were publicly read in their audience on every sabbath. And, still more solemnly, they were recited at all the great festivals to the assembled nation. Every Israelite, as was the intention of Moses, had the laws of his country, and of his religion, its civil police, and its sacred ritual, in a great measure, by heart. They were incorporated, moreover, with all his ideas, and all his affections. Hence these institutions have endured longer than those of any other legislator, and have ever been adhered to by that people with a more ardent, and persevering zeal, than has been found in any other nation.

OF THE CORRUPTION OF THE PRINCIPLES OF THE GOVERNMENT.

As the laws ought to be relative to the principle by which the government is made to move, education, customs, manners, every thing in the state of the republic, should contribute to strengthen that principle. But there is a certain excess to which the actuating spring of each government tends, which it is no less requisite to repress with the utmost vigilance of the law.—For example, the principle of a monarchy, says Montesquieu, is corrupted, when the prince, forgetting that it is his interest to maintain only a general inspection into the government, by his authority preserving the magistrates attentive to their duty, affects to govern every thing immediately by himself, and his creatures, destroying the privileges and customs which time has rendered sacred in the esteem of the people, and by which they still retain a portion of liberty amidst the overwhelming power of the monarch,—when he thinks he shews his power more by changing, than by conforming to the laws,—when he calls all the considerable officers of the state round his own person, to make them feel their dependence, and to receive their flatteries, —when, stripping his ministers of popular respect, he uses them merely as the tools of arbitrary power,—when the honors of the state are prostituted to the low and infamous panders of the prince's pleasures,—and when,

mistaking his true interest, he would govern, rather by exciting the fear, than by gaining the affection of his people; and studies more to intimidate them by the cruelty of his executions, than to win their confidence by his public services, and the wisdom of his administration. Such a monarchy is hastening into despotism; and the infatuated monarch is creating that insecurity for himself, which it seems his principal study, by the severity of his measures, to avoid.—Supreme power, united with the bad education of princes, has a strong tendency to this issue in the progress of a very few successions.

The principle of a democratic republic is corrupted when the spirit of equality, which is naturally cherished by the enjoyment of liberty, is carried to an extreme. All men, by nature, have equal rights. And in a well regulated republic they possess equal rights as citizens. But, from that equality of right, by which each man is secured in the possession of the fruits of his own industry, and ingenuity, and in the fortuitous accessions which have fallen to him by the natural order of things, or the arrangements of society, necessarily arises, in a course of time, an inequality of property among the citizens. And, from the necessary order of government results an inequality of rank between the magistrate and the citizen. It is essential to the peace and prosperity of the state that property should be respected, that the citizens should be

obedient to the laws, and should reverence the magistrate as their interpreter, and the organ of their justice. But when that reverence is withdrawn from the magistrate, or when magistrates render themselves unworthy of the public confidence by private and mercenary aims in the discharge of their civil functions; when the people grow impatient of law and order, and wantonly endeavor to subvert them through the variable caprice of popular passion, or in unjustly pursuing the objects of faction; or, when the magistrate, embarked in the vortex of faction, puts himself at the head of a party instead of his country;—or, finally, when the mass of the people, flattered by their demagogues, grow insolent and envious of the rich, and are impelled to infringe on the sacred rights of property, the republic is on the eve of dissolution. To this extreme the democratic form of government, unless placed under the strictest guards, and regulated by the happiest organization, as naturally tends as monarchy towards despotism. For, every thing depending on the people, those who are ambitious to court their favor are ever ready to flatter them on their power that they may turn it to their own interest,—to inflame their passions that they may be permitted to direct them,—to excite suspicions, or hatred against those who have the actual administration of affairs, that they themselves may mount into office on the turbulent tide which they have

created. Thus the people become haughty and impatient of control, and are so jealous of their liberties, for, it is on this subject that their demagogues perpetually harangue them, that they bear with difficulty the restraints of government. The lowest and poorest aspire to be on a level with the richest, and have always been found, in a course of time, to turn their attention towards a division of the property of the state among themselves. Becoming idle, at last, as well as insolent, the elections are made venal. The populace must be gratified, whatever their pleasures cost, at the expense either of the public, or of those who solicit their suffrages: and if the latter, means must be found to reimburse it out of the public treasure. But, while the populace are indulged, their servants, who are also their masters, may securely pillage the coffers of the state, or dispose of its honors, or its offices, to their friends, for their own advantage. The deluded people will not suffer them to be called to account. Corruption and anarchy continue to increase, till different popular favorites starting up, and aiming to enslave the people by means of the people themselves, they are all, at length, superceded by one more fortunate than the rest; who becomes the tyrant of a new dynasty.—Thus perished the liberty of Rome; and, in a similar vicissitude, many of the Grecian states long vibrated between anarchy and the tyranny of successive demagogues.

A democracy has two evils to avoid:—one is great inequality of wealth among the citizens which leads to aristocracy;—the other is the spirit of extreme equality, which leads to anarchy in the first place, and tends eventually, in the natural progress of events, to despotism. This spirit in a republic, is greatly cherished by foreign conquests, and splendid national successes acquired chiefly by the influence of the people. Arrogant and intractable, they will hardly then submit to the control of the superior, but mild authority of the laws. Jealous of the magistrates, they become jealous of the magistracy itself. They devote themselves, often with a certain frenzy, to any leader who promises to augment their glory, who flatters their vanity, cherishes their idleness, and gratifies their extravagance by the influx and dissipation of foreign wealth gathered from the spoils of nations.

OF FRUGALITY IN A REPUBLIC, AND THE MEANS TO PROMOTE IT.

The spirit of republican virtue is greatly aided by the frugal and simple manners of the citizens. A people of simple manners have seldom any strong voluptuous, or mercenary passions to divide or divert their attention from that superior concern which every good citizen should feel for his country. On this the whole force of their minds will naturally be bestowed. But when luxury invades the degenerate community, the considerations of

public good are commonly lost in the pursuits of private pleasure and ambition. General luxury, and genuine patriotism in the spirit of a country, are forever incompatible. The state ought, in such a case, if possible, to possess some means of revolving easily into another form of government. The laws in a commonwealth, in order to preserve the public virtue, should study to preserve the frugality of the public manners. One of the most effectual, and least offensive means of arriving at this end, would be, by prudent regulations, preventing the growth of extreme inequality in the fortunes of individual citizens. In many of the ancient republics a violent measure was attempted for this purpose by the establishment of agrarian laws, and founding the civil order of the state on an equal division of the lands among all the citizens. Such laws, however, are not practicable, except in states of very small extent, founded entirely on agricultural institutions. They are, moreover, utterly inconsistent with the spirit and principles of a nation addicted to commerce; which, in the midst of wealth, and a certain magnificence which accompanies it, is always frugal. A more eligible method, perhaps, to introduce as great an equality into the state as is practicable, and beneficial, is by the regulation of dowries, inheritances, and testamentary settlements, so that the largest estate which any man may acquire by the most successful industry, shall, usually, be

so divided among his heirs as shall seldom place them above the necessity of a prudent and habitual exertion of their own talents.—The best model of an agrarian law which the history of ancient nations presents to us was that established by Moses in the land of Israel, which, while it promoted all the economy, and frugality aimed at by the division of the lands, permitted, at the same time, to a certain degree, of the elegant accommodations furnished by commerce.*

Some small republics have appointed senates to be perpetual models of manners.

It is evident that such an institution could be of no use in an extensive state in which the senators must be in a great measure lost from the view of the great majority of the people.

The censorship was instituted among the Romans to preserve the purity of the public manners. While manners continued pure it assisted in their preservation. But when luxury invaded the mass of the people, together

* Money exchanges, and the use of credit, which were almost utterly excluded by the institutions of Lycurgus, by his iron medium, and the unalienable tenure of lands, had a certain existence in Israel, by the circulation of the precious metals, and the power of pledging lands for the redemption of loans, or the liquidation of debts, till the period of the Jubilee, which might be from one to fifty years.

with its attendants voluptuousness and ostentation, the office could no longer be executed. It is evident that this, like the former, is an institution which can be of no utility beyond the bounds of a single city, and its environs.

It is a maxim which merits the particular attention of the legislator; that while the principle of the constitution is preserved in its purity, the worst laws may be harmless, but when that is corrupted, the best are often rendered useless, or pernicious. Among a virtuous people an oath is more powerful than interest. A Roman consul could lead a whole army to their duty by the remembrance of the oath they had taken before their standards, in opposition to the most violent impulses of seditious passions. But when the popular mass is corrupted, oaths are only made a protection to crimes: and the frequency of swearing only tends more effectually to prostrate the public morals. —And Plutarch remarks that the gymnastic exercises of Sparta, which anciently contributed to form hardy soldiers for the defence of the state, afterwards, when the people had lost their virtue, only infected the youth with cowardice, and inclined them to infamous passions.

OF SUMPTUARY LAWS.

It has been made a question among political moralists, how far frugality ought to be enforced by sumptuary laws, —or laws prescribing certain limits to expense in the

dress, table, and equipage of the citizens. In proportion as the political institutions, or physical circumstances of a state, have contributed to bring the property of the citizens nearly to an equality, sumptuary laws become unnecessary. Luxury cannot exist in such a state; but after great inequality has already taken place, they are inexpedient, because they cannot be executed without exciting public discontent. In the extreme rusticity of the Spartan manners they might be beneficial to prevent, or arrest a decay of the principle of the constitution. In a state that exists by commerce they are often injurious; for, notwithstanding the spirit of commerce is frugal, yet a certain elegance, and even magnificence of expense in wealthy merchants, is useful for the encouragement of the arts, and furnishing occupation to the lower orders of citizens.

Frugality to a degree, is requisite in an aristocratic government as well as in a democracy. Otherwise, that moderation of the passions which is the principle of the government, and essential to its prosperity, cannot be maintained. Yet, as the government itself is founded in great inequality of fortune, some legitimate means of expense should be encouraged which may at the same time, be consistent with the frugality of private manners. Otherwise, we should every where see, in such a state as this, very poor men without the possibility of bettering their

fortune, and very rich men without the power of enjoying theirs. The state will be impeded in its prosperity for want of a proper circulation of its wealth.

To remedy this inconvenience, that was an excellent custom among the ancient Greeks, by which the wealthy were encouraged to employ their riches in executing chargeable offices for the good of their country and in festivals and choruses for the entertainment of the people. To these might be added, the erection of libraries for diffusing the lights of science more extensively through the republic—the raising of statues and monuments in commemoration of the distinguished patriots, or the great events of the nation—forming gardens and public walks for the accommodation of the citizens—and, above all, executing canals, roads, harbors, and other noble and generous labors for the improvement and glory of their country. To all which they might be encouraged by public honors, and by some conspicuous means of perpetuating the remembrance of their works.—Athens frequently exhibited the most distinguished union of public magnificence with private simplicity. In that renowned city in which existed the most splendid monuments of the arts, erected by the noble munificence of private citizens, we might often see them entering their own doors by a simple latch.

LECTURE XXVIII.

OF THE OBJECTS OF NATIONAL POLICY; AND FIRST OF A POLITICAL CONSTITUTION.

Of the separation, and union of the different powers of government of the British constitution.—The analogy of the constitutions of the several states—and of that especially of the United States.

I PROCEED, in this lecture, to the second branch of the science of politics, which is to point out, and illustrate some of the principal objects of national policy;—the establishment of a political constitution,—taxation and revenue,—the regulation of commerce,—the means of promoting population, agriculture, and the arts. On the last three of these subjects I have already, in the third and fifth lectures, made such observations as I thought were necessary for our present purpose. I shall now, therefore, make only a few reflections on the three former, as far as I conceive every student ought to be acquainted with the subject, before he leaves the place of his elementary education, let his pursuits afterwards in life be what they may. At the same time, brief as they are, they may serve as a useful introduction, to prepare the minds of those who are aiming to become civilians,

to enter more extensively hereafter into the career of their political studies.

OF A POLITICAL CONSTITUTION.

Most governments have been originally founded in the authority of a single person, or of a few families, which has gradually grown up by custom, or ultimately terminated, after various revolutions, and changes, in the dominion of one. The schemes of policy have seldom been deliberately formed, and established by the will of the people who have voluntarily submitted themselves to the control of their own laws. It is not sufficient, however, that a great people enjoy the privilege of chusing their own government, unless the fabric of it is so wisely constructed as to secure its own duration, and to give as much liberty as possible to the citizen, in consistency with the general good order of society. This must be provided for in the internal organization of the political system in such a manner that, while all the parts move together harmoniously to promote the public welfare, no one part shall have such disproportioned strength as to afford either the means, or the motives to disturb, or improperly control the motions of the rest, while the true interest of all shall be, as near as the errors, and imperfection of human judgment will permit, the common interest of the nation. That frame of the government which is calcu-

lated to afford this permanent security for the freedom and happiness of the people, is called the *political liberty of the constitution.* *Civil liberty* consists in the security which they have of property, and of personal safety, and in the undisturbed opinion which they enjoy of that security.

Sometimes manners, customs, religion, a fortunate combination of circumstances, will procure for a nation a greater portion of civil liberty, that is, of personal freedom and security, than their political constitution promises to bestow; and sometimes, beneath the impulse of party feelings and passions, we perceive the oppressions of arbitrary power amidst the most specious forms of liberty.

The liberty of the constitution is produced by such a distribution, and arrangement of the necessary powers of government, that they shall severally impose a salutary check upon each other, thereby preventing that abuse to which unrestrained power is always prone. The great powers of government have been divided into the legislative, the executive, and the judiciary. And the wisdom of the legislator appears in the organization of these powers in such a manner that they shall always preserve an equable balance among them in the operations of the government: at the same time that each shall apply an

efficient restraint on the other departments, which may in any way attempt to transcend the authorities entrusted to it in the general organization.

If men were perfectly wise and virtuous, all the powers of government might be entrusted in the same hands not only with safety to the public liberties, but with advantage to the public prosperity. But, as mankind are liable to be impelled and misled by motives of interest and ambition, it is necessary to make their rival interests, and ambitious aims restrain one another. These powers must, therefore, be deposited in different hands, and so balanced and adjusted that the interest of each body composing the government shall have more relation to the public good than to any designs of either of the other bodies with which they are associated in the government.

Although the perfect idea of political liberty requires that the legislative, executive, and judiciary powers should be preserved separate, yet, this maxim does not imply that they should be entirely disunited, and unconnected; otherwise, in their mutual opposition, the movements of the government might be arrested; or one, more powerful than the rest, would at length absorb them all into itself, and thus establish a tyranny. Such a connexion they ought to have as to make them mutually necessary to one another; and such a mutually controlling

power should they possess, that each should be able to preserve itself in the full exercise of its peculiar authorities, and privileges, against the encroachments of either of the others, or of both united.*

The British constitution has often presented the text on this subject to political writers. In this celebrated model, from which many of the most useful traits in our own have been drawn, the king possesses a negative on the proceedings of parliament.—The representatives of the people enjoy a check on the monarch's prerogative of levying and commanding the army by the privilege of originating all supply bills. These two branches of the government are perfectly independent on one another, the king being hereditary, and his person sacred, and in the other branch of the government, one of its component parts being likewise hereditary, and the other appointed immediately by the people. The judges, although they are appointed, and receive their commissions from the king, yet are so far independent that they cannot be removed from office except by the joint application of both

* See these ideas beautifully illustrated in Montesquieu's Spirit of Laws, book 11th, ch. 6, where he treats of the British constitution. You will find them happily applied to the American constitutions, and that, particularly, of the general government of the United States, in the Federalist, a book which deserves the most attentive perusal of every American citizen.—See especially Nos. 48—51.

houses of parliament. The king possesses a share in the legislature by his negative on the resolutions of the lords and commons, and by his power of making treaties with foreign nations. The house of lords possesses a share in the judiciary, being the only court for the trial of impeachments, and having supreme appellate jurisdiction in all other causes. The judges so far partake of executive and legislative influence, that they form one of the king's constitutional councils, and are sometimes called to assist in the deliberations of the legislature, though they do not enjoy the efficient power of a vote in any act of that body.

This government furnishes the most complete example existing in any nation, unless, perhaps, we may except our own, of the separation, and independence, of these powers in the constitution, and yet the necessary connexions, and relations subsisting between the bodies respectively exercising them. The supreme executive, being hereditary, and surrounded with the majesty of a throne, derives thence that elevated dignity, and powerful influence which are requisite to balance the immense weight of the legislature. The division of the legislature into two bodies lessens the force of its action upon the executive, which would otherwise be irresistible. And the lords, holding an intermediate rank between the prince, and the commons, are enabled to preserve the equilibrium of the government by adding their weight sometimes to one

scale, and sometimes to the other, which would, otherwise, frequently vibrate very unequally. In the contest for power, the representative body of the people are known once to have prevailed, and overturned all the other orders of the state. And their weight in the government would, perhaps, always be too great for both the correlative bodies of the constitution, if the decayed boroughs did not give the crown an opportunity of purchasing, or powerfully influencing a part of the popular representation. This unfortunate remedy, however, for an immediate inconvenience, is preparing the way to a very different result, and eventually introducing, perhaps, a much greater evil. There is infinite danger that the corruption of the legislative body will yield, in time, an uncontrollable power to the crown. This is the meaning of Montesquieu when he says, "that beautiful fabric will perish as all other governments have done. It will perish when the legislative becomes more corrupt than the executive."

The American states have endeavoured to imitate this model, as far as the difference of their circumstances would permit. They were obliged to create the bodies which exercise the three great powers of government out of the same uniform mass of the people, and have studied to give them as much independence as possible on one another, by the different modes of their election. I had

intended to present to you a philosophical examination of the principal points of the federal constitution, on the most acknowledged principles of good policy, if the severity and tediousness of my present indisposition had not arrested my design, as it has obliged me also to curtail, or omit many of the subjects which I had proposed to myself in the latter part of these lectures. But I cannot forbear recommending to your perusal again, the excellent and detailed analysis of the whole constitution, in the Federalist, a work which was the combined production of several of the ablest civilians in America. It deserves, however, to be here remarked, that the Americans, in their first efforts to frame the political constitutions of the several states, as well as of the United States, fixing their view too strongly on the terrors of a tyranny from which they had but just escaped, and making too high an estimate of the wisdom and the virtue of the people, from their exploits and sacrifices during the war of the revolution, when the pressure of imminent danger repressed almost every other passion among them but love of the public, generally laid the executive under too great restraint, and, in the same proportion, enlarged, beyond their due bounds, the power of the legislative. They remembered that power in the hands of a single person always aims to extend its sphere. But they often seem to have forgotten, that its tendency is the same in the hands

of the many, as of one: and that commonly the encroachments of a numerous body, are even more rapid, and more bold. They derive confidence from their numbers, and their supposed influence with the people. In all the constitutions of the individual states the balance inclines, perhaps too much, to the popular scale. In most of them, the legislative bodies have already been making repeated encroachments on both their executive and judiciary departments. Of this Mr Jefferson, in his notes on Virginia, complains in his comments on the conduct of the legislature of that state. "They have in many instances, says he,* decided rights which should have been left to judiciary controversy; and the direction of the executive, during the whole time of their session, is becoming habitual and familiar." For a like reason some of the states, and especially Pennsylvania, have been obliged, by calling a new convention, to re-model their constitutions. And it is well known that the constitution of New-Jersey has grossly confounded all the powers of government, and suffered its legislature to absorb almost the whole.

The convention of confederated America, in framing the federal constitution, has studied, as far as possible, or, at least, as far as the state of society, and the prepossessions of the country would admit, to escape these errors. We find, in experience however, that the legislative branch,

* Notes on Virginia, p. 195.

and especially the lower house, which is composed of the most immediate representatives of the people, is still aiming at a similar accumulation of power in the popular branch. And this dangerous project it has means, peculiar to its own body, of successfully pursuing. It is almost impossible to give to the head of the executive, a man selected from the mass of the people, that elevation and dignity of character, and that powerful influence, which will enable him effectually to resist their formidable encroachments, or inspire him with that energy and force of mind, that will support him, like the first president of the United States, resting on the glory of his past services, in daring to repel their unreasonable demands. It gives me pleasure to be able to confirm these principles with regard to the tendencies of the popular branch of the government, by the opinion of one of our most enlightened politicians, delivered at the very commencement of the present federal government, a time when his judgment cannot be supposed to have received any bias from existing parties.* "In a government, says he, where numerous and extensive prerogatives are placed in the hands of an hereditary monarch, the executive department is very justly regarded as the source of danger, and watched with all the jealousy which a zeal for liberty ought to in-

* Mr Madison of Virginia, now president of the United States. Federalist, No. 68, near the middle.

spire. But, in a representative republic, where the executive magistracy is carefully limited both in the extent and the duration of its power, and where the legislative power is exercised by an assembly which is inspired by a supposed influence over the people, with an intrepid confidence in its own strength,—which is sufficiently numerous to feel all the passions which actuate the multitude; yet not so numerous as to be incapable of pursuing its objects by means which reason prescribes,—it is against the enterprizing ambition of this department that the people ought to indulge all their jealousy, and exhaust all their precautions."—"The legislative department, he adds, derives a superiority in our government from other circumstances. Its constitutional powers, being at once more extensive, and less susceptible of precise limits, it can, with greater facility, mask under complicated and indirect measures, the encroachments which it makes on the co-ordinate departments." And afterwards, "nor is this all: as the legislative department alone has access to the pockets of the people, and has, in some constitutions, full discretion, and, in all, a prevailing influence over the pecuniary rewards of those who fill the other departments, a dependence is thus created in the latter which gives still greater facility to encroachments of the former."

It was frequent with the ancient philosophers of Greece to sketch their ideas of a perfect republic, and, in theory,

to pursue its organization into all its details. The example has been followed by some modern writers. I shall not attempt to imitate them. Your ideas upon this subject will be better matured by comparing together different forms of government in the course of your studies, and examining in history the practical effects of each. The great desideratum in the science of politics is the distribution and organization of the three powers which have been mentioned, in such a manner, that they shall always move in concert for the public good, and, at the same time, shall form such necessary checks on one another, that the integrity and balance of the whole shall be permanently preserved. The imperfection of human nature, however, hardly leaves us room to hope that this idea shall ever be completely realized.

Instead of presenting you with any ideal system I shall expect you to commit faithfully to memory that form of government under which we live, and which is, perhaps, the best practical scheme of a confederated republican institution which has ever been framed. The principles of our government, and, if possible, a summary of our legal institutions, I have before said, ought to form essential objects in the education of every American scholar.

[*Here the federal constitution is to be committed to memory.*]

LECTURE XXIX.

Of other objects of national policy, taxation and commerce.—Of demesne—capitation—assessment—customs. Customs ought not to be laid on the necessaries of life—but on superfluities—no branch of trade should be oppressively burdened. The merchant advances the impost to the state—The consumer ultimately pays it. Frauds on the revenue restrained by fiscal punishments. When the laws are equitable, these punishments may be severe, they are otherwise ruinous to trade.—Of excise. —Of the maxim, that taxes contribute to the benefit of a state, and sometimes to the improvement of manufactures—Of commerce internal and external—Of economical commerce—Liberty necessary to a flourishing commerce—Of banks—Of the incorporation of exclusive companies for trade—Commerce ought to be free—Of commercial treaties—Of facilities for compelling punctuality in commercial engagements—Of the balance of trade—Of money—Of coinage—Of bills of exchange.

ONE of the principal operations of government relates to the laying and collecting of *revenue*. Revenue is that portion of the property of the citizens which is required by government for the immediate purposes of the

state. Formerly, the greater part of the income of the princes of Europe, except the feudal services of their vassals, arose from demesne; that is, from those lands attached to the crown, which might be considered as the landed estate of the sovereign. A source of revenue of this kind may exist in countries newly occupied, as in the United States of America, in which are large quantities of land not yet distributed in private property, from the sale of which a considerable augmentation may be derived to the public treasury. This, from the natural progress of society, will be daily diminishing, and it is the interest of the public that, as speedily as possible, it should be wholly extinguished, leaving no portion of the soil unappropriated by useful and active citizens. The chief means of providing for the public exigencies therefore, is taxation. And one of the principal objects of political science is to be able to impose, and to raise taxes in such a way as shall be most effectual to supply the necessities of the state, and be the least burdensome to the citizens.

Taxes ought to regulated according to the real exigencies of the government, and the convenience of the people. But the exigencies of the government should never be measured by the ambition, caprice, or passions of those who have the direction of public affairs; nor of the people themselves in those momentary paroxysms of rage, or of vanity to which they are sometimes stirred up by

their demagogues. The democratic mass are often not less apt than princes, to be seduced by an imaginary glory, and often excited by a sudden impulse of passion, to pursue expensive schemes that flatter the national vanity for a while, but in the end draw after them poverty and ruin. When the real wants of a country are ascertained, these must be provided for, how great soever may be the cost, or effort.

In raising the necessary revenues of the state, it should be a consideration of primary concern with the legislature to select those subjects of taxation which shall be least oppressive to the people, and, at the same time, most productive to the public. All taxes are reducible to the heads of capitation, assessment, customs, or excise. Capitation, as its name imports, is a tribute levied on the citizens simply according to their number. This is, perhaps, the most unequal mode of taxation. The rich man pays nothing more than the poor; and the poor man nothing less than the rich. It is a tax however, which, from the simplicity of its nature, is peculiarly adapted to despotic states. In them many and intricate details do not agree with the genius of the government. And much complication in the system of finance, would afford the officers of the prince too great an opportunity to oppress the subjects without any means of detection, or redress.

Assessment is a certain proportional rate levied on the property, or wealth of each citizen. Such a system of taxation may be rendered perfectly equitable and just, although the greatest inequality subsist in the property of different citizens. Land being the most visible and permanent subject of property, is best adapted to this species of taxation. Stock in trade is much more difficult to be ascertained with the precision requisite for an equitable tax. It is of so fluctuating a nature as to render it almost impossible to be sure that you possess its real amount. And attempts to assess it with accuracy would probably be attended with many frauds in the proprietor, or with oppression on the part of the government, and an improper disclosure of the secrets of trade.

Assessments of land for the purposes of taxation should be framed not merely according to its quantity, or admeasurement, but according to the quality of the soil, and the nature and value of its produce. These circumstances cannot be designated by any law, but may generally be ascertained by honest and judicious men of the vicinity without oppression or fraud, and without any great error from the truth of the facts.

In laying the rate of taxes, allowance should always be made for the necessaries of life. Necessaries ought always to be exempted from every public burden. The surplus

above these which the soil would yield under a prudent and industrious cultivation should solely be the object of taxation. Taxes ought as much as possible to be laid only on conveniencies and superfluities.

Customs are that species of taxation which is most favorable to liberty, or, at least, to that sense of freedom so dear to every citizen, and so necessary to the general contentment, and happiness of the people. They are imposts laid according to a certain rate, prescribed by law, on merchandize imported, exported, or exchanged in trade. When prudently laid, the merchant always makes the advance to the state, required by the revenue ; and is reimbursed by a proportional augmentation in the price of his commodities. Eventually the consumer pays the impost to the merchant, which he has advanced to the state ; but confounding it with the price of the goods, he considers it as a voluntary bargain, and is not sensible that he is paying a contribution to the public. This is the ground of his contentment. The demand for money is always odious, when no compensation for it, real or imaginary, is perceived. But when men seem to receive an equivalent, the duty is cheerfully paid. This is the great advantage of this species of tax : the payment being wholly optional on the part of the consumer, he considers it not as a demand of the state, but merely as an ordinary transaction of commerce. In order to favor this deception, so con-

ducive to the public tranquility, two principles are important to be observed,—in the first place, that there be a reasonable proportion between the quantity of the impost, and the natural price of the commodity. Otherwise the tax is felt, and the illusion is at an end. In the next place, imposts should not be laid on such articles as are become absolute necessaries of life among the poor, except, perhaps, in some rare instances in which they cannot easily be reached by any other tax. Such duties operate like a capitation, and are necessarily grievous and unequal in their pressure upon the people. A wise policy will lay them as much as possible on mere luxuries, and merchandizes of costly ornament and accommodation. In that case, they fall directly on the wealthy, or the prodigal, and are the most willingly paid.

It is the part of legislative wisdom not to impose an unequal burden on any branch of commerce. Large imposts may be so laid as to defeat their own end, and impair the revenue by diminishing consumption, or amounting to a prohibition of the article. Moderate customs, with a flourishing commerce, serve most effectually to replenish the public treasury.

Another observation merits attention on this subject. As the merchant who makes the advance of the duties to the state must not only be eventually reimbursed, but re-

ceive a profit upon this advance, as well as upon all other monies employed in his mercantile transactions, the earlier in trade any customs or duties are made payable to the public, each transfer requiring a new profit, the more the prices of the goods become increased at last to the consumer.

Customs, when raised beyond a certain reasonable proportion between the duty and the original price of the commodity, if they do not lessen importation, always afford temptations to the practice of smuggling, so injurious to the public morals, as well as to the revenue. Whenever the risk of smuggling is overbalanced by the amount of the impost, the treasury will be defrauded.

Frauds committed on the revenue are restrained, or corrected by fiscal punishments. When imposts are moderate, and the nation free, that is, subject only to the government of laws, and not of men, these penalties may be made severe. They may be even more severe than they can be made in despotic states with any safety to the interests of commerce. But if they are excessive, then rigorous fiscal punishments operate the ruin of trade, as well as the oppression of the citizen.

The last species of taxation is *excise*, which is a duty paid on commodities in actual occupation and use; not levied as customs are on goods in trade, and in the course

of exchange, and transit from hand to hand. It is generally esteemed, and perhaps justly, a tax of the most odious kind. For, although duties collected by excise may not be actually so heavy as those drawn from customs and imposts upon trade, they are, notwithstanding, more directly felt as a tax.—Besides, the methods necessarily employed to discover exciseable goods are peculiarly obnoxious to public opinion, and to the private peace, and tranquility of families.

From two facts which very frequently occur,—that the heaviest taxes are paid by free states; and that an additional tax laid upon a particular manufacture, has been followed by an improvement in the quality, and an augmentation in the quantity of the manufacture, it has passed into a maxim with some political writers, that the increase of taxes is beneficial to a state.—It is true, that free states, from that spirit of industry and enterprize which accompanies the possession of liberty, are more able to support the weight of taxes than arbitrary governments; and being commonly smaller in extent, and surrounded by ambitious and dangerous neighbors, they are often called to greater exertions in defence of their rights, and their existence. But the ability to support such impositions does not surely arise from any peculiar tendency in taxation to augment the monied resources of

the country, but from the nature of the government which is the nurse of industry, and of every useful effort of human talents. And the augmentation of taxes does not arise from any idea in their rulers, of their beneficial influence on the civil or commercial interests of the state, but from the necessity of their situation.

It may likewise be remarked that a small and gradual increase of taxes, within moderate bounds, may, on some occasions, be found to stimulate industry, and, indirectly, to contribute to the improvement of particular arts.—To see how this may be effected let us attend to the following considerations.

There is a certain portion of labor requisite, and sufficient to supply to each man the absolute necessaries of life, far enough below the utmost exertion of his talents. When he puts forth his efforts to their full power, they are able, besides necessaries, to furnish him with a large supply of convenient, comfortable, and even elegant accommodation. Between these points, therefore, the moderate labor, on the one hand, which is sufficient to supply the necessary provisions of life, and the highest efforts of industry, on the other, which may yield a large surplus of convenient accommodation, taxes may be gradually augmented. And as men may often want stronger motives, than simply the prospect of a little additional gain, to stimulate them to

put forth all their powers, these motives may sometimes be found in the necessity of furnishing the taxes demanded by the state. But this rule ought carefully to be observed, that whenever the public burdens are to be augmented, it should be done by very small and gradual increments, that, in the process of the operation, the people may have leisure to learn by experience to feel their own abilities. Great and sudden augmentations of their taxes are calculated only to alarm and discourage them.

I add that the *maximum* of taxation, or the highest surplus for public use, which the industry of the nation can yield, after the necessary wants and ordinary conveniencies of life have been supplied, ought seldom to be aimed at by the rulers of a state. Human nature kept constantly at its full exertion, will become fatigued and dispirited, and be ready at length to bless a less free government, relieved from the oppressive weight of those fiscal impositions. The state, moreover, ought not to be always at its utmost effort. Emergencies will arise which will require extraordinary exertions; and strength ought to be left to meet these demands.

OF LAWS RELATIVE TO COMMERCE.

Another of the most important operations of government respects the encouragement and regulation of commerce. Commerce consists, in the exchange of the pro-

ducts, or the labor of one country for those of another. It is founded on the mutual wants of mankind, real or factitious, and is ready always to furnish a supply for those wants which it either finds, or creates. By affording a vent for the produce of labor, and procuring, in return, the means of desirable accommodation, it increases industry, promotes the arts, and thereby augments the wealth of a state. Commerce is the handmaid of agriculture, and the arts, and by distributing their productions over the world, prompts the industry of the husbandman, and quickens the ingenuity of the artizan.

Commerce is either *internal*, consisting of the traffic which takes place among the citizens of the same state, —or *external*, which consists in that subsisting with foreign nations. The more extensive a state is, of the more value to it commonly is its internal commerce, if it possesses the means of a convenient interchange of commodities through seas, rivers, or canals, and the less does its prosperity depend on foreign traffic. This is an advantage which the United States may possess in an eminent degree, extended as they are through various climes, and intersected by numerous rivers, if they are wise enough to preserve their union, and liberal enough to favor and assist, without jealousy, the natural advantages enjoyed by each, which may ultimately redound to the benefit of the whole, and of every part.

Free states whose territories are small, and manners simple, if conveniently posited to enter into the career of trade, are generally inclined to undertake an economical commerce; that is, to become carriers for the rest of the world who either need, or are willing to receive, the aid of their ships. In this species of commercial intercourse, it is the interest of an economical republic to consider the wants and the superfluities of all nations, and to avail itself of both. This species of commerce can be maintained, only by the smallness of its profits. It exists by underselling others. Its present gains are small; but by gaining constantly, and drawing its resources from every quarter of the world, the ultimate profit to the nation may be great.

Civil liberty is absolutely necessary to the existence of a flourishing commerce. Freedom is the nurse of industry and enterprize; and in the bosom of liberty alone is the property of the merchant, at all times, sufficiently secure from the grasp of power. In absolute monarchies, the humble and industrious occupations of the merchant are held in contempt by the superior orders of society. But under the protection of a free government, merchants have been found capable of the grandest enterprizes.*

* The tendency of commerce is to create civility and refinement of manners, by opening a free and liberal intercourse among all nations; at the same time, it begets a certain spirit of

The laws and spirit of a nation should annex a dignity and respectability to the character and profession of a merchant in order to favor the success of trade.

Those laws are founded in good policy which encourage trade with wealthy and pacific nations who can take the greatest quantity of our produce or manufactures on the best terms; or who can furnish their own merchandizes at the cheapest rates, and take the largest proportion of ours in return.

Laws are impolitic which attempt to restrict trade to particular nations, unless it be for a time, with a view to compel advantages from others which are unreasonably withheld. Competition alone can establish the just rates of merchandizes, and reduce the profits of trade to the most equitable standard.

exact justice, and habitual calculation of interest, which is unfriendly to the highest polish and ease of social manners, and to the hospitable reception of strangers, except where some interest recommends their admission. It deserves, however, to be remarked, in order to take off the unjust prejudices which are apt to be entertained by different people against one another, on the score of their reception abroad, that hospitality, and indeed all other national virtues, or defects, arise, not from the differences between nations as they are men, but as they are affected by the state of society. The characters of men are formed by the circumstances in which they are placed. And those nations who entertain the greatest contempt for each others manners, would, with exchange of situations, exchange characters.

The institution of banks, when properly restricted, is beneficial to trade, by facilitating a reasonable credit to merchants, by which they are enabled to encourage industry, and to extend the useful enterprizes of commerce.* On the other hand, the multiplication of banks beyond the real necessities of trade, or unsupported by an adequate capital of bullion, becomes a pernicious evil, by augmenting unduly an artificial medium of trade, and thereby increasing the price of labor, and of all commodities in the market, and at length defrauding the credit which had been reposed in them.

The incorporation of exclusive companies of merchants for managing, and enjoying the sole benefit of any particular branch of commerce, is contrary to the rules of good policy, unless the commerce be of such magnitude, and attended with such expense and risks, that it cannot be advantageously pursued by individuals. When such a case occurs, the privilege of entering into the company ought to be extended as far as possible. Another important requisite is, that the charter of incorporation should be limited to a convenient term of years, in such manner that the earliest opportunity may be embraced for throwing

* For a clear and concise elucidation of the nature and effects of banking systems, I cannot refer you to a more useful work than a small treatise by Dr Erick Bollman of Philadelphia, entitled *Paragraphs on Banks.*

open the trade, and extending its privileges.—The English East-India company have held a monopoly of the trade of the Indies too long for the benefit of the nation.

Commerce ought to be as free as the ocean on which it is borne, or the winds which waft it. The interest of merchants will always find the most profitable channels of trade better than the foresight of the legislator. There may frequently, however, exist a necessity for his interference to secure those privileges of trade to his nation of which the caprice, or policy of others may be inclined to deprive it. Each nation possessing the control over its own commerce may frequently subject foreigners to inconvenient restraints in their intercourse with it. Hence the utility of commercial treaties with those states whose wrong policy may incline, and whose situation may enable them, without the intervention of such contracts, to impose peculiar disadvantages, on some branches of commerce, or to subject it to entire interdictions. But the general maxim that trade ought to be free, and committed almost wholly to the guardianship and direction of the interested vigilance of the merchant, is not inconsistent with another principle, that the policy of a nation may sometimes wisely impose certain restrictions dictated by the spirit of commerce itself in order to introduce a new, or to foster a growing manufacture. On this principle the exportation of wool, which had formerly been

sent to Flanders, was interdicted in England, that it might produce a greater profit at home, by being worked into cloth.

The freedom, or facility of trade is injured by all unnecessary delays, or intricacies in the transaction of business at the custom houses. The more effectually the laws guard the trader from imposition, and the fewer auditors and judges he is obliged to be concerned with, the more favorable is the policy to the operations of commerce. Its affairs are the transactions of every day. Expedition therefore, in all the forms of business, and in all the judicial questions arising in it, is of the greatest utility to the merchant.

As the life of commerce depends upon the punctual fulfilment of engagements, every facility should be put in the power of the merchant to compel punctuality in contracts. Let it be lawful for him, says Montesquieu, even to seize the person for debt. That great oracle of legislation speaks of it as an excellent law in Geneva which excludes from the chief honors and privileges of the state the children of those who die insolvent unless they have first discharged the debts of their parents.

In the intercourse between nations, there will generally arise in the settlement of their accounts at the close of each year, a balance due from one to another. An unfa-

vorable balance due to one nation must be compensated by a favorable one received from some other; otherwise the specie, which supplies the channels of its trade, would, in time, be drained from the country, and a stagnation in business ensue. Commercial nations are frequently seen indulging an unnecessary solicitude concerning the balance of trade, and fatiguing themselves with jealous calculations and fears about its poise. If the laws are good, the manners industrious, and the habits of the nation frugal, these are the surest means of turning the scale ultimately in its favor. Frugality enables artificers to work cheap, and merchants to trade on small profits.*

* Two or three facts on this subject exist in the United States which create surprize to foreigners, and are often little understood by our own citizens. The price of labor in this country is much higher than in Europe; yet the products of the soil can always be sent thither to a good market. On the other hand, the expense attending the erection of manufactures is so great as hitherto, except in a few instances, to prevent their establishment. The cause of both these effects is to be found in the great quantity, and cheapness of our new and fertile lands. One man is able to spread his labor over a much more extended surface in the ample plantations of America, than can be done in the small and circumscribed districts, into which the soil must be divided in Europe. And though the agriculture is less perfect, yet the great scope which is under cultivation throws off, in the end of the year, a more abundant product to the industry of each husbandman.

OF MONEY.

Trade, in the early and rude ages of the world was carried on by *barter*, or the exchange of one species of goods for another. This was found, in time, to be inconvenient, especially after exchanges, in the progress of society, necessarily became frequent. It was requisite, therefore, to discover some medium of commerce which should be willingly received, and acknowledged as a universal sign, and standard of value. This medium, in order to subserve the various purposes of trade, and to render it, at all times, a safe and convenient mean of exchange ought to possess the following properties. It ought, in the first place, to have an intrinsic value, and to be in itself an object of desire, and, therefore, a proper subject of commerce, as well as a sign of wealth, and a standard of the value of all other things. This primary quality is requisite, because no authority can give a value to that which possesses none in the public estimation. It ought, in the next place, to be rare, that a small portion of it may represent a large quantity of other commodities, and be easily portable for the convenience of trade. It should, for the same purpose, be divisible into minute parts. And, finally it ought to be durable, that it may not be liable to decay by being exposed to the air, nor be easily worn and wasted in passing from hand to hand.

The precious metals, and they alone, possess all these properties; and, therefore, have been employed in all nations, where they could be procured, as the common symbols of value. It has been frequently, though erroneously, supposed that, intrinsically, money possesses no value, though the sign of all value; and this was long a vulgar theoretic opinion. But gold and silver have their price in trade as well as other commodities; and, like them, this price depends upon their relative quantity. If all the gold and silver in the mercantile world were placed on one side, and, on the opposite side, all other goods, the whole value of the one would be equal to the whole value of the other, and any proportional quantity of the one, would be equal to a similar proportion of the other. Increase the aggregate quantity of the precious metals, and each piece will then possess a smaller relative value. If, in the progress of society, an improved industry and ingenuity increase the quantity and perfection of the products and manufactures of trading nations, the quantity of money remaining the same, each piece will acquire an increased price; that is, it will purchase an additional quantity, either in number, or in fineness, of those articles which are brought by commerce into the market. This constant ratio of things no law, or authority of the state can alter without violence to liberty, and manifest injury to the interests of trade. It is a mistaken policy in the govern-

ment ever to attempt to regulate the prices of the market, farther than to prevent fraud in the genuineness, the measure, or the weight of the articles brought into it. Every arbitrary regulation, or attempt to change the natural proportions between money, and other merchandize, especially, of provision in a season of scarcity, will usually prove as abortive as it would be pernicous if it could be carried into effect. This assumed power over the freedom of the merchant, tends to destroy industry, and increase the distressing want for which it is proposed as the mistaken remedy. If scarcity produces an alarming augmentation of prices, that very circumstance holds out the speediest prospect of relief. It awakens industry, and invites a prompt supply from every quarter whence it can be derived, till the increasing quantity in the market again reduces the price towards its natural standard. All compulsion contributes to drive the means of relief out of the market, and to continue the public distress. It were better, in such a case, to afford a bounty on provision than to check the freedom of its sale, by limiting its price.

OF COINAGE.

The quantity and proportion of the metals is determined by weight. But, on account of the inconvenience and inaccuracy which must attend weighing bullion in all the

multiplied transactions of commerce, after nations have arrived at an advanced period of civilization, the government usually takes that care upon itself, and affixes its own signature and attestation to the weight of each piece of money in the *mint*.* Coinage is the impression of a known public mark on the respective pieces of gold and silver in circulation, thereby pledging the public faith for the exactness of the weight.

A certain known proportion of alloy is usually mixed in coining with the precious metals, to increase their durability, and to render the size of the small pieces more convenient in passing them in tale. The practice of increasing the quantity of alloy, or of raising the denominations of the coins, which have been sometimes resorted to in arbitrary governments, in order to pay the public debts with less than a just proportion of gold and silver, is a dishonest expedient, as dangerous to the prince, as it is void of faith to the nation.

BILLS OF EXCHANGE.

In the commercial transactions between nations, money must often necessarily be remitted from one to another. This necessity has given rise to *bills of exchange*, to save

* This denomination is derived from the *low latin* term moneta, which signifies both the stamp upon coin, and the laboratory whence it is issued. It comes to the English through the medium of Dutch word *munte*.

the risks of the sea. A bill is no more than a draft for the money which may be owing from one merchant, to satisfy the demand which may be due to another. When equal sums are to be remitted from one nation to another, bills may be purchased at par. When greater sums are due from one than are to be received from the other, the nation against which the balance is found to lie, must make its remittances in kind, or must pay an additional sum for bills; which sum must be estimated according to the risks of remitting. The exchange, therefore, is against that nation, and bills must be purchased at a price above par. The balance of trade between two nations may, of course, be generally determined, at any period, by the rate of exchange.

LECTURE XXX.

OF THE LAW OF NATURE AND NATIONS.

Of the law of nature and nations—It has attained its perfection only in modern times—The three-fold division of that law—Of the rules and principles relative to a state of peace—Of the independence and equality of nations—Of intriguing with parties, or aiding factions—The right of a nation to use its own resources, to its own advantage, of making alliances, treaties, without affording just cause of umbrage to others—Treaties not annulled by a revolution in the government of either nation—Treaties in the United States the supreme law of the land—The interpretation of them vested in the supreme court—Of the extent of the jurisdiction of states—Of the intercourse and commerce of nations—Of ambassadors or national representatives.

NATIONS, in their sovereign capacity, may be considered in reference to one another, as individual and moral persons, subject, in their mutual intercourse, to the rules of reason and humanity; and amenable to no common tribunal but the opinion of the world. The laws of justice ought to subsist among all mankind. And the interest of human nature requires that there should exist

some known and general principles of equity to which, by the tacit consent of custom, or the explicit stipulations of treaty, they should agree to submit in their conduct towards one another.

On this subject, there naturally arise two important questions :—In the first place, are there any such principles which have been acknowledged to be obligatory on all nations ?—and, in the next place,—by what authority are they prescribed ? and by what sanction enforced ?

In answer to the former question ; it has already been observed, that independent nations may justly be viewed as standing in the same relations to one another, as independent individuals, previously to the existence of civil society, possessing the same rights, and subject to the same obligations. This state has been denominated *the state of nature.* And these rights and obligations constitute the basis of the *law of nature.* But because individuals are rarely, if ever, found actually existing in this state, and its laws are almost exclusively applicable to mankind in their national capacities, hence the additional title has been given to it of the law of nations.

The most rude and barbarous people have not been without some rules, to ascertain the several rights, and regulate the mutual intercourse of their respective tribes.

But it is only among civilized nations whose manners and political institutions nearly resemble one another, and who have been long connected together by the most liberal intercourse, mutually imparting their improvements in letters and in arts, that any regular and entire code can be expected on this subject. Indeed, it is only in modern times, and among the enlightened nations of Europe, that this law has taken the form of a science. Among the ancients, with whom stranger and enemy were almost synonymous terms, it was hardly known, till the latter ages of the Roman empire. The civil law was, at that period, brought to a state of high perfection: and some, although, as yet, but imperfect, principles of the law of nations were acknowledged as forming a part of the doctrines of natural reason.

In modern Europe, the diffusion of letters, the refinement of manners, the influence of religion, and a spirit of humanity resulting from a combination of all these causes, together with ideas and interests arising out of the most enlarged commercial intercourse which has ever existed in the world, have contributed to give an extension, and perfection to the law of nature and nations which it had never before attained. Grotius has the honor of leading the way on this important subject, in his treatise *de jure belli et pacis*. After him his commentator Barbeyrac, Burlamaqui, Puffendorf, Wolfius, Vattel, Van Bynker-

shoeck, have acquired the highest reputation, and have become authorities to which even nations have condescended to appeal in the decision of their controversies. They have left little to be desired in the science. And in the respect paid to the writings of these illustrious men, we have often seen the pride of power stoop to the illumination and persuasion of wisdom.

To the second enquiry, by what authority is the law of nature and nations prescribed? and by what sanction is it enforced on independent communities?—I answer,—It is prescribed by custom, and the implicit or positive consent of all the nations of Europe, and to these we may now add the United States of America, and the European dependencies in the East and West Indies, who have all agreed to submit nearly to the same rules.

In this age of refinement, and literature, learning has shed such an extensive illumination through society, and learned men have acquired such preponderance, that their opinions have become, in a great measure, a standard of civil and national policy, and, in many respects, a *law* to princes and states. Their authority is resorted to, and often admitted as decisive in the determination of controversies between the most powerful kingdoms. But besides this indirect authority, the greater part of the principles of the law of nature and nations, as they have been

proposed and illustrated by the most eminent political philosophers, have, within a short period, been explicitly recognized in the public treaties of Europe. Principles thus recognized receive the sanction and force of *positive* laws. Others which have been admitted only by long custom, compose the *implicit*, or what Vattel calls the *necessary* law of nations. Of these laws the natural sanction is national convenience; or, if they are infringed, the fear of the just resentment of other nations. Fairness, justice, and good faith, are not less the public interest of states, than the private advantage of individuals. Injustice and falsehood may profit for a moment; but, in the end, are ever found to be injurious to the true interests of the great communities of mankind.

DIVISION OF THE LAW OF NATURE AND NATIONS.

The law of nature and nations does not respect the internal policy, or institutions of state; but is occupied only with their external rights, and obligations, in their relations with other states. These relations are threefold—of peace—of war—and of neutrality. This law is accordingly divided into three parts—the first containing rules and principles relative to a state of peace—the second, rules and principles relative to a state of war—and the last, those which relate to a state of neutrality. On each of these subjects, all that I can propose to you is to give

some openings to the science in the prosecution of your future studies.

OF RULES AND PRINCIPLES RELATIVE TO A STATE OF PEACE.

These principles respect chiefly the independence and equality of nations in their right of absolute control over their own political arrangements,—the extent of their several jurisdictions,—their privileges of intercourse and commerce with one another,—and, finally, their mutual rights of embassy and representation.

The independence of states, and their equality in rights and privileges, lies at the foundation of the law of nations. And this perhaps is a proof that this law, which is of so modern a date, has taken its origin among nations which, in fact, are nearly equal in geographical extent, and in physical power. For it is unhappily true in the history of nations, that the justest claims are seldom conceded by such powerful bodies, to equity alone, when they possess force sufficient to violate them with impunity.

The rights which result from the principle of the independence and equality of states suffer no change, on account of their greater or less degree of population, wealth, or territorial extent. Among these rights the most important is that of establishing, or preserving in perfect integrity, their own forms of civil policy, free from the

control, or interference of any other power. No right can be more precious to a nation. All attempts, therefore, to modify or change an existing government; or to prevent a nation, when it pleases, to alter, amend, or change its own system, under any pretence, that such change is inconsistent with the interest of any neighboring power, is a palpable violation of the most sacred rights of nations.

The same principle condemns the intriguing of foreigners with parties which may spring up within a state. And condemns still more forcibly the affording any encouragement or aid to a factious portion of the citizens to oppose, or disturb the existing order of the government under which they live.—On this ground, the world has so justly and strongly reprobated the conduct of the empress of Russia, the emperor of Germany, and the king of Prussia for their unwarantable interference in the affairs of Poland; and especially for their atrocious dismemberment of that republic, and afterwards presuming to dictate a form of government for the remaining provinces without the consent of the people who were to be affected by it. The ancient Romans were infamous for intermeddling in the internal disturbances of the neighboring nations, till they had broken, in succession, and overturned the independence of every kingdom, and republic within the reach of their arms. On the same principle, the attempt of the combined powers of Europe to prescribe a

government to France, although it was in the most turbulent period of her frenzy, and their ostensible motive was, in part, their own preservation, was most justly reprehensible. And they have since been reaping the fruits of their folly; having forced her into the career of foreign conquest, of which they themselves have become the victims, instead of leaving her, as they ought to have done, to spend her fury, and the unnatural force of her insanity on her own limbs.

The principles, however, which have been just laid down, do not prohibit one state, in certain circumstances, from yielding succors to another, which is oppressed by its government, or which, on the other hand, is afflicted by a dangerous insurrection. Yet this case requires the most profound consideration, and the most dispassionate circumspection, lest, under the pretence of assisting a nation in her affliction, a faction only should be cherished, or a tyranny protected.

When civil dissentions exist in a state a principle of good neighborhood, and of justice, requires that no aid should be afforded by a foreign power to any party, unless it is clearly known to embrace an undoubted majority of the people, who are organized in such a manner as to afford a reasonable prospect of their being able to maintain their government: or, unless there is the strongest

ground to believe that those succors, and the change that is aimed to be effected by them, will contribute to the happiness, and meet the approbation of the nation when restored to a state of tranquility. For those moral considerations ought to be felt to be as obligatory on nations as on individuals.

On such principles we vindicate the aids granted by France and received by the people of America during the conflicts of that revolution which ultimately established the liberties and independence of the nation.

From the independence and equality of nations results, in the next place, the right of using their own resources and advantages, according to their pleasure for their own interest, provided that, in pursuing these interests, they do not infringe upon the equal rights of others. They have a right to admit one nation to the participation of greater privileges, within their territories, than another; and reciprocally to yield and take such advantages as they conceive to be most for their own benefit, which use of their rights ought not to afford to those from whom they are withheld, any just cause of offence. For this purpose, they may enter into alliances, and form national conventions and treaties with other states, which may materially alter the relations formerly existing between them, and mutually create new rights and obligations. Such

national compacts, when once made under the proper authorities, impose duties, and create rights of the most sacred and inviolable nature. They cannot justly be annulled, or altered at the supposed interest, or convenience of one of the parties; but require, for the purpose of any modification or change, the clear and explicit consent of all who were engaged in the original contract. And if any doubt or uncertainty arise in their interpretation, justice requires that the most fair and obvious exposition be given to their terms; in which a candid and equitable spirit will derive great assistance from considering the objects originally proposed by the parties to be respectively accomplished by the treaty; the evils to be corrected, or the advantages to be gained.

In the United States treaties concluded by the President and Senate are made the supreme law of the land. The national judiciary is, consequently, charged with their interpretation, and furnishing the rule for their execution within the jurisdiction of the states. This is a measure fraught with the greatest wisdom and equity; and peculiarly calculated, as far as depends on the United States, to preserve these important conventional laws from infractions occasioned by ignorance, injustice, or ambition.

It has been made a serious question in the law of nations, whether or not a revolution in the government of

any people ought in justice to annul the obligation of a treaty contracted under the preceding government?—It is sufficient to reply that a treaty is a convention made with the *nation*, and not with the men who may, at any time, have the powers of government in their hands. These are only the organs by which one political body communicates with another. The organ of their intercourse may be changed, while their conventions retain all their validity; except where some palpable disingenuousness, mistake, or fraud, appears in the conduct of one, or of both the parties.

OF THE EXTENT OF THE JURISDICTION OF STATES.

The jurisdiction of a state extends as far as the limits of its territory, and over all rivers, lakes, and bays included within those bounds. The territorial limits of countries have been fixed by custom, and convention with neighboring powers. In taking possession of new and uncultivated regions, and exercising or claiming jurisdiction over them, the principle of convenience, as formerly explained, must be regarded; and treaties with other powers who occupy portions of the same lands, must ultimately fix their respective limits.—If any waters be encompassed by the territory of any state, the jurisdiction of that state, extends equally over both the water, and the land.—If a river or a bay form the boundary or

part of the boundary between two states, it ought to be considered, as far as it extends, as a natural high way, in which, consequently, the navigation should be free, and common to both nations; unless otherwise restricted, or appropriated by explicit treaty. If a river be divided between the territories of two nations, so that the one incloses its mouth, and the other embraces the heads of the same stream, the dictates of reason evidently require that the navigation of the whole should be equally open to those who inhabit the superior, or the inferior part of the channel, each giving to the other sufficient national pledges for their mutual security, and for the peaceable and friendly use of that liberty.

Another question which has occupied the civilians of Europe with no small degree of zeal for more than a century past, regards the extent of jurisdiction which may be exercised by any state over the open ocean. Some nations, on account of their great maritime superiority, or, on pretence of providing for the safety of their commerce, or their dominions, have advanced claims to pre-eminent control over particular seas. Great-Britain has pushed her demands farther than any other nation; and, by the haughtiness with which they have been urged, has raised to herself many enemies. The ideas of mankind, on this subject, however, have, for a considerable time, been growing more just and liberal. The ocean is re-

garded, by most writers, as the universal highway of nature, and equally free for the use of all nations. Yet, as every state is justly expected to extend its protection against all hostile aggressions, not only to its subjects, and friends, but even to strangers within the control of its power, its jurisdiction is admitted to extend into the sea as far as the force of its arms can reach. And this limit, since the invention and use of fire-arms, has been generally interpreted to mean, the ordinary range of cannon shot. The United States of America, that there may be no uncertainty in a boundary which might otherwise be too vague, have fixed it at one marine league from the shore.

OF THE INTERCOURSE AND COMMERCE OF NATIONS.

As the law of nations is founded on the natural obligations of mankind, and the actual desire among all civilized people, of extending as far as possible the ties, and good offices of humanity, as well as to promote their mutual interests, the privileges of intercourse and commerce between all the various states of the world should be rendered as liberal, and extensive as is consistent with their common safety.

Strangers cannot claim admission into a foreign state, by the law of nations, as a perfect right; yet, agreeably to the benevolence of that law, the privilege ought not to be

refused to any where it is not likely to be abused or attended with national danger. But when a stranger is admitted into any nation, reason and humanity require that he should be considered by the same act as taken under its protection. His property, as well as his personal safety, is deemed to be under the guardianship of the power and justice of its laws. He still retains the right to dispose of it as he pleases; or, if he dies within the jurisdiction of that foreign state, a benevolent justice seems to require that it should be preserved under the safeguard of the public authority, and restored to the requisition of the government of his native country.*

It is an obvious principle in this code, in the next place, that, if a stranger in a foreign country enjoys the protection, he is also subject to the control, of its laws. During his residence, it is his duty to demean himself as a good and peaceable citizen, and orderly subject. And if, in any thing, he offends against this rule, he shall be subjected to the penalties of the law, as if he were a native. If there be strong and well supported suspicions of his abusing the privilege of a stranger to any hostile, or unfriendly purpose, such as attempting to excite disaffection

* For a long time these rights were little understood in Europe, and were hardly known in the rest of the world. Even till very late years the *droit d'aubain*, as it was called, remained a stain on the humanity of France.

to the existing government, or taking plans or charts of their sea coasts, or their strong places, for the use of an enemy, he may, without violating the rights of hospitality, be required immediately to depart from the country, or, under a safe conduct, be sent beyond its limits.

It is worthy of particular observation, with regard to the privileges of intercourse for the purposes of commerce, that it is, generally, the interest of all states to render the ingress and egress of fair traders as easy, and secure as possible. Yet nations have frequently, from some idea, whether true, or false, of the advantage of encouraging one species of commerce, or the commerce of one nation, in preference to another, imposed narrow and exclusive regulations on their commercial intercourse. When this is the case, other nations must submit to the restrictions, however absurd, which each thinks fit to prescribe for itself; if they cannot, by some conventional agreement, procure a more favorable state of things. Hence those numerous commercial treaties which form so large a portion of the positive, or diplomatic law of nations, in the modern states and kingdoms of Europe.

OF AMBASSADORS, OR NATIONAL REPRESENTATIVES.

The fourth class of laws relative to a state of peace, respects the rights of embassy, or national representation. From the first ages of civilized society the convenience of

nations has given rise to a class of men residing near foreign courts as their representatives; through whom such communications might be made, or propositions received as go to affect the interest of those by whom they are sent.

On this subject the following principles are universally admitted. The ambassador of an independent nation possesses within that country to which he has been received, all the independent rights of the nation which he represents.—His person, of consequence, is sacred, and inviolable—He is not amenable to the civil, or criminal jurisdiction of the state within which he resides.—Yet, if he should so far forget the rights of the nation as to insult its government,—to intrigue with its parties,—to contravene its laws,—or to attempt to foment sedition or insurrection, the government whose displeasure he has incurred may apply to that whose representative he is, with a request that he may be recalled: and it shall be the duty of such state, if it be disposed to preserve the relations of amity and friendship subsisting between them, to recal him.—There are certain cases in which the exigency of affairs may require that he be immediately ordered to quit the territories which he has abused. The public safety may even demand that his person be confined. The government, however, which proceeds to such severe measures, must rely on the justice of the state

which sends him, to approve the act when the cause impelling them to it is understood. Otherwise the sending away an ambassador, confining his person, or refusing to receive him in his public character, is construed to be a proof of hostile intentions, and is generally considered as a sufficient occasion of proclaiming immediate war.

Any nation possesses a right, on the ground of national courtesy, to send its representative to reside with another nation; nor will the principles of amity and good neighborhood, permit the latter to refuse admitting him except on such reasons as have been already explained.

When a nation has been divided into great and powerful factions by civil dissention, it may be doubtful in which party the power and authority of the state is vested. In such a case, a friendly power may justly refuse to receive an ambassador from either party till the interior disorders of the state be composed. Or if it consents to receive any, prudence seems to require that it should be from that party which is in actual possession of the government.

Thus have I proposed to you a very brief sketch of the principal rules which respect nations maintaining towards each other the relations of peace. In the following lecture I shall, with equal brevity, endeavor to lay down the most essential principles that should govern their conduct in the respective states of war, and of neutrality.

LECTURE XXXI.

OF LAWS RELATIVE TO A STATE OF WAR, AND OF NEUTRALITY.

The just causes of war.—Of the time and manner of commencing war.—On the means of carrying on war.—Disturbing the peaceable husbandman in the labors of the field, privateering at sea, confiscating or sequestrating debts or property in the public funds, seizing vessels in the harbors at the commencement of a war, iniquitous, and impolitic.—On the method of terminating war.—Of laws relative to a state of neutrality.—Of the commerce of neutral nations.—Of contraband goods.—Of the goods of an enemy nation on board of neutral vessels.—Of the right of search.—Of the principle that free ships should make free goods.—Of the inviolability of neutral territory.—Two questions, 1. Have vessels of war a right to bring their prizes into neutral ports and there expose them to sale? 2. Have neutral nations a right to enter into a commerce with a belligerent, which they did not enjoy in time of peace?

NATIONS are often necessarily engaged in wars, through the pride, jealousy, or ambition of foreign powers. And, not unfrequently, they mistake their own pas-

sions, and imaginary interests for just and reasonable causes of war. The organization, therefore, and direction of the national force, by which they may successfully repel injury, or retaliate aggression, is an important object of political philosophy.

Nations, even in managing their wars should remember that they are *men*. In the causes of their wars, therefore, they should be just; and in the conduct of them they should exercise all the humanity which is consistent with the nature of the contest, and the end to be attained by it. The civilization and refinement of modern times has tended to extinguish much of that ferocity and cruelty in the operations of war which were the disgrace of human nature in the barbarous ages.

On this subject, I shall propose to you a few principles on the just causes of war;—on the time and manner of commencing it;—on the means of carrying it on;—and on the method of terminating it.

OF THE CAUSES OF WAR.

The just causes of war may be stated, in general, to be the violation of any of the perfect rights of nations.

Inasmuch as all the citizens, or subjects of a state are considered to be under the protection of its power, and its laws, any unjust aggressions made on the persons or property of these, by the authority of another state, or

made by the subjects of another state, and refused to be redressed after proper application made for the purpose by the government of that nation whose citizens have been injured, may be deemed a reasonable cause of war.

If a nation is found arming, and putting itself in a threatening posture of offence, and refuses to desist, or to give an amicable explanation of its conduct to another which has probable grounds for apprehending some meditated aggression on its safety, or its rights, this state of hostile preparation has been held by writers on the law of nations to be a justifiable cause of war.

ON THE TIME AND MANNER OF COMMENCING WAR.

War, which is accompanied by so many calamities to mankind, ought seldom to be undertaken till every pacific measure has been tried in vain to obtain redress of injuries actually received, or satisfaction with regard to those dangers which are justly apprehended. One exception there is to this principle. When sufficient reason has been given to believe that all application will be fruitless to a predetermined enemy; and delay will only be yielding him greater advantages to commence an attack with success, in such case, the injured party may strike his blow whenever he finds it most convenient for himself.

Formerly it was customary to precede hostilities by a public declaration of war, and some nations have accom-

panied this transaction with ceremonies of great formality.* This practice has been growing into disuse among the nations of Europe. And it is now only necessary that each state take the most early means of apprizing its own citizens of the state of hostility in which they are placed. The people of the United States will always be apprized of it by the act which engages the nation in war: for it can be undertaken only in consequence of a solemn decree of Congress. By this wise provision of our constitution, the people are defended in the best possible manner, from the risk of unnecessary wars, which usually spring, either from the mistaken pride and ambition of princes, or the inconsiderate passions of a heated populace.

ON THE MEANS OF CARRYING ON WAR.

The means of justifiable hostility and offence, are all weapons of injury, and methods of compulsion and force, which can tend most effectually to weaken and subdue an enemy, and to bring him, at length, to reasonable terms of pacification. Reparation of injuries, and restoration of peace upon equitable terms are the legitimate objects of every just and reasonable war; and no measures of violence will be permitted by a magnanimous people which

* The Romans sent a herald to the enemy's borders to demand redress and, if they did not obtain the satisfaction they expected within thirty days, the herald returned, and hurled a spear into their territory in token of defiance, or as a denunciation of hostility.

do not directly contribute to these ends. Every mean of inspiring terror, or inflicting death in the ardor of battle is allowable in an enemy. But all unnecessary acts of cruelty, such as the use of poisoned weapons, poisoning springs or provisions, refusing quarters to a vanquished enemy, or, after laying down their arms, reducing them to slavery, compelling them to fight against their country, or oppressing them by a rigorous confinement, are as abhorrent from true magnanimity, as from true humanity.

Individuals ought not to be considered as culpable in any war. They are entitled, therefore, when in our power, to all possible lenity, and to the exercise of all the ordinary sympathies of humanity. On the same principles, all devastations committed on the property of unarmed husbandmen, peaceably pursuing the labors of the field, are unwarrantable. This is making war on human nature, not on an enemy. These acts of wanton devastation are not less unwise, than unjust; by destroying the means of subsistence which, in the end, may become necessary to the destroyers themselves. One exception may be imagined to this rule. When a general has it in his power, by destroying the provisions of a country, to impede the dangerous course of a victorious enemy. Such an action, however, can be justified only on the principle of self-preservation.

Attacking and plundering, by private vessels of war, the peaceable merchants of an enemy nation pursuing their customary and innocent traffic, ought to be condemned, on the same grounds. Acts of this kind tend to involve individuals in distress and ruin, but contribute little or nothing to impair the public force of the enemy, or to determine the issue of the war. Some attempts have, within a few years, been made by different powers to limit, or put an end to this odious and iniquitous practice. But those generous nations have not yet been able to accomplish their humane and equitable purposes. And privateering, which, in its principle, is nothing less than the most cruel and unjust species of plunder and robbery, still remains, under a few limitations as to the precautions and forms necessary in commissioning the vessels, and condemning the prizes, the reproach of the policy, and humanity of modern times.

All acts by which a state endeavors to revenge on innocent, and unoffending individuals the injustice of their government, is equally iniquitous and impolitic. Therefore, confiscating, or sequestrating the property which foreigners may hold in its public funds, or in the hands of private debtors, or seizing on the vessels of their merchants which may be in its harbors at the commencement of a war, instead of being a justifiable mean of offence, is a shameful violation of national faith, and honor. These

funds were deposited, these debts were contracted, and these vessels entered its harbors under the protection of its laws ; and surely those laws cannot, either with good faith, or in good policy, be made a decoy for innocent foreigners who have honored it by confiding in its integrity and justice.

The nations of Europe, by the progressive refinement of their manners, are gradually mitigating the horrors of war. And some late treaties, particularly that between Prussia, and the United States of America, have introduced, on this subject, some of the most amiable and benevolent doctrines of the law of nature and nations. All the principles which have just been mentioned have been recognized in that treaty. And we have reason to hope that such generous efforts in favor of humanity, made under such high authority, will, in a course of time, tend to establish these benevolent principles on an immovable foundation.

ON THE METHOD OF TERMINATING WAR.

When empires are so extensive, as in the eastern quarter of the globe, that the ideas of a balance of power among its several nations cannot easily be framed, or realized, force alone generally impels, or limits the actions of despots. If war is terminated by conquest, which frequently happens, the victor has then an option, accord-

ing to the maxims which usually govern such states, of four possible ways of using his power; the first to exterminate the inhabitants; the second to reduce them to slavery. In both these cases the vacant lands are usually replenished by new subjects drawn from other parts of his dominions. In the third place, he may spare the people, only changing entirely their laws, institutions, and rulers, and subjecting them immediately to his own authority. Or, finally, he may suffer them to enjoy their laws, and their ancient customs; but, annexing them to the body of his empire, may impose upon them a perpetual tribute. The two former of these methods nothing can justify but power. The last is the most equitable, and, even for a despot, the part of the wisest policy.

But, where reason and policy preside at the termination of a war between independent nations, hostilities should be closed by treaty. And on this subject, the following principles ought sacredly to be respected. In order to facilitate propositions for peace, flags should be free, and the persons of those who bear them, inviolable. —All armistices ought to be proposed, and observed with perfect good faith.—If the injured nation, should prove superior in the war, she can only reasonably demand reparation for the injuries she has suffered, and indemnification, perhaps, for the expenses she has incurred in pursuing redress. Where a nation has discovered any peculiar

restlessness of disposition, and manifests an inclination, as well as possesses the power to disturb her neighbors, extraordinary securities may justly be demanded of her, for her future pacific intentions. On this principle cautionary fortresses within her territory may sometimes be required to be delivered up, to be garrisoned by the troops of the injured nation, or of some friendly and allied power, as a more effectual guard against future and sudden infractions of the present peace.

To the disgrace of human nature, reasonable terms of accommodation are hardly to be expected, except where nations are so nearly equal in strength, either by themselves, or their alliances, that equitable compromise is preferable to prolonged and fruitless contest; or where, on the other hand, they are surrounded by nations who have formed to themselves such a system, and *balance of power*, that they find a common interest in not suffering any one state to acquire too great a superiority over another, and too great a preponderance in the general scale.

We are prone to flatter the age in which we live on its superior advances in wisdom and virtue. But the improvements which have recently been introduced into the law of nations in Europe, and the reason which has presided in the treaties of her different powers, for more

than a century past, has been the result of their equality of force, and of the peculiar relations which have sprung out of their artificial adjustments of the balance of power, as much as of their progress either in science, or humanity.*

OF LAWS RELATIVE TO A STATE OF NEUTRALITY.

The rights and duties of neutral states form an important branch of the law of nations. It is particularly interesting to the United States of America while they hold their present relations to the other nations of the world. And it were much to be desired that we might always have enlightened statesmen wise enough to understand, and firm and prudent enough to maintain them.

The first duty of a neutral power, in any existing war, is to observe a perfect impartiality of conduct towards the nations which may be embarked in it.

This principle does not preclude a neutral from fulfilling, with good faith, the stipulations of pre-existing treaties, binding her to any definite supplies to be furnished to either of the parties at war. And complying with such engagements ought not to interrupt the amity

* Of this fact Bonaparte has given the world the most striking evidence since he has been able to break the European balance of power, and acquire for himself such a decided preponderance in the scale of empire.

subsisting between the neutral, and the opposite belligerent power;* unless the stipulated supplies go to such extent as, by reasonable construction, to destroy her right to the privileges of neutrality, and render her, in fact, a party in the war.

Van Bynkershoek and Vattel have both proposed a limitation to this principle, maintaining that if a war be manifestly unjust on the part of a nation to which certain succors have been stipulated, the stipulation is, by that circumstance, rendered void. In all other cases they contend for its obligation.—This decision of these eminent writers seems to lay a foundation for a very lax national morality. If it is lawful for a nation to judge of the justice of the cause of another, with whom she has federal engagements, before she is obliged to fulfil them, it were as well they had not been contracted. Where a government has an interest to decline complying with its engagements, it is not difficult to find reasons to justify its refusal. A wise people will always be cautious with

* A late example of this doctrine happened in the war between Russia and Sweden. [A. D. 1788] Denmark was bound by previous treaty to furnish to Russia a certain number of ships and troops. This stipulation she accordingly fulfilled without breaking her friendship with Sweden. Yet such treaties are generally dangerous in the issue, and ought rarely, if ever, to be entered into, except between nations who find it necessary for their common safety to form such reciprocal leagues.

regard to the obligations which they assume, and leave themselves at liberty, in the very terms of them, not to aid injustice. It is difficult for one people to estimate, with certainty, the justice of a war in which another may be involved. And a neutral nation has no right to pronounce upon the subject, or to discover by its conduct towards the parties, that it condemns the one, or justifies the other.

OF THE COMMERCE OF NEUTRAL NATIONS.

The citizens of a neutral state have a right to pursue a free and unmolested commerce with all countries, whether belligerent, or others. Nor is there any exception to this right, except with regard to military and naval stores intended for an enemy, or provisions going to a place that is actually besieged or blockaded. These prohibited articles are usually enumerated in treaties under the title of contraband.

The right of seizing, and confiscating contraband merchandize is connected with another right exercised by the ships of war of the belligerents, of stopping neutral vessels in their voyage, and detaining them for search. But because this right, when most prudently used, is necessarily vexatious and often highly injurious to the fair trader, it must be exercised at the peril of those who search; that is, if no contraband goods are found, those who have

presumed to interrupt a voyage, are made liable for all damages committed in the exercise of this right, and for all losses that shall result from the detention of the merchant.

Not only the goods denominated contraband, but all property of the enemy discovered on board of a neutral vessel, has hitherto, by the law of nations, been made liable to seizure. But this principle has often become the source of so many abuses, and is always attended with so much vexation to the fair trader, that some nations have, with great reason, attempted, in their late treaties, to correct the evil, by making the vessels of the contracting powers, when one may happen to be in the relation of neutrality, at the same time that the other is engaged in war, a sufficient protection to the freight universally. In whatever countries these treaties exist they form so many positive laws, in amendment of what has hitherto been acknowledged as the law of nature and nations on the subject. And happy would it be for the interests of the commercial world, and not unfavorable to the objects of legitimate warfare, if the principle were adopted by all nations that neutral bottoms shall be deemed a sufficient protection to the property which they convey.*

* The celebrated marine ordonnances of France issued 1681, amended in 1694 and 1704, and perfected in 1744, are calculated to ascertain by the best and clearest rules that ever were published, the genuineness of neutral vessels, and their cargoes.

A principle immediately connected with the preceding, in the law of nations, as it is now generally understood, is that the property of neutrals shall be free in the vessels of an enemy. For they have a right to make use of the assistance of their friends without fearing that it shall operate to their disadvantage.

Another acknowledged principle in this code is that neutral powers have the right, and are under obligation, to preserve their territories inviolate not only from the encroachments of those who are actually engaged in war, but from being used for any purpose of convenience against their enemies. And it is correspondently the duty of all belligerents to respect the limits of neutral jurisdiction. Within these limits an enemy cannot lawfully be attacked, nor a capture lawfully be made. If any such act of hostility is committed, it is incumbent on the neutral power to demand satisfaction from the aggressor, and to procure redress for those who have been injured while under its protection, or within its jurisdiction.

Some jurists have made one exception to this principle. If the vessel of an enemy has been attacked in the open sea, and flees for shelter within the jurisdiction of a neutral power, they maintain that the victor, in the ardor of contest, may pursue her within neutral limits, and capture her, provided there has been no intermission of the battle,

or pursuit; or, as Van Bynkershoek expresses himself, *dum fervet opus*. This is an exception which will be found very dangerous in practice. And the United States have judged better, who have given the cognizance of all captures made within their jurisdiction, to the district courts. But no vessel should be permitted to take refuge in a neutral harbor with the view of making preparations there to renew the contest. And, generally, all military equipments, or naval armaments made by any belligerent powers within the jurisdiction of neutrals, are contrary to the rights of neutrality. If a vessel of war, having suffered damages at sea, has been forced, by stress of weather, into the harbor of a neutral nation, she may be permitted to repair those damages; but must depart without making any other equipment.

A neutral nation may rightfully prohibit all vessels of war entering her harbors, if she conceives the general interests of her peace and safety require it, except when, compelled by the dangers of the sea, they find themselves obliged to take refuge within them for a short, and limited time. If no such prohibition exists, vessels of force, as well as merchant ships belonging to different powers at war may, consistently with the law of nations, use the harbors of a neutral state as an assylum in cases of imminent danger, or as convenient stages of refreshment in long and hazardous voyages. But, in no case shall they

be permitted to use this right merely for the purpose of lying in wait for their enemy, or gaining a favorable opportunity to attack him with advantage.

In order the more effectually to preserve an impartial neutrality, and to save the rights of assylum and hospitality from being abused to subserve any hostile purpose, the United States have wisely ordained that, if any armed vessel belonging to a belligerent nation, depart from any harbor within the limits of these States, no armed vessel belonging to a hostile power, being within the same harbor at the time, shall depart until twenty-four hours after the former: otherwise she shall be deemed to have violated the law of nations.

Two questions remain to be decided on this subject; the first is, have the citizens or subjects of belligerent states a right to bring their prizes into neutral ports, and expose them there to sale?—And the second; has a neutral nation a right to enter into a commerce with one of the belligerents, in time of war, to which she had not been admitted in time of peace?

To the former of these questions, I answer that a neutral ought equally to grant or refuse the privilege to all the powers at war; unless she is already bound to some certain rule of conduct on the subject in pre-existing treaties. If she has not antecedently laid herself under

any obligation, the safest rule is to refuse the privilege to all. Mr Valin, in his *commentaire sur l'ordonnance de la marine du* 1681, *tome* 2. 272—277, asserts in strong and positive terms, that an impartial neutrality forbids not only the selling of prizes in a neutral port, but even the introduction of them, except it be through stress of weather, and as long as that stress continues; or for some convenience in navigation, in which case, they ought not to be permitted to remain longer than twenty-four hours; that being a sufficient time to fulfil all the necessary purposes of mere convenience. "As neutrality, says he, towards two nations at war does not permit us to favor one, to the prejudice of the other, in order to conciliate this object with the right of assylum, nations have tacitly agreed, and custom has rendered it a common right, that an assylum should be given to foreign vessels of war, with their prizes—that is to say, if they have entered a port, being forced by a tempest, and as long as the tempestuous weather will not permit them again to put out to sea;—but only for twenty-four hours, if they have entered for any other cause.—Excepting the case of a tempest, if vessels are in a condition to sail, the neutral power is under an obligation to cause them to depart within twenty-four hours; *otherwise it would be a violation of its neutrality.* These observations, he adds, regard only *vessels of war, with their prizes*, and not those

vessels which, without prizes, take refuge in a neutral harbor from the pursuit of an enemy, or enter it for any other cause."

To the second question I reply, that independent nations always possess the right of making commercial arrangements with one another, whether in time of peace, or of war; these arrangements, however, being subject to those just restrictions which have been already pointed out, and admitted to take place in neutral trade, in time of war. The English nation, indeed, in the confidence of their great maritime power, have denied this right, under the pretence, that it is covering the property of an enemy under the privileges of a neutral commerce.*

Finally, as the spirit of commerce tends in a great degree to mitigate the ferocity of war, and so many improvements have, by this means, been actually introduced into the former barbarous code, during the last two centuries, the extension of neutral privileges will be found to contribute to the interest and happiness of mankind.—They merit the attentive study, and the firm support of every American statesman.

* Lord Hawkesbury's *discourse on the conduct of Great Britain in respect to neutral nations*—page 18.

END OF THE SECOND VOLUME.

The reader is requested to correct the following errors.

Vol. 1. p. 19, l. 1, *divers* for *diversity*.
—— p. 86, l. 2, *officers* for *offices*.
—— p. 87, l. 6, insert *an* before *unsuspecting*.
—— p. 116, l. 16, after *obscurity*, insert, *among the people*.
—— —— l. 17, after *adhered to* insert *by the priests*.
—— p. 124, l. 15, *external* for *internal*.
—— p. 152, l. 3, *ascitancy* for *excitement*.
—— p. 166, l. 18, after *firmer* insert *hold*.
—— p. 241, l. 1, strike out *As*.
Vol. 2. p. 48, l. 17, *has* for *have*.
—— p. 57, note, *Greco* for *Graeco*.
—— —— *denigue* for *denique*.
—— —— *atgue* for *atque*.
—— p. 57, l. 13, *behold* for *beheld*.
—— p. 60, l. 2 from bottom, *ingenions* for *ingenious*.
—— p. 77, l. 4 from bottom, *a it* for *a pit*.
—— p. 102, l. 5 from bottom, *Cheruna* for *Cheronea*.