

THE MAN VERSUS THE STATE

With Six Essays on
Government, Society, and Freedom

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LibertyClassics

INDIANAPOLIS

THE GREAT POLITICAL SUPERSTITION

The great political superstition of the past was the divine right of kings. The great political superstition of the present is the divine right of parliaments. The oil of anointing seems unawares to have dripped from the head of the one on to the heads of the many, and given sacredness to them also and to their decrees.

However irrational we may think the earlier of these beliefs, we must admit that it was more consistent than is the latter. Whether we go back to times when the king was a god, or to times when he was a descendant of a god, or to times when he was god-appointed, we see good reason for passive obedience to his will. When, as under Louis XIV, theologians like Bossuet taught that kings "are gods, and share in a manner the Divine independence," or when it was thought, as by our own Tory party in old days, that "the monarch was the delegate of heaven"; it is clear that, given the premise, the inevitable conclusion was that no bounds could be set

to governmental commands. But for the modern belief such a warrant does not exist. Making no pretention to divine descent or divine appointment, a legislative body can show no supernatural justification for its claim to unlimited authority; and no natural justification has ever been attempted. Hence, belief in its unlimited authority is without that consistency which of old characterized belief in a king's unlimited authority.

It is curious how commonly men continue to hold in fact, doctrines which they have rejected in name—retaining the substance after they have abandoned the form. In Theology an illustration is supplied by Carlyle, who, in his student days, giving up, as he thought, the creed of his fathers, rejected its shell only, keeping the contents; and was proved by his conceptions of the world, and man, and conduct, to be still among the sternest of Scotch Calvinists. Similarly, Science furnishes an instance in one who united naturalism in Geology with supernaturalism in Biology—Sir Charles Lyell. While, as the leading expositor of the uniformitarian theory in Geology, he ignored only the Mosaic cosmogony, he long defended that belief in special creations of organic types, for which no other source than the Mosaic cosmogony could be assigned; and only in the latter part of his life surrendered to the arguments of Mr. Darwin. In Politics, as above implied, we have an analogous case. The tacitly-asserted doctrine, common to Tories, Whigs, and Radicals, that governmental authority is unlimited, dates back to times when the law-giver was supposed to have a warrant from God; and it survives still, though the belief that the law-giver has God's warrant has died

out. "Oh, an Act of Parliament can do anything," is the reply made to a citizen who questions the legitimacy of some arbitrary State-interference; and the citizen stands paralysed. It does not occur to him to ask the how, and the when, and the whence, of this asserted omnipotence bounded only by physical impossibilities.

Here we will take leave to question it. In default of the justification, once logically valid, that the ruler on Earth being a deputy of the ruler in Heaven, submission to him in all things is a duty, let us ask what reason there is for asserting the duty of submission in all things to a ruling power, constitutional or republican, which has no Heavenly-derived supremacy. Evidently this inquiry commits us to a criticism of past and present theories concerning political authority. To revive questions supposed to be long since settled, may be thought to need some apology; but there is a sufficient apology in the implication above made clear, that the theory commonly accepted is ill-based or unbased.

The notion of sovereignty is that which first presents itself; and a critical examination of this notion, as entertained by those who do not assume the supernatural origin of sovereignty, carries us back to the arguments of Hobbes.

Let us grant Hobbes's postulate that, "during the time men live without a common power to keep them all in awe, they are in that condition which is called war . . . of every man against every man"¹; though this is not

¹ T. Hobbes, *Collected Works*, vol. iii, pp. 112-13.

true, since there are some small uncivilized societies in which, without any "common power to keep them all in awe," men maintain peace and harmony better than it is maintained in societies where such a power exists. Let us suppose him to be right, too, in assuming that the rise of a ruling man over associated men, results from their desires to preserve order among themselves; though, in fact, it habitually arises from the need for subordination to a leader in war, defensive or offensive, and has originally no necessary, and often no actual, relation to the preservation of order among the combined individuals. Once more, let us admit the indefensible assumption that to escape the evils of chronic conflicts, which must otherwise continue among them, the members of a community enter into a "pact or covenant," by which they all bind themselves to surrender their primitive freedom of action, and subordinate themselves to the will of an autocrat agreed upon:² accepting, also, the implication that their descendants for ever are bound by the covenant which remote ancestors made for them. Let us, I say, not object to these data, but pass to the conclusions Hobbes draws. He says:

For where no covenant hath preceded, there hath no right been transferred, and every man has a right to everything; and consequently, no action can be unjust. But when a covenant is made, then to break it is *unjust*: and the definition of INJUSTICE, is no other than *the not performance of covenant*. . . . Therefore before the names of just and unjust can have place, there must be some coercive power, to compel men equally to the performance of their covenants, by the terror of some punishment,

² *ibid.*, p. 159.

greater than the benefit they expect by the breach of their covenant.³

Were people's characters in Hobbes's day really so bad as to warrant his assumption that none would perform their covenants in the absence of a coercive power and threatened penalties? In our day "the names of just and unjust can have place" quite apart from recognition of any coercive power. Among my friends I could name several whom I would implicitly trust to perform their covenants without any "terror of such punishment"; and over whom the requirements of justice would be as imperative in the absence of a coercive power as in its presence. Merely noting, however, that this unwarranted assumption vitiates Hobbes's argument for State-authority, and accepting both his premises and conclusion, we have to observe two significant implications. One is that State-authority as thus derived, is a means to an end, and has no validity save as subserving that end: if the end is not subserved, the authority, by the hypothesis, does not exist. The other is that the end for which the authority exists, as thus specified, is the enforcement of justice—the maintenance of equitable relations. The reasoning yields no warrant for other coercion over citizens than that which is required for preventing direct aggressions, and those indirect aggressions constituted by breaches of contract; to which, if we add protection against external enemies, the entire function implied by Hobbes's derivation of sovereign authority is comprehended.

³ Hobbes, *Collected Works*, vol. iii, pp. 130–31.

Hobbes argued in the interests of absolute monarchy. His modern admirer, Austin, had for his aim to drive the authority of law from the unlimited sovereignty of one man, or a number of men, small or large compared with the whole community. Austin was originally in the army; and it has been truly remarked that "the permanent traces left" may be seen in his *Province of Jurisprudence*. When, undeterred by the exasperating pedantries—the endless distinctions and definitions and repetitions—which served but to hide his essential doctrines, we ascertain what these are, it becomes manifest that he assimilates civil authority to military authority; taking for granted that the one, as the other, is above question in respect of both origin and range. To get justification for positive law, he takes us back to the absolute sovereignty of the power imposing it—a monarch, an aristocracy, or that larger body of men who have votes in a democracy; for such a body also, he styles the sovereign, in contrast with the remaining portion of the community which, from incapacity or other cause, remains subject. And having affirmed, or rather, taken for granted, the unlimited authority of the body, simple or compound, small or large, which he styles sovereign, he, of course, has no difficulty in deducing the legal validity of its edicts, which he calls positive law. But the problem is simply moved a step further back and there left unsolved. The true question is—Whence the sovereignty? What is the assignable warrant for this unqualified supremacy assumed by one, or by a small number, or by a large number, over the rest? A critic might fitly say—"We will dispense with your process of deriving positive law from

unlimited sovereignty: the sequence is obvious enough. But first prove your unlimited sovereignty."

To this demand there is no response. Analyse his assumption, and the doctrine of Austin proves to have no better basis than that of Hobbes. In the absence of admitted divine descent or appointment, neither single-headed ruler nor many-headed ruler can produce such credentials as the claim to unlimited sovereignty implies.

"But surely," will come in deafening chorus the reply, "there is the unquestionable right of the majority, which gives unquestionable right to the parliament it elects."

Yes, now we are coming down to the root of the matter. The divine right of parliaments means the divine right of majorities. The fundamental assumption made by legislators and people alike, is that a majority has powers which have no bounds. This is the current theory which all accept without proof as a self-evident truth. Nevertheless, criticism will, I think, show that this current theory requires a radical modification.

In an essay on "Railway Morals and Railway Policy," published in the *Edinburgh Review* for October, 1854, I had occasion to deal with the question of a majority's powers as exemplified in the conduct of public companies; and I cannot better prepare the way for conclusions presently to be drawn, than by quoting a passage from it:

Under whatever circumstances, or for whatever ends, a number of men cooperate, it is held that if difference of opinion arises among them, justice requires that the will of the greater number shall be executed rather than that of the smaller num-

ber; and this rule is supposed to be uniformly applicable, be the question at issue what it may. So confirmed is this conviction, and so little have the ethics of the matter been considered, that to most this mere suggestion of a doubt will cause some astonishment. Yet it needs but a brief analysis to show that the opinion is little better than a political superstition. Instances may readily be selected which prove, by *reductio ad absurdum*, that the right of a majority is a purely conditional right, valid only within specific limits. Let us take a few. Suppose that at the general meeting of some philanthropic association, it was resolved that in addition to relieving distress the association should employ home-missionaries to preach down popery. Might the subscriptions of Catholics, who had joined the body with charitable views, be rightfully used for this end? Suppose that of the members of a book-club, the greater number, thinking that under existing circumstances rifle-practice was more important than reading, should decide to change the purpose of their union, and to apply the funds in hand for the purchase of powder, ball, and targets. Would the rest be bound by this decision? Suppose that under the excitement of news from Australia, the majority of a Freehold Land Society should determine, not simply to start in a body for the gold-diggings, but to use their accumulated capital to provide outfits. Would this appropriation of property be just to the minority? and must these join the expedition? Scarcely anyone would venture an affirmative answer even to the first of these questions; much less to the others. And why? Because everyone must perceive that by uniting himself with others, no man can equitably be betrayed into acts utterly foreign to the purpose for which he joined them. Each of these supposed minorities would properly reply to those seeking to coerce them: "We combined with you for a defined object; we gave money and time for the furtherance of that object; on all questions thence arising we tacitly agreed to conform to the will of the greater number; but we did not agree to conform on any other questions. If you induce us to join you by professing a certain end, and then undertake some other end of which we were not apprised, you obtain our support under false pretences; you exceed the expressed or understood compact to which we committed ourselves; and we are no longer bound by your decisions." Clearly this is the only

rational interpretation of the matter. The general principle underlying the right government of every incorporated body, is, that its members contract with one another severally to submit to the will of the majority in all matters concerning the fulfilment of the objects for which they are incorporated; but in no others. To this extent only can the contract hold. For as it is implied in the very nature of a contract, that those entering into it must know what they contract to do; and as those who unite with others for a specified object, cannot contemplate all the unspecified objects which it is hypothetically possible for the union to undertake; it follows that the contract entered into cannot extend to such unspecified objects. And if there exists no expressed or understood contract between the union and its members respecting unspecified objects, then for the majority to coerce the minority into undertaking them, is nothing less than gross tyranny.

Naturally, if such a confusion of ideas exists in respect of the powers of a majority where the deed of incorporation tacitly limits those powers, still more must there exist such a confusion where there has been no deed of incorporation. Nevertheless the same principle holds. I again emphasize the proposition that the members of an incorporated body are bound "*severally to submit to the will of the majority in all matters concerning the fulfilment of the objects for which they are incorporated; but in no others.*" And I contend that this holds of an incorporated nation as much as of an incorporated company.

"Yes, but," comes the obvious rejoinder, "as there is no deed by which the members of a nation are incorporated—as there neither is, nor ever was, a specification of purposes for which the union was formed, there exist no limits; and, consequently, the power of the majority is unlimited."

Evidently it must be admitted that the hypothesis of

a social contract, either under the shape assumed by Hobbes or under the shape assumed by Rousseau, is baseless. Nay more, it must be admitted that even had such a contract once been formed, it could not be binding on the posterity of those who formed it. Moreover, if any say that in the absence of those limitations to its powers which a deed of incorporation might imply, there is nothing to prevent a majority from imposing its will on a minority by force, assent must be given—an assent, however, joined with the comment that if the superior force of the majority is its justification, then the superior force of a despot backed by an adequate army, is also justified; the problem lapses. What we here seek is some higher warrant for the subordination of minority to majority than that arising from inability to resist physical coercion. Even Austin, anxious as he is to establish the unquestionable authority of positive law, and assuming, as he does, an absolute sovereignty of some kind, monarchic, aristocratic, constitutional, or popular, as the source of its unquestionable authority, is obliged, in the last resort, to admit a moral limit to its action over the community. While insisting, in pursuance of his rigid theory of sovereignty, that a sovereign body originating from the people “is *legally* free to abridge their political liberty, at its own pleasure or discretion,” he allows that “a government may be hindered by *positive morality* from abridging the political liberty which it leaves or grants to its subjects.”⁴ Hence, we have to find, not a physical justification, but a moral justification, for the supposed absolute power of the majority.

⁴ *The Province of Jurisprudence Determined*. Second Edition, p. 241.

This will at once draw forth the rejoinder—"Of course, in the absence of any agreement, with its implied limitations, the rule of the majority is unlimited; because it is more just that the majority should have its way than that the minority should have its way." A very reasonable rejoinder this seems until there comes the re-rejoinder. We may oppose to it the equally tenable proposition that, in the absence of an agreement, the supremacy of a majority over a minority does not exist at all. It is cooperation of some kind, from which there arises these powers and obligations of majority and minority; and in the absence of any agreement to cooperate, such powers and obligations are also absent.

Here the argument apparently ends in a deadlock. Under the existing condition of things, no moral origin seems assignable, either for the sovereignty of the majority or for the limitation of its sovereignty. But further consideration reveals a solution of the difficulty. For if, dismissing all thought of any hypothetical agreement to cooperate heretofore made, we ask what would be the agreement into which citizens would now enter with practical unanimity, we get a sufficiently clear answer; and with it a sufficiently clear justification for the rule of the majority inside a certain sphere but not outside that sphere. Let us first observe a few of the limitations which at once become apparent.

Were all Englishmen now asked if they would agree to cooperate for the teaching of religion, and would give the majority power to fix the creed and the forms of worship, there would come a very emphatic "No" from a large part of them. If, in pursuance of a proposal to revive sumptuary laws, the inquiry were made whether

they would bind themselves to abide by the will of the majority in respect of the fashions and qualities of their clothes, nearly all of them would refuse. In like manner if (to take an actual question of the day) people were polled to ascertain whether, in respect of the beverages they drank, they would accept the decision of the greater number, certainly half, and probably more than half, would be unwilling. Similarly with respect to many other actions which most men now-a-days regard as of purely private concern. Whatever desire there might be to cooperate for carrying on, or regulating, such actions, would be far from a unanimous desire. Manifestly, then, had social cooperation to be commenced by ourselves, and had its purposes to be specified before consent to cooperate could be obtained, there would be large parts of human conduct in respect of which cooperation would be declined; and in respect of which, consequently, no authority by the majority over the minority could be rightly exercised.

Turn now to the converse question—For what ends would all men agree to cooperate? None will deny that for resisting invasion the agreement would be practically unanimous. Excepting only the Quakers, who, having done highly useful work in their time, are now dying out, all would unite for defensive war (not, however, for offensive war); and they would, by so doing, tacitly bind themselves to conform to the will of the majority in respect of measure directed to that end. There would be practical unanimity, also, in the agreement to cooperate for defence against internal enemies as against external enemies. Omitting criminals, all must wish to have per-

son and property adequately protected. Each citizen desires to preserve his life, to preserve things which conduce to maintenance and enjoyment of his life, and to preserve intact his liberties both of using these things and getting further such. It is obvious to him that he cannot do all this if he acts alone. Against foreign invaders he is powerless unless he combines with his fellows; and the business of protecting himself against domestic invaders, if he did not similarly combine, would be alike onerous, dangerous, and inefficient. In one other cooperation all are interested—use of the territory they inhabit. Did the primitive communal ownership survive, there would survive the primitive communal control of the uses to be made of land by individuals or by groups of them; and decisions of the majority would rightly prevail respecting the terms on which portions of it might be employed for raising food, making means of communication, and for other purposes. Even at present, though the matter has been complicated by the growth of private landownership, yet, since the State is still supreme owner (every landlord being in law a tenant of the Crown) able to resume possession, or authorize compulsory purchase, at a fair price; the implication is that the will of the majority is valid respecting the modes in which, and conditions under which, parts of the surface or subsurface, may be utilized: involving certain agreements made on behalf of the public with private persons and companies.

Details are not needful here; nor is it needful to discuss that border region lying between these two classes of cases, and to say how much is included in the last and

how much is excluded with the first. For present purposes, it is sufficient to recognize the undeniable truth that there are numerous kinds of actions in respect of which men would not, if they were asked, agree with anything like unanimity to be bound by the will of the majority; while there are some kinds of actions in respect of which they would almost unanimously agree to be thus bound. Here, then, we find a definite warrant for enforcing the will of the majority within certain limits, and a definite warrant for denying the authority of its will beyond those limits.

But evidently, when analysed, the question resolves itself into the further question—What are the relative claims of the aggregate and of its units? Are the rights of the community universally valid against the individual? or has the individual some rights which are valid against the community? The judgement given on this point underlies the entire fabric of political convictions formed, and more especially those convictions which concern the proper sphere of government. Here, then, I propose to revive a dormant controversy, with the expectation of reaching a different conclusion from that which is fashionable.

Says Professor Jevons, in his work, *The State in Relation to Labour*,—"The first step must be to rid our minds of the idea that there are any such things in social matters as abstract rights." Of like character is the belief expressed by Mr. Matthew Arnold in his article on Copyright: "An author has no natural right to a property in

his production. But then neither has he a natural right to anything whatever which he may produce or acquire."⁵ So, too, I recently read in a weekly journal of high repute, that "to explain once more that there is no such thing as "natural right" would be a waste of philosophy." And the view expressed in these extracts is commonly uttered by statesmen and lawyers in a way implying that only the unthinking masses hold any other.

One might have expected that utterances to this effect would have been rendered less dogmatic by the knowledge that a whole school of legists on the Continent, maintains a belief diametrically opposed to that maintained by the English school. The idea of *Natur-recht* is the root-idea of German jurisprudence. Now whatever may be the opinion held respecting German philosophy at large, it cannot be characterized as shallow. A doctrine current among a people distinguished above all others as laborious inquiries, and certainly not to be classed with superficial thinkers, should not be dismissed as though it were nothing more than a popular delusion. This, however, by the way. Along with the proposition denied in the above quotations, there goes a counter-proposition affirmed. Let us see what it is; and what results when we go behind it and seek its warrant.

On reverting to Bentham, we find this counter-proposition openly expressed. He tells us that government fulfils its office "by creating rights which it confers upon

⁵ *Fortnightly Review*, 1880, vol. xxvii, p. 322.

individuals: rights of personal security; rights of protection for honour; rights of property" etc.⁶; Were this doctrine asserted as following from the divine right of kings, there would be nothing in it manifestly incongruous, did it come to us from ancient Peru, where the Ynca "was the source from which everything flowed"⁷; or from Shoa (Abyssinia), where "of their persons and worldly substance he [the King] is absolute master"⁸; or from Dahome, where "all men are slaves to the king"⁹; it would be consistent enough. But Bentham, far from being an absolutist like Hobbes, wrote in the interests of popular rule. In his *Constitutional Code*¹⁰ he fixes the sovereignty in the whole people; arguing that it is best "to give the sovereign power to the largest possible portion of those whose greatest happiness is the proper and chosen object," because "this proportion is more apt than any other that can be proposed" for achievement of that object.

Mark, now, what happens when we put these two doctrines together. The sovereign people jointly appoint representatives, and so create a government; the government thus created, creates rights; and then, having created rights, it confers them on the separate members of the sovereign people by which it was itself created. Here is a marvellous piece of political legerdemain! Mr. Matthew Arnold, contending, in the article above

⁶ Bentham's Works (Bowring's edition), vol. i, p. 301.

⁷ W. H. Prescott, *Conquest of Peru*, bk i, ch. i.

⁸ J. Harris, *Highlands of Æthiopia*, ii, 94.

⁹ R. F. Burton, *Mission to Gelele, King of Dahome*, i, p. 226.

¹⁰ Bentham's Works, vol. ix, p. 97.

quoted, that "property is the creation of law," tells us to beware of the "metaphysical phantom of property in itself." Surely, among metaphysical phantoms the most shadowy is this which supposes a thing to be obtained by creating an agent, which creates the thing, and then confers the thing on its own creator!

From whatever point of view we consider it, Bentham's proposition proves to be unthinkable. Government, he says, fulfils its office "by creating rights." Two meanings may be given to the word "creating." It may be supposed to mean the production of something out of nothing; or it may be supposed to mean the giving form and structure to something which already exists. There are many who think that the production of something out of nothing cannot be conceived as effected even by omnipotence; and probably none will assert that the production of something out of nothing is within the competence of a human government. The alternative conception is that a human government creates only in the sense that it shapes something pre-existing. In that case, the question arises—"What is the something pre-existing which it shapes?" Clearly the word "creating" begs the whole question—passes off an illusion on the unwary reader. Bentham was a stickler for definiteness of expression, and in his *Book of Fallacies* has a chapter on "Impostor-terms." It is curious that he should have furnished so striking an illustration of the perverted belief which an impostor-term may generate.

But now let us overlook these various impossibilities of thought, and seek the most defensible interpretation of Bentham's view.

It may be said that the totality of all powers and rights, originally exists as an undivided whole in the sovereign people; and that this undivided whole is given in trust (as Austin would say) to a ruling power, appointed by the sovereign people, for the purpose of distribution. If as we have seen, the proposition that rights are created is simply a figure of speech; then the only intelligible construction of Bentham's view is that a multitude of individuals, who severally wish to satisfy their desires, and have, as an aggregate, possession of all the sources of satisfaction, as well as power over all individual actions, appoint a government, which declares the ways in which, and the conditions under which, individual actions may be carried on and the satisfactions obtained. Let us observe the implications. Each man exists in two capacities. In his private capacity he is subject to the government. In his public capacity he is one of the sovereign people who appoint the government. That is to say, in his private capacity he is one of those to whom rights are given; and in his public capacity he is one of those who, through the government they appoint, give the rights. Turn this abstract statement into a concrete statement, and see what it means. Let the community consist of a million men, who, by the hypothesis, are not only joint possessors of the inhabited region, but joint possessors of all liberties of action and appropriation: the only right recognized being that of the aggregate to everything. What follows? Each person, while not owning any product of his own labour, has, as a unit in the sovereign body, a millionth part of the ownership of the products of all others' labour. This is an unavoidable

implication. As the government, in Bentham's view, is but an agent; the rights it confers are rights given to it in trust by the sovereign people. If so, such rights must be possessed *en bloc* by the sovereign people before the government, in fulfilment of its trust, confers them on individuals; and, if so, each individual has a millionth portion of these rights in his public capacity, while he has no rights in his private capacity. These he gets only when all the rest of the million join to endow him with them; while he joins to endow with them every other member of the million!

Thus, in whatever way we interpret it, Bentham's proposition leaves us in a plexus of absurdities.

Even though ignoring the opposite opinion of German and French writers on jurisprudence, and even without an analysis which proves their own opinion to be untenable, Bentham's disciples might have been led to treat less cavalierly the doctrine of natural rights. For sundry groups of social phenomena unite to prove that this doctrine is well warranted, and the doctrine they set against it unwarranted.

Tribes all over the world show us that before definite government arises, conduct is regulated by customs. The Bechuanas are controlled by "long-acknowledged customs."¹¹ Among the Korranna Hottentots, who only "tolerate their chiefs rather than obey them,"¹² "when ancient usages are not in the way, every man seems to

¹¹ W. J. Burchell, *Travels into the Interior of Southern Africa*, vol. i, p. 544.

¹² Arbousset and Dumas, *Voyage of Exploration*, p. 27.

act as is right in his own eyes."¹³ The Araucanians are guided by "nothing more than primordial usages or tacit conventions."¹⁴ Among the Kirghizes the judgements of the elders are based on "universally-recognized customs."¹⁵ Similarly of the Dyaks, Rajah Brooke says that "custom seems simply to have become the law; and breaking custom leads to a fine."¹⁶ So sacred are immemorial customs with the primitive man, that he never dreams of questioning their authority; and when government arises, its power is limited by them. In Madagascar the king's word suffices only "where there is no law, custom, or precedent."¹⁷ Raffles tells us that in Java "the customs of the country"¹⁸ restrain the will of the ruler. In Sumatra, too, the people do not allow their chiefs to "alter their ancient usages."¹⁹ Nay, occasionally, as in Ashantee, "the attempt to change some customs" has caused a king's dethronement.²⁰ Now, among the customs which we thus find to be pre-governmental, and which subordinate governmental power when it is established, are those which recognize certain individual rights—rights to act in certain ways and possess certain things. Even where the recognition of property is least developed, there is proprietorship of weapons, tools,

¹³ G. Thompson, *Travels and Adventures in Southern Africa*, vol. ii, p. 30.

¹⁴ G. A. Thompson, *Alcedo's Geographical and Historical Dictionary of America*, vol. i, p. 405.

¹⁵ Alex. Michie, *Siberian Overland Route*, p. 248.

¹⁶ C. Brooke, *Ten Years in Sarawak*, vol. i, p. 129.

¹⁷ W. Ellis, *History of Madagascar*, vol. i, p. 377.

¹⁸ Sir T. S. Raffles, *History of Java*, i, 274.

¹⁹ W. Marsden, *History of Sumatra*, p. 217.

²⁰ J. Beecham, *Ashantee and the Gold Coast*, p. 90.

and personal ornaments; and, generally, the recognition goes far beyond this. Among such North American Indians as the Snakes, who are without Government, there is private ownership of horses. By the Chippewayans, "who have no regular government," game taken in private traps "is considered as private property."²¹ Kindred facts concerning huts, utensils, and other personal belongings, might be brought in evidence from accounts of the Ahts, the Comanches, the Esquimaux, and the Brazilian Indians. Among various uncivilized peoples, custom has established the claim to the crop grown on a cleared plot of ground, though not to the ground itself; and the Todas, who are wholly without political organization, make a like distinction between ownership of cattle and of land. Kolff's statement respecting "the peaceful Arafuras" well sums up the evidence. They "recognize the right of property in the fullest sense of the word, without there being any [other] authority among them than the decisions of their elders, according to the customs of their forefathers."²² But even without seeking proofs among the uncivilized, sufficient proofs are furnished by early stages of the civilized. Bentham and his followers seem to have forgotten that our own common law is mainly an embodiment of "the customs of the realm." It did not give definite shape to that which it found existing. Thus, the fact and the fiction are exactly opposite to what they allege. The fact is that property was well recognized before law existed; the fiction is that "property is the creation of law." These writers and

²¹ H. R. Schoolcraft, *Expedition to the Sources of the Mississippi River*, v, 177.

²² G. W. Earl's *Kolff's Voyage of the Dourga*, p. 161.

statesmen who with so much scorn undertake to instruct the ignorant herd, themselves stand in need of instruction.

Considerations of another class might alone have led them to pause. Were it true, as alleged by Bentham, that Government fulfils its office "by creating rights which it confers on individuals"; then, the implication would be, that there should be nothing approaching to uniformity in the rights conferred by different governments. In the absence of a determining cause over-ruling their decisions, the probabilities would be many to one against considerable correspondence among their decisions. But there is very great correspondence. Look where we may, we find that governments interdict the same kinds of aggressions; and, by implication, recognize the same kinds of claims. They habitually forbid homicide, theft, adultery: thus asserting that citizens may not be trespassed against in certain ways. And as society advances, minor individual claims are protected by giving remedies for breach of contract, libel, false witness, etc. In a word, comparisons show that though codes of law differ in their details as they become elaborated, they agree in their fundamentals. What does this prove? It cannot be by chance that they thus agree. They agree because the alleged creating of rights was nothing else than giving formal sanction and better definition to those assertions of claims and recognitions of claims which naturally originate from the individual desires of men who have to live in presence of one another.

Comparative Sociology discloses another group of facts having the same implication. Along with social

progress it becomes in an increasing degree the business of the State, not only to give formal sanction to men's rights, but also to defend them against aggressors. Before permanent government exists, and in many cases after it is considerably developed, the rights of each individual are asserted and maintained by himself, or by his family. Alike among savage tribes at present, among civilized peoples in the past, and even now in unsettled parts of Europe, the punishment for murder is a matter of private concern; "the sacred duty of blood revenge" devolves on some one of a cluster of relatives. Similarly, compensations for aggressions on property and for injuries of other kinds, are in early states of society independently sought by each man or family. But as social organization advances, the central ruling power undertakes more and more to secure to individuals their personal safety, the safety of their possessions, and, to some extent, the enforcement of their claims established by contract. Originally concerned almost exclusively with defence of the society as a whole against other societies, or with conducting its attacks on other societies, Government has come more and more to discharge the function of defending individuals against one another. It needs but to recall the days when men habitually carried weapons, or to bear in mind the greater safety to person and property achieved by improved police-administration during our own time, or to note the facilities now given for recovering small debts, to see that the insuring to each individual the unhindered pursuit of the objects of life, within limits set by others' like pursuits, is increasingly recognized as a duty of the State. In other

words, along with social progress, there goes not only a fuller recognition of these which we call natural rights, but also a better enforcement of them by Government: Government becomes more and more the servant to these essential pre-requisites for individual welfare.

An allied and still more significant change has accompanied this. In early stages, at the same time that the State failed to protect the individual against aggression, it was itself an aggressor in multitudinous ways. Those ancient societies which advanced far enough to leave records, having all been conquering societies, show us everywhere *the traits of the militant régime*. As, for the effectual organization of fighting bodies, the soldiers, *absolutely obedient, must act independently only when commanded to do it*; so, for the effectual organization of fighting societies, citizens must have their individualities subordinated. Private claims are overridden by public claims; and the subject loses much of his freedom of action. One result is that the system of regimentation, pervading the society as well as the army, causes detailed regulation of conduct. The dictates of the ruler, sanctified by ascription of them to his divine ancestor, are unrestrained by any conception of individual liberty; and they specify men's actions to an unlimited extent—down to kinds of food eaten, modes of preparing them, shaping of beard, fringing of dresses, sowing of grain, etc. This omnipresent control, which the ancient Eastern nations in general exhibited, was exhibited also in large measure by the Greeks; and was carried to its greatest pitch in the most militant city, Sparta. Similarly during mediaeval days throughout Europe, characterized by chronic war-

fare with its appropriate political forms and ideas, there were scarcely any bounds to Governmental interference: agriculture, manufactures, trades, were regulated in detail; religious beliefs and observances were imposed; and rulers said by whom alone furs might be worn, silver used, books issued, pigeons kept, etc. But along with increase of industrial activities, and implied substitution of the régime of contract for the régime of status, and growth of associated sentiments, there went (until the recent reaction accompanying reversion to militant activity) a decrease of meddling with people's doings. *Legislation gradually ceased to regulate the cropping of fields, or dictate the ratio of cattle to acreage, or specify modes of manufacture and materials to be used, or fix wages and prices, or interfere with dresses and games (except where there was gambling), or put bounties and penalties on imports or exports, or prescribe men's beliefs, religious or political, or prevent them from combining as they pleased, or travelling where they liked.* That is to say, throughout a large range of conduct, the right of the citizen to uncontrolled action has been made good against the pretensions of the State to control him. While the ruling agency has increasingly helped him to exclude intruders from that private sphere in which he pursues the objects of life, it has itself retreated from that sphere; or, in other words—decreased its intrusions.

Not even yet have we noted all the classes of facts which tell the same story. It is told afresh in the improvements and reforms of law itself; as well as in the admissions and assertions of those who have effected them.

"So early as the fifteenth century," says Professor Pollock, "we find a common-law judge declaring that, as in a case unprovided for by known rules the civilians and canonists devise a new rule according to 'the law of nature which is the ground of all law,' the Courts of Westminster can and will do the like."²³ Again, our system of Equity, introduced and developed as it was to make up for the shortcomings of Common-law, or rectify its inequities, proceeded throughout on a recognition of men's claims considered as existing apart from legal warrant. And the changes of law now from time to time made after resistance, are similarly made in pursuance of current ideas concerning the requirements of justice; ideas which, instead of being derived from the law, are opposed to the law. For example, that recent Act which gives to a married woman a right of property in her own earnings, evidently originated in the consciousness that the natural connexion between labour expended and benefit enjoyed, is one which should be maintained in all cases. The reformed law did not create the right, but recognition of the right created the reformed law.

Thus, historical evidences of five different kinds unite in teaching that, confused as are the popular notions concerning rights, and including, as they do, a great deal which should be excluded, yet they shadow forth a truth.

It remains now to consider the original source of this truth. In a previous paper I have spoken of the open secret, that there can be no social phenomena but what,

²³ "The Methods of Jurisprudence: an Introductory Lecture at University College, London," 31 October 1882.

if we analyse them to the bottom, bring us down to the laws of life; and that there can be no true understanding of them without reference to the laws of life. Let us, then, transfer this question of natural rights from the court of politics to the court of science—the science of life. The reader need feel no alarm: the simplest and most obvious facts will suffice. We will contemplate first the general conditions to individual life; and then the general conditions to social life. We shall find that both yield the same verdict.

Animal life involves waste; waste must be met by repair; repair implies nutrition. Again, nutrition presupposes obtainment of food; food cannot be got without powers of prehension, and, usually, of locomotion; and that these powers may achieve their ends, there must be freedom to move about. If you shut up a mammal in a small space, or tie its limbs together, or take from it the food it has procured, you eventually, by persistence in one or other of these courses, cause its death. Passing a certain point, hindrance to the fulfilment of these requirements is fatal. And all this, which holds of the higher animals at large, of course holds of man.

If we adopt pessimism as a creed, and with it accept the implication that life in general being an evil should be put an end to, then there is no ethical warrant for these actions by which life is maintained: the whole question drops. But if we adopt either the optimist view or the meliorist view—if we say that life on the whole yields more pleasure than pain; or that it is on the way to become such that it will yield more pleasure than pain;

then these actions by which life is maintained are justified, and there results a warrant for the freedom to perform them. Those who hold that life is valuable, hold, by implication, that men ought not to be prevented from carrying on life-sustaining activities. In other words, if it is said to be "right" that they should carry them on, then, by permutation, we get the assertion that they "have a right" to carry them on. Clearly the conception of "natural rights" originates in recognition of the truth that if life is justifiable, there must be a justification for the performance of acts essential to its preservation; and, therefore, a justification for those liberties and claims which make such acts possible.

But being true of other creatures as of man, this is a proposition lacking ethical character. Ethical character arises only with the distinction between what the individual *may* do in carrying on his life-sustaining activities, and what he *may not* do. This distinction obviously results from the presence of his fellows. Among those who are in close proximity, or even some distance apart, the doings of each are apt to interfere with the doings of others; and in the absence of proof that some may do what they will without limit, while others may not, mutual limitation is necessitated. The non-ethical form of the right to pursue ends, passes into the ethical form, when there is recognized the difference between acts which can be performed without transgressing the limits, and others which cannot be so performed.

This, which is the *a priori* conclusion, is the conclusion yielded *a posteriori*, when we study the doings of the uncivilized. In its vaguest form, mutual limitation of

spheres of action, and the ideas and the sentiments associated with it, are seen in the relations of groups to one another. Habitually there come to be established, certain bounds to the territories within which each tribe obtains its livelihood; and these bounds, when not respected, are defended. Among the Wood-Veddahs, who have no political organization, the small clans have their respective portions of forest; and "these conventional allotments are always honourably recognized."²⁴ Of the ungoverned tribes of Tasmania, we are told that "their hunting grounds were all determined, and trespassers were liable to attack."²⁵ And, manifestly, the quarrels caused among tribes by intrusions on one another's territories, tend, in the long run, to fix bounds and to give a certain sanction to them. As with each inhabited area, so with each inhabiting group. A death in one, rightly or wrongly ascribed to somebody in another, prompts "the sacred duty of blood-revenge"; and though retaliations are thus made chronic, some restraint is put on new aggressions. Like causes worked like effects in those early stages of civilized societies, during which families or clans, rather than individuals, were the political units; and during which each family or clan had to maintain itself and its possessions against others such. These mutual restraints, which in the nature of things arise between small communities, similarly arise between individuals in each community; and the ideas and usages appropriate to the one are more or less appropriate to the other. Though within each group there is

²⁴ Sir J. E. Tennant, *Ceylon: an Account of the Island, etc.*, ii, p. 440.

²⁵ J. Bonwick, *Daily Life and Origin of the Tasmanians*, p. 83.

ever a tendency for the stronger to aggress on the weaker; yet, in most cases, consciousness of the evils resulting from aggressive conduct serves to restrain. Everywhere among primitive peoples, trespasses are followed by counter-trespasses. Says Turner of the Tannese, "adultery and some other crimes are kept in check by the fear of club-law."²⁶ Fitzroy tells us that the Patagonian, "if he does not injure or offend his neighbour, is not interfered with by others"²⁷: personal vengeance being the penalty for injury. We read of the Uapés that "they have very little law of any kind; but what they have is of strict retaliation—an eye for an eye and a tooth for a tooth."²⁸ And that the *lex talionis* tends to establish a distinction between what each member of the community may safely do and what he may not safely do, and consequently to give sanctions to actions within a certain range but not beyond that range, is obvious. Though, says Schoolcraft of the Chippewayans, they "have no regular government, as every man is lord in his own family, they are influenced more or less by certain principles, which conduce to their general benefit"²⁹: One of the principles named being recognition of private property.

How mutual limitation of activities originates the ideas and sentiments implied by the phrase "natural rights," we are shown most distinctly by the few peaceful tribes which have either nominal governments or none at all.

²⁶ *Nineteen Years in Polynesia*, p. 86.

²⁷ *Voyages of the Adventure and Beagle*, ii, p. 167.

²⁸ A. R. Wallace, *Travels on Amazon and Rio Negro*, p. 499.

²⁹ H. R. Schoolcraft, *Expedition to the Sources of the Mississippi*, v, p. 177.

Beyond those facts which exemplify scrupulous regard for one another's claims among the Todas, Santals, Lepchas, Bodo, Chakmas, Jakuns, Arafuras, etc., we have the fact that the utterly uncivilized Wood-Veddahs, without any social organization at all, "think it perfectly inconceivable that any person should ever take that which does not belong to him, or strike his fellow, or say anything that is untrue."³⁰ Thus it becomes clear, alike from analysis of causes and observation of facts, that while the positive element in the right to carry on life-sustaining activities, originates from the laws of life, that negative element which gives ethical character to it, originates from the conditions produced by social aggregation.

So alien to the truth, indeed, is the alleged creation of rights by government, that, contrariwise, rights having been established more or less clearly before government arises, become obscured as government develops along with that militant activity which, both by the taking of slaves and the establishment of ranks, produces *status*; and the recognition of rights begins again to get definiteness only as fast as militancy ceases to be chronic and governmental power declines.

When we turn from the life of the individual to the life of the society, the same lesson is taught us.

Though mere love of companionship prompts primitive men to live in groups, yet the chief prompter is experience of the advantages to be derived from coop-

³⁰ B. F. Hartshorne in *Fortnightly Review*, March 1876. See also H. C. Sirr, *Ceylon and Ceylonese*, ii, p. 219.

eration. On what condition only can cooperation arise? Evidently on condition that those who join their efforts severally gain by doing so. If, as in the simplest cases, they unite to achieve something which each by himself cannot achieve, or can achieve less readily, it must be on the tacit understanding, either that they shall share the benefit (as when game is caught by a party of them), or that if one reaps all the benefit now (as in building a hut or clearing a plot), the others shall severally reap equivalent benefits in their turns. When, instead of efforts joined in doing the same thing, different things are effected by them—when division of labour arises, with accompanying barter of products, the arrangement implies that each, in return for something which he has in superfluous quantity, gets an approximate equivalent of something which he wants. If he hands over the one and does not get the other, future proposals to exchange will meet with no response. There will be a reversion to that rudest condition in which each makes everything for himself. Hence the possibility of cooperation depends on fulfilment of contract, tacit or overt.

Now this which we see must hold of the very first step towards that industrial organization by which the life of a society is maintained, must hold more or less fully throughout its development. Though the militant type of organization, with its system of *status* produced by chronic war, greatly obscures these relations of contracts, yet they remain partially in force. They still hold between freemen, and between the heads of those small groups which form the units of early societies; and, in a measure, they still hold within these small groups

themselves; since survival of them as groups, implies such recognition of the claims of their members, even when slaves, that in return for their labours they get sufficiencies of food, clothing, and protection. And when, with diminution of warfare and growth of trade, voluntary cooperation more and more replaces compulsory cooperation, and the carrying on of social life by exchange under agreement, partially suspended for a time, gradually re-establishes itself; its re-establishment makes possible that vast elaborate industrial organization by which a great nation is sustained.

For in proportion as contracts are unhindered and the performance of them certain, the growth is great and the social life active. It is not now by one or other of two individuals who contract, that the evil effects of breach of contract are experienced. In an advanced society, they are experienced by entire classes of producers and distributors, which have arisen through division of labour; and, eventually, they are experienced by everybody. Ask on what condition it is that Birmingham devotes itself to manufacturing hardware, or part of Staffordshire to making pottery, or Lancashire to weaving cotton. Ask how the rural people who here grow wheat and there pasture cattle, find it possible to occupy themselves in their special businesses. These groups can severally thus act only if each gets from the others in exchange for its own surplus product, due shares of their surplus products. No longer directly effected by barter, this obtainment of their respective shares of one another's products is indirectly effected by money; and if we ask how each division of producers gets its due amount of the required

money, the answer is—by fulfilment of contract. If Leeds makes woollens and does not, by fulfilment of contract, receive the means of obtaining from agricultural districts the needful quantity of food, it must starve, and stop producing woollens. If South Wales melts iron and there comes no equivalent agreed upon, enabling it to get fabrics for clothing, its industry must cease. And so throughout, in general and in detail. That mutual dependence of parts which we see in social organization, as in individual organization, is possible only on condition that while each other part does the particular kind of work it has become adjusted to, it receives its proportion of those materials required for repair and growth, which all the other parts have joined to produce: such proportion being settled by bargaining. Moreover, it is by fulfilment of contract that there is effected a balancing of all the various products to the various needs—the large manufacture of knives and the small manufacture of lancets; the great growth of wheat and the little growth of mustard-seed. The check on undue production of each commodity, results from finding that, after a certain quantity, no one will agree to take any further quantity on terms that yield an adequate money equivalent. And so there is prevented a useless expenditure of labour in producing that which society does not want.

Lastly, we have to note the still more significant fact that the condition under which only any specialized group of workers can grow when the community needs more of its particular kind of work, is that contracts shall be free and fulfilment of them enforced. If when, from

lack of material, Lancashire failed to supply the usual quantity of cotton-goods, there had been such interference with the contracts as prevented Yorkshire from asking a greater price for its woollens, which it was enabled to do by the greater demand for them, there would have been no temptation to put more capital into the woollen manufacture, no increase in the amount of machinery and number of artisans employed, and no increase of woollens: the consequence being that the whole community would have suffered from not having deficient cottons replaced by extra woollens. What serious injury may result to a nation if its members are hindered from contracting with one another, was well shown in the contrast between England and France in respect of railways. Here, though obstacles were at first raised by classes predominant in the legislature, the obstacles were not such as prevented capitalists from investing, engineers from furnishing directive skill, or contractors from undertaking works; and the high interest originally obtained on investments, the great profits made by contractors, and the large payments received by engineers, led to that drafting of money, energy, and ability, into railway-making, which rapidly developed our railway-system, to the enormous increase of our national prosperity. But when M. Thiers, then Minister of Public Works, came over to inspect, and having been taken about by Mr. Vignoles, said to him when leaving: "I do not think railways are suited to France,"³¹ there resulted, from the consequent policy of hindering free contract,

³¹ Address of C. B. Vignoles, Esq., F.R.S., on his election as President of the Institution of Civil Engineers, Session 1869-70, p. 53.

a delay of "eight or ten years" in that material progress which France experienced when railways were made.

What do these facts mean? They mean that for the healthful activity and due proportioning of those industries, occupations and professions, which maintain and aid the life of a society, there must, in the first place, be few restrictions on men's liberties to make agreements with one another, and there must, in the second place, be an enforcement of the agreements which they do make. As we have seen, the checks naturally arising to each man's actions when men become associated, are those only which result from mutual limitation; and there consequently can be no resulting check to the contracts they voluntarily make: interference with these is interference with those rights to free action which remain to each when the rights of others are fully recognized. And then, as we have seen, enforcement of their rights implies enforcement of contracts made; since breach of contract is indirect aggression. If, when a customer on one side of the counter asks a shopkeeper on the other for a shilling's worth of his goods, and, while the shopkeeper's back is turned, walks off with the goods without leaving the shilling he tacitly contracted to give, his act differs in no essential way from robbery. In each such case the individual injured is deprived of something he possessed, without receiving the equivalent something bargained for; and is in the state of having expended his labour without getting benefit—has had an essential condition to the maintenance of life infringed.

Thus, then, it results that to recognize and enforce the

rights of individuals, is at the same time to recognize and enforce the conditions to a normal social life. There is one vital requirement for both.

Before turning to those corollaries which have practical applications, let us observe how the special conclusions drawn converge to the one general conclusion originally foreshadowed—glancing at them in reversed order.

We have just found that the pre-requisite to individual life is in a double sense the pre-requisite to social life. The life of a society, in whichever of two senses conceived, depends on maintenance of individual rights. If it is nothing more than the sum of the lives of citizens, this implication is obvious. If it consists of those many unlike activities which citizens carry on in mutual dependence, still this aggregate impersonal life rises or falls according as the rights of individuals are enforced or denied.

Study of men's politico-ethical ideas and sentiments, leads to allied conclusions. Primitive peoples of various types show us that before governments exist, immemorial customs recognize private claims and justify maintenance of them. Codes of law independently evolved by different nations, agree in forbidding certain trespasses on the persons, properties, and liberties of citizens; and their correspondences imply, not an artificial source for individual rights, but a natural source. Along with social development, the formulating in law of the rights pre-established by custom, becomes more definite and elaborate. At the same time, Government

undertakes to an increasing extent the business of enforcing them. While it has been becoming a better protector, Government has been becoming less aggressive—has more and more diminished its intrusions on men's spheres of private action. And, lastly, as in past times laws were avowedly modified to fit better with current ideas of equity; so now, law-reformers are guided by ideas of equity which are not derived from law but to which law has to conform.

Here, then, we have a politico-ethical theory justified alike by analysis and by history. What have we against it? A fashionable counter-theory, purely dogmatic, which proves to be unjustifiable. On the one hand, while we find that individual life and social life both imply maintenance of the natural relation between efforts and benefits; we also find that this natural relation, recognized before Government existed, has been all along asserting and re-asserting itself, and obtaining better recognition in codes of law and systems of ethics. On the other hand, those who, denying natural rights, commit themselves to the assertion that rights are artificially created by law, are not only flatly contradicted by facts, but their assertion is self-destructive: the endeavour to substantiate it, when challenged, involves them in manifold absurdities.

Nor is this all. The re-institution of a vague popular conception in a definite form on a scientific basis, leads us to a rational view of the relation between the wills of majorities and minorities. It turns out that those co-operations in which all can voluntarily unite, and in the carrying on of which the will of the majority is rightly

supreme, are cooperations for maintaining the conditions requisite to individual and social life. Defence of the society as a whole against external invaders, has for its remote end to preserve each citizen in possession of such means as he has for satisfying his desires, and in possession of such liberty as he has for getting further means. And defence of each citizen against internal invaders, from murderers down to those who inflict nuisances on their neighbours, has obviously the like end—an end desired by every one save the criminal and disorderly. Hence it follows that for maintenance of this vital principle, alike of individual life and social life, subordination of minority to majority is legitimate; as implying only such a trenching on the freedom and property of each, as is requisite for the better protecting of his freedom and property. At the same time it follows that such subordination is not legitimate beyond this; since, implying as it does a greater aggression upon the individual than is requisite for protecting him, it involves a breach of the vital principle which is to be maintained.

Thus we come round again to the proposition that the assumed divine right of parliaments, and the implied divine right of majorities, are superstitions. While men have abandoned the old theory respecting the source of State-authority, they have retained a belief in that unlimited extent of State-authority which rightly accompanied the old theory, but does not rightly accompany the new one. Unrestricted power over subjects, rationally ascribed to the ruling man when he was held to be a deputy-god, is now ascribed to the ruling body, the deputy-godhood of which nobody asserts.

Opponents will, possibly, contend that discussions about the origin and limits of governmental authority are mere pedantries. "Government," they may perhaps say, is bound to use all the means it has, or can get, for furthering the general happiness. Its aim must be utility; and it is warranted in employing whatever measures are needful for achieving useful ends. The welfare of the people is the supreme law; and legislators are not to be deterred from obeying that law by questions concerning the source and range of their power." Is there really an escape here? or may this opening be effectually closed?

The essential question raised is the truth of the utilitarian theory as commonly held; and the answer here to be given is that, as commonly held, it is not true. Alike by the statements of utilitarian moralists, and by the acts of politicians knowingly or unknowingly following their lead, it is implied that utility is to be directly determined by simple inspection of the immediate facts and estimation of probable results. Whereas, utilitarianism as rightly understood, implies guidance by the general conclusions which analysis of experience yields. "Good and bad results cannot be accidental, but must be necessary consequences of the constitution of things"; and it is "the business of Moral Science to deduce, from the laws of life and the conditions of existence, what kinds of action necessarily tend to produce happiness, and what kinds to produce unhappiness."³² Current utilitarian speculation, like current practical politics, shows inadequate consciousness of natural causation. The habitual

³² *Data of Ethics*, § 21. See also § § 56-62.

thought is that, in the absence of some obvious impediment, things can be done this way or that way; and no question is put whether there is either agreement or conflict with the normal working of things.

The foregoing discussions have, I think, shown that the dictates of utility, and, consequently, the proper actions of governments, are not to be settled by inspection of facts on the surface, and acceptance of their *prima facie* meanings; but are to be settled by reference to, and deductions from, fundamental facts. The fundamental facts to which all rational judgements of utility must go back, are the facts that life consists in, and is maintained by, certain activities; and that among men in a society, these activities, necessarily becoming mutually limited, are to be carried on by each within the limits thence arising, and not carried on beyond those limits: the maintenance of the limits becoming, by consequence, the function of the agency which regulates society. If each, having freedom to use his powers up to the bounds fixed by the like freedom of others, obtains from his fellow-men as much for his services as they find them worth in comparison with the services of others—if contracts uniformly fulfilled bring to each the share thus determined, and he is left secure in person and possessions to satisfy his wants with the proceeds; then there is maintained the vital principle alike of individual life and of social life. Further, there is maintained the vital principle of social progress; inasmuch as, under such conditions, the individuals of most worth will prosper and multiply more than those of less worth. So that utility, not as empirically estimated but as rationally deter-

mined, enjoins this maintenance of individual rights; and, by implication, negatives any course which traverses them.

Here, then, we reach the ultimate interdict against meddling legislation. Reduced to its lowest terms, every proposal to interfere with citizens' activities further than by enforcing their mutual limitations, is a proposal to improve life by breaking through the fundamental conditions to life. When some are prevented from buying beer that others may be prevented from getting drunk, those who make the law assume that more good than evil will result from interference with the normal relation between conduct and consequences, alike in the few ill-regulated and the many well-regulated. A government which takes fractions of the incomes of multitudinous people, for the purpose of sending to the colonies some who have not prospered here, or for building better industrial dwellings, or for making public libraries and public museums, etc., takes for granted that, not only proximately but ultimately, increased general happiness will result from transgressing the essential requirement to general happiness—the requirement that each shall enjoy all those means to happiness which his actions, carried on without aggression, have brought him. In other cases we do not thus let the immediate blind us to the remote. When asserting the sacredness of property against private transgressors, we do not ask whether the benefit to a hungry man who takes bread from a baker's shop, is or is not greater than the injury inflicted on the baker: we consider, not the special effects, but the general effects which arise if property is insecure. But when

the State exacts further amounts from citizens, or further restrains their liberties, we consider only the direct and proximate effects, and ignore the direct and distant effects. We do not see that by accumulated small infractions of them, the vital conditions to life, individual and social, come to be so imperfectly fulfilled that the life decays.

Yet the decay thus caused becomes manifest where the policy is pushed to an extreme. Any one who studies, in the writings of MM. Taine and de Tocqueville, the state of things which preceded the French Revolution, will see that that tremendous catastrophe came about from so excessive a regulation of men's actions in all their details, and such an enormous drafting away of the products of their actions to maintain the regulating organization, that life was fast becoming impracticable. The empirical utilitarianism of that day, like the empirical utilitarianism of our day, differed from rational utilitarianism in this, that in each successive case it contemplated only the effects of particular interferences on the actions of particular classes of men, and ignored the effects produced by a multiplicity of such interferences on the lives of men at large. And if we ask what then made, and what now makes, this error possible, we find it to be the political superstition that governmental power is subject to no restraints.

When that "divinity" which "doth hedge a king," and which has left a glamour around the body inheriting his power, has quite died away—when it begins to be seen clearly that, in a popularly governed nation, the government is simply a committee of management; it will also

be seen that this committee of management has no intrinsic authority. The inevitable conclusion will be that its authority is given by those appointing it; and has just such bounds as they choose to impose. Along with this will go the further conclusion that the laws it passes are not in themselves sacred; but that whatever sacredness they have, it is entirely due to the ethical sanction—an ethical sanction which, as we find, is derivable from the laws of human life as carried on under social conditions. And there will come the corollary that when they have not this ethical sanction they have no sacredness, and may rightly be challenged.

The function of Liberalism in the past was that of putting a limit to the powers of kings. The function of true Liberalism in the future will be that of putting a limit to the powers of Parliaments.