JUSTICE AND CHARITY.

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JUSTICE AND CHARITY.

BY

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BEING THE FIRST OF A SERIES OF TRACTS IN DEFENCE OF SOCIAL ORDER, ISSUED BY THE ACADEMY OF MORAL AND POLITICAL SCIENCES, WITH THE AUTHORITY OF

THE FRENCH GOVERNMENT.

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PREFACE.

When the National Convention created, "on behalf of the entire Republic, an institute charged with the duty of collecting discoveries, and of promoting the advancement of the arts and sciences"; when, in the name of the law, it directed this Institute "closely to watch all such scientific and literary labours as have for their object the general advantage and the glory of the Republic"; it placed the physical and mathematical sciences side by side with the moral and political sciences. In the same rank with the former, from all time recognized as sciences,—which alone, indeed, had hitherto borne that title; in the same rank with the former, which throughout their career had never ceased to shed a profitable light upon every stage and every detail of the labours of man in his contest with matter,—in the same rank with these, the Convention proclaimed that there are sciences which consider man in himself and in society; which teach him to know his nature and his end, to comprehend this history and laws, to elevate his sentiments, and to ameliorate his condition. These sciences, the far greater portion of which, but a hundred years back, were scarcely thought worthy of the appellation, are—philosophy, morals, legislation, political economy, general history. In assigning to these an Academy of their own, the government of the revolution not only did that which has been done nowhere else, but it gave to the sciences thus distinguished a positive mission; it gave to them in charge to do for general ideas that which other Academies do for the study of nature, for mathematics, for letters, for arts, for learning. Suppressed for a while by governments jealous of the independence of Reason, re-established in the Institute, under its own name and with its full rights, by the revolution of 1830, the Academy of Moral and Political Sciences has for the last sixteen years remained faithful to the spirit of its institution. It has devoted itself to the re-

search and diffusion of truth in the moral order, and peculiarly to the relations which connect the science of man with his dignity and his happiness.

This is not the place in which to write the history of the Academy. The analysis, however compressed, of the numerous papers drawn up by its members, read at its sittings, and published under its superintendence, would be quite incongruous here: it will suffice to review some of the subjects proposed by it to the writers who contended for the prizes of which it directed the distribution. Not content with aiding the development of general knowledge, by promoting the close investigation of the great questions of philosophy, history, and legislation, it offered premiums for the best treatises—On the organization of normal primary schools; On the various methods of popular instruction; On the advantages and disadvantages of associations or unions for the amelioration of the condition of labour; On the influence of the desire for social well-being, as an active principle, upon the state and society; On the physical and moral situation of workmen in towns as compared with that of agricultural labourers; and infinite other problems, whose solution deeply interests the whole country. Urged on by the earnest zeal of the Academy, and under its immediate auspices, several of its members undertook journeys, which we may designate tours of social exploration, one of which missions placed the public in possession of M. Villermé's valued "Review of the Physical and Moral Condition of the Manufacturing Population." Pages might be filled with similar proofs of the solicitude of the Academy for the immediate interests of the great masses of the population.

It accordingly happened that, when the Revolution of the 24th February placed the claims and condition of these so precious interests in especial prominence, under the consideration alike of all the powers in the state and of all its citizens, it found the Academy quite prepared for its share in the great work that now presented itself. When Government has recognized the duty, has manifested the hope, of ameliorating the condition of all classes of society, it becomes the part of the Academy—its privilege—a privilege earned by its labours in long past years, as well as by its more recent services—to second Government in the grateful but anxious task. To accomplish it effectually, there is required all the patience of enlightened gentleness: precipitation were destruction. To elevate all the children of a country to the moral dig-

nity of the citizen, to realize the measure of well-being possible to him in a society ruled by the principle of political equality; these are not things to be done by proclamations. Enthusiasm may suffice to commence such a work, but will never carry it through. There is to be solved a general question, made up of a thousand particular questions: the grand end of the harmony of unity must be constructed of a thousand various means. A great society is a great machine, not to be moved by a single spring. It is not the least mischievous fallacy of certain minds, to suppose that, to change in an effective, permanent manner, the destiny of a whole nation, nothing more is needed than the enunciation of a single idea—say, sometimes, of a single word.

They who imagine themselves masters of one of these magic words, which can transform the condition of man upon earth, are alike ignorant, theoretically, of the value of science, and practically, of the grandeur of social destiny. When they conceive all this an easy matter, they deceive themselves; when they proclaim it an easy matter, they deceive their fellow-men, and lead them, through the by-ways of chimerical hopes, to cruel disappointments, perhaps to desperate revenge!

It is well, then, to lose no opportunity of turning mankind from the promises of inconsiderate speculation to the attentive study of realities. Amid the dreams which are misleading our age, the Academy of Moral and Political Sciences believes that it will best serve the cause of true progress, by ascertaining the positive condition upon which that progress may be accomplished. It is the essential interest of this great democracy, which we are all desirous of organising, that we should lay down upon scientific principles, and investigate, throughout all their multiplicity and variety, the social questions necessarily coming before us, that we should determine from the data of experience the breadth and scope of human institutions, the defining characteristics of reality, the limits of the possible. The Academy has ever directed its search to practicable good. It believes that, in political science, duration is the test of systems. It aims only at a science which fulfils that which it promises, and in no way piques itself upon an ability to mislead reason by casuistry.

Such were its views, such the direction it habitually gave to its labours, when it was called upon by the voice of authority to occupy itself still more practically, still more immediately, with questions it has ever held in such high estimation. Let us quote,

in their official language, the Reports of various sittings of the Academy:—

"*Extraordinary Sitting of Monday, the 17th of July*, 1848.

"The Academy met, on the summons of its President, M. Charles Dupin, who informed its members of the occasion of this extraordinary sitting. Invited, on the 15th July, to wait the next day upon the Chief of the Executive Power, the President had received from him a communication of high and patriotic interest. The Chief of the Executive Power had requested the Academy to co-operate in the defence of social principles, attacked by all sorts of publications. Persuaded that it was not enough to re-establish material order by means of force, unless moral order were also re-established by means of true ideas, he deemed it necessary to pacify men's minds by enlightening them: he had therefore thought that the Academy might participate in so useful a work, and second the efforts of Government, by placing science at the service of society and of civilization.

"The President replied to General Cavaignac, that the Academy, to which he would immediately communicate his views, would assuredly accept with eagerness, and fulfil with zeal, the noble task he proposed; grateful for, and flattered by, the confidence he placed in it;—that, fully persuaded with himself of the perils to which certain theories exposed the state, by the agitation which they infused into men's minds, by the evil sentiments they introduced into men's hearts, it had already commenced the work of opposing to these theories the true principles upon which are founded the rights of property, the well-being of families, the liberty of nations, the progress of the world: that every one of its members would readily meet the wishes that had been expressed by the Chief of the Executive Power, and would rejoice in assisting the Academy to fulfil its mission, to serve, with the eternal cause of truth, the most pressing interests of the country.

"M. Cousin, rising as the medium of the sentiment of the Academy, thanked the President for all that, with equal propriety and promptitude, he had said and done on this important occasion. It was a proud day for the Academy when the Government thus requested the co-operation of their united intelligence to promote the moral interests of the country, invoking science to the aid of authority! He moved that the Academy should—1st, direct its perpetual Secretary to write in its name to the Chief of the Exe-

cutive Power, accepting with gratitude the honourable mission proposed to it; 2dly, that a Commission should be immediately appointed, to inquire into the most efficacious, and at the same time readiest, means of fulfilling that mission, and to report thereon at the sitting of the following Saturday.

"Several members suggested various means, all duly referred to the Commission, which, as subsequently named by the Academy, consisted of MM. Cousin, De Beaumont, Troplong, Blanqui, and Thiers. This Commission, selected from the five sections of the Academy, to be augmented by its officers, was directed to meet on the Thursday at eleven o'clock, then to prepare its Report for the Saturday's sitting.

"In obedience to the decision of the Academy the perpetual Secretary addressed to General Cavaignac, the President of the Council of Ministers, and Chief of the Executive Power, the following letter:—

"Sir,—The Academy of Moral and Political Science, assembled at an extraordinary sitting, has received through its President the honourable proposal you have made. In requesting it to second, by the publication of sound and true ideas, the action of Government and the laws, you have offered it the means of being still more immediately useful to its country; you have augmented its zeal by the same act which has overwhelmed it with gratitude. It is with perfect unanimity that it will respond to your patriotic appeal, and combine the persuasions of science with the efforts of authority for the common defence of society and of civilization.

"A commission has been nominated for the purpose of immediately inquiring into the best means of attaining this noble end. All the sections of which the Academy is composed will apply themselves, with emulous earnestness, to the maintenance of the great social principles, grounding their reasonings upon the demonstrations of philosophy, the precepts of morality, the progress of legislation, the rules of political economy, and the lessons of history.

"The Academy, which has directed its perpetual Secretary to communicate to you these its resolutions, will rejoice if, in conformity with your wishes and its own mission, it should succeed in directing men's minds to salutary truths, and should contribute to advance society in the direction of order, of liberty and prosperity, the result of labour.—Accept, &c. &c. MIGNET."

"*Sitting of Saturday, 22d July*, 1848.

"The President informed the Academy that its Commission had assembled thrice since their last sitting for the purpose of considering the best means of fulfilling the task it had undertaken. The principal objects to which it had applied itself were the publications which might be drawn up in the name of the Academy, with a view to the diffusion of true and useful ideas, and a mission to the towns of Marseilles, Lyons, Rouen, and Lille, which it proposed to confide to M. Blanqui. A report on the subject of the publications to be undertaken, will be shortly presented to the Academy, which may then determine upon their form and mode.

"With reference to the mission of M. Blanqui, the Commission, desirous of giving it the utmost beneficial scope, has drawn up the following propositions, which it respectfully submits to the Academy:—

"M. Blanqui is directed to investigate and report upon the moral and economical state of the working populations of the towns of Lyons, Marseilles, Rouen, and Lille, and of the surrounding districts of which these towns may severally be considered the industrial centre. He will examine—

"1st. What is the physical and moral education of the children of the workmen.

"2d. What is the influence over the conduct and material condition of the workmen, of domestic life, of the religious spirit, and of the class of reading to which they are generally accustomed to apply themselves.

"3d. What is the physical effect of their various occupations upon the personal health and character of the various working populations.

"4th. What are the economical causes to which we may attribute the depression of these populations, and whether these causes vary as between the manufacturing populations and the agricultural populations.

"5th. What classes of industry are the most exposed to stoppages of work, and what are the ordinary causes of these stoppages.

"6th. Whether associations among workmen have a tendency to ameliorate their condition, and whether there are any particular forms of such associations that may be usefully adopted.

" 7th. What progress has, during the last twenty-five years, taken place in the condition of the workmen, and what have been the causes of this progress.

" The Academy adopted the proposition, and directed that it should be published in the *Moniteur*.

" In consequence of the approaching departure of M. Blanqui, M. Passy was added to the Commission."

" *Sitting of Saturday, the* 12*th of August*, 1848.

" The Perpetual Secretary read a report of the deliberations of the Commission, and submitted the result to the Academy. The Commission, after mature consultation at repeated meetings, had come to the resolution that the most effectual way in which the Academy could fulfil the task entrusted to it, would be to send forth, under the authority of its name, periodical publications, in the form of tracts, upon all the questions within its province, and especially upon those in any way relating to social order. While they preserve the general and elevated character indispensable to the labours of science, to the *Memoirs* of an Academy, these little treatises must be as clear and concise as the matters discussed in them will permit. The Academy has every reason to hope that this clearness and this brevity will render them accessible to a great number of readers. They will appear at least once a fortnight, in the 18mo. form of the Institute, and in Parts of from sixty to a hundred pages each.

" The Commission has ascertained that all the sections of the Academy will contribute to the execution of this so beneficial a work, and it has already entered into direct communication on the subject with several of the respective members, the result of which is, that pamphlets upon Social Justice and Charity; upon Property, its foundation, its distribution, its burdens; upon the causes of Wealth, and of its inequalities; upon the Family Circle, its organization and its developments; upon the condition of the various classes of society, and upon their means of concord and well-being; upon the most usually agitated topics of social economy, &c. are ready, or nearly ready, for publication. The Commission has made arrangements with M. Didot, Bookseller to the Institute, in conjunction with MM. Paulin and Pagnerre, for the production in print of these treatises, which, furnished gratuitously by the Academy, will be issued to the public at the lowest possible price.

"The Academy adopted the Report presented to it by the Secretary in the name of the Commission, and added M. de Tocqueville to the Commission in the place of M. Gustave de Beaumont, who had departed for England as Envoy-Extraordinary for the Republic to her Britannic Majesty."

The foregoing will explain at once the origin and the object of the publications, which on this day commence. There can be no mistake about their character. The Academy has hastened with earnest zeal to give the co-operation so nobly solicited from it. The thought of recurring to its aid reflects honour upon the Government. Most accurate was the judgment which discerned that science may aid politics, by addressing to the nations the language of common sense.

The Academy will exercise with zeal, but with independence, this share of authority—the only share it can ever appropriately claim. It will endeavour to enunciate in energetic but simple language, those fundamental truths upon which every society stands, and which are even still more essential to a democratic than to any other society. A society which dates only from itself, which aspires to cast aside all prejudices, all conventionalities, all fiction, can only be held together by reason! Such is at this moment the condition of republican France. The first right of the people is the right to the truth!

JUSTICE AND CHARITY.

MORAL and Political Philosophy is, or ought to be, a science of observation.

Its aim should be to make itself master of all the great phenomena that constitute the moral life of individuals and of states; to classify them under their essential characteristics, and to bring them back to their simplest principles.

Nearly all the most celebrated systems of morals, legislation, and political economy, are open to this accusation—that they have suffered themselves to be led astray by the passion for a false unity; they have insisted upon recognizing one principle only, where human nature and human societies recognize two,—different, indeed, in their character, but intimately connected together; namely, Justice and Charity. In our opinion, it is perfectly impossible for any society to stand in opposition to the facts which explain the essential relation between these two principles; or for the most insignificant community to go on, a single day, with the aid of only one of them. Every legitimate system must comprehend both the one and the other principle; for this simple reason, that every society, as every individual, is subject to the concurrent rule of both the one and the other.

Give me the simplest declaration of the duties and rights of the man and the citizen, and I undertake to prove that their declaration may be resolved into Justice and Charity: certainly that it is incomplete, unless it allot fitting place to these two natural sentiments, of which every society is the more or less harmonious development.

With a view to the more effectual demonstration

of these two distinct orders of sentiments, and of their necessary intervention in human societies, I will divide this pamphlet into two parts; the first relating to the order of Justice, the second to the order of Charity.

Part I.

Man—materially so feeble, so diminutive, in contrast with the broad face of nature—feels and knows himself great in his intellect and in his liberty. Pascal said: "Man is only a reed, but he is a thinking reed. Were the universe to crush him, man would still be nobler than the universe that destroyed him; for the advantage the universe has over him, the universe knows not and feels not." Let us add, that not only is the universe ignorant of its power, it has not the disposal of that power, but itself obeys the irresistible laws that rule it as a slave; whilst, what I do, how little soever, I do it because I will it; and did I so will, I should cease to do it, for I have myself the power to commence, to suspend, to continue, or wholly to extinguish the movement I have resolved to accomplish.

Elevated in his own estimation by the sentiment of his liberty, man judges himself superior to the things by which he is surrounded; he deems them to have no other or higher value than that which he awards them, because they belong not to themselves—because they are not their own masters. He recognizes in himself the right to occupy them, to apply them to his use, to change their form, to alter their natural arrangement,—in a word, to do with them what he pleases; and no sentiment of remorse ever enters his soul, as for an act of usurpation.

The first moral fact, then, which develops itself to

the conscience, is the dignity of man's person in relation to things, and this dignity more peculiarly lies in liberty.

Liberty, which raises man above things, has also its obligations upon him. While assuming the right to do what he pleases with things, he does not feel that he has a right to pervert his own nature; on the contrary, he appreciates the duty of sustaining it, and of constantly labouring to perfect the liberty that is within him. Such is the first law, the general duty that reason imposes upon liberty; and consistently with it, capriciousness, violence, pride, envy, idleness, intemperance, are all passions which reason orders man to combat, because they all strike heavy blows at liberty, and degrade the dignity of human nature.

The free force that constitutes man appears to him respect-worthy in his own person; in the same way, all free force is respect-worthy in his eyes, and liberty is to him great and noble in itself wherever he encounters it. Now, when men consider each other, they find all alike—one equally with the other, free beings.

Unequal in all other respects, in physical strength, in health, in beauty, in intellect, they are equal in liberty alone; for no man is more free than another; all make different use of their liberty, but none are therefore more or less free than the rest. In this point of view, and in this point of view only, are they equal. When once this natural relation has manifested itself, the majestic idea of mutual liberty developes that of mutual equality, and, by inevitable consequence, the idea of the equal and mutual duty to respect that liberty, under penalty of treating one another as things and not as persons.

Towards things, I have only rights; towards myself, I have only duties; towards you, I have both rights and duties, both derived from the same principle. The duty I have to respect you, is my right to your respect; and, reciprocally, your duties towards me are my rights upon you. Neither you nor I have any other right, the one over the other, than the mutual duty of mutual respect.

We must not confound power and right. A being may have enormous power: the power of the whirlwind, of the thunder, of one of the forces of nature, but unless he combine with this, liberty, he is nothing more than a formidable and terrible thing; he is not a person, he has no rights. He may inspire terror: he has no right to respect. We have no duties towards him.

Duty and right are brothers; their common mother Liberty. They were born on the same day; they grew up together; when the one dies, the other will not survive him.

It may, indeed, be said, that right and duty are one and the same thing, regarded, merely, from two different points of view. What, in effect—it cannot be too often repeated to oneself and to others—what, in effect, is my right to your respect, unless it be the duty incumbent on you to respect me, because I am a free being? But you, too, are a free being; and thus the basis of my right and of your duty becomes for you the basis of an equal right, and in me that of an equal duty.

And equal with an equality the most emphatic and most rigorous; for liberty, and liberty alone, is equal to itself. It is of much importance thoroughly to comprehend this. The only distinct identity in me

is the absolute person—all the rest is matter of diversity; in all the rest, men differ, for there is a difference even in resemblance. As no two leaves are the same, no two men exactly assimilate, whether in physical form, in mind, or in heart. But it is impossible to conceive any difference between the free will of one man and the free will of another man. I am free, or I am not free. If I am free, I am as much so as you are, and you as much so as I; there is no more nor no less in the case; I am a moral person to the same extent, and by the same title, that you are a moral person. The will—the seal and citadel of liberty—is the same in all men. It may have, in its service, different instruments and different powers, and these, of consequence, unequal, whether material or spiritual; but the powers of which the will disposes, are not the will itself, for it has not the absolute disposition of them. The only free power is that of the will, and this is essentially free. If the will recognizes laws, these laws are no motive wheels—no springs regulating its conduct; they are ideal laws; the law of justice, for example: this law of justice, the will recognizes, but so that according to just circumstances, it may relinquish rather than follow it, conforming to it with the consciousness that, if need be, it may depart from it, and *vice-versâ*. Here is the type of liberty, and, at the same time, of true equality: all others are counterfeit.

It is not true that men have a right to be equally rich, beautiful, robust; to equal enjoyment; in a word, to be equally happy: for they differ originally and necessarily at all the points of their nature which correspond to pleasure, riches, happiness. God has made us with unequal powers for all these things.

Here, equality is contrary to nature, contrary to the eternal order of things, for diversity is fully as much as harmony, the law of creation. To dream of such an equality is a strange blunder, a deplorable phrenzy. False equality is the idol of deformed minds and hearts, of restless and ambitious selfishness. High-souled liberty has nothing to do with the furies pride and envy; is not aspirant at domination, neither does she pretend to a chimerical equality of mind, beauty, fortune, enjoyment. This equality, even were it possible, would have little value in her eyes; she asks something far loftier than pleasure, fortune, rank: she asks respect. Respect—equal respect of the sacred right of freedom in all that constitutes the person—that person which is truly man, this is what liberty, and, with her, true equality, claim, or rather, what they imperiously demand.

We must not confound respect with homage. I render homage to genius, to beauty: I respect humanity alone: by humanity understanding all free natures, for whatever is not free in man is foreign to man. Man, then, is the equal of men precisely in that which constitutes him man, and the reign of true equality requires from all simply respect for that which each equally possesses in himself,—young and old, ugly and handsome, rich and poor, the man of genius and the man of humble capacity, man and woman, all, in a word, who possess the consciousness that they are persons and not things.

Liberty, with equality thus defined, is the parent of all rights and of all duties. The inmost development of the free *me* is thought. All thought, as such, considered within the limits of the individual sphere, is sacred. Thought in itself, solely occupied with the

search after truth, is philosphy, properly so called. Philosophy is the expression, in its purest and loftiest phase, of the liberty and dignity of thought. Philosophical liberty, then, is the first of all liberties.

Another development of thought, well nigh as deep-seated, is the religious thought. Religions, like philosophies, have in them more or less of truth; there is one amongst them which incomparably surpasses all the rest; but all have an equal right to their free exercise, so far, at least, as this exercise involves nothing contrary to the dignity of the human person.

A religion, for example, which should authorize polygamy, that is to say, the oppression and degradation of woman, that one half of humanity, could not be endured among us. A worship that, while recommending its members to observe good faith and sincerity among themselves, should dispense them from this observance towards the faithful of other worships, ought to be interdicted. The same principle will apply to any religious congregation that should impose upon its members the entire abdication of their free will, and should enjoin them to consider themselves, in relation to their chief, as simple things, as a stick, as a lifeless clod.

Property is sacred, because it represents the right of the *person* itself. The first act of free and personal thought is an act of property. Our first property is ourselves, is our *me*, is our liberty, is our thought: all the rest derive from this, and reflect it back.

The primitive act of property consists of the free imposition of the human person upon things: it is thus I make things mine; thenceforward, assimilated to myself, marked with the seal of my person and of

my right, they cease to be simple things in relation to other persons, and, of consequence, may not fall within their occupation and appropriation. My property becomes a part of my person, and, through me, entitled, so to speak, to a participation in my rights; or rather, perhaps, my rights attend me in it, and in it retain their right to respect.

It is difficult, in this period of the world, to distinguish with any accuracy the foundation of our rights. Long habit has impressed upon us the idea that the laws which from time immemorial have protected our rights, constitute those rights, and that consequently, if we have the right to possess our lands or houses, and if all others are forbidden to wrest them from us, we owe this to the laws which have declared property inviolable. But is it so?

If the established law rested on its own basis, if the reason of it were not traceable to some higher principle, it might certainly be regarded as the sole foundation of the right of property, and we should be well content not to trace back its pedigree. But every law evidently involves the supposition of principles which suggested it, which sustain it, and which authorize it.

Some publicists have proposed to base the right of property upon a primitive contract. But as to this primitive contract itself, let us ask, what is the reason of it? It is the same with the primitive contract as with the written law. This contract, after all, is itself but a law, though said to be a primitive one. Thus, even were an alleged contract the reason of the written law, we have still to seek the reason of the contract. The theory which founds the right of property upon a primitive contract does not, then,

solve the difficulty, it merely throws it somewhat back.

Further, what is a contract? A stipulation between two or more wills: hence it would follow that the right of property is as uncertain and fluctuating as the concord of wills. A contract founded upon such a concord cannot communicate to the right of property an inviolability which itself does not possess. If at one time it pleased the wills of the contracting parties to decree the inviolability of the property, a change in their wills may bring about and justify another contract, by which the property ceases to be inviolable, and undergoes such and such modifications.

To view the right of property in this light, to consider it as resting upon a contract or upon arbitrary legislation, is to destroy it. The right of property either exists not all, or it is absolute. The written law is not the foundation of the right: if it were, there would be no stability either in the right or in the law itself; no, it is the written law which has its foundation in the right pre-existent to it, and which it merely translated and consecrated with its sanction, placing force at its disposal, in return for the moral power which it derived from it.

After the jurisconsults and publicists, who base the right of property on the laws and the laws on a primitive contract, come the economists, who, struck with the importance of labour and production, look to these for the original principle of the right of property. Every man, say they, has a natural, inviolable, and exclusive right over that which is the fruit of his own labour; labour is naturally productive; the result of production belongs to the producer; a man cannot

possibly be unable to distinguish his own products from those of other men, or, from any such ignorance, give his neighbour the slightest right over that which he knows himself to have produced. This theory has somewhat more depth than the preceding, but it is far from complete. To produce, I require matter whence to produce, and instruments wherewith to produce; I only produce by the aid of something that I already possess. If the matter upon which I work does not belong to me, by what title shall I claim the products thence obtained? It hence follows that property is pre-existent to production, and that production supposes an anterior right; this right, followed through a series of analyses, resolves itself into the right of first occupant.

The theory which rests the right of property upon a primitive occupation, touches most nearly upon the truth; it is, in fact, the truth, but it requires explanation. What is *to occupy?* It is to make a thing one's own, to appropriate it. There was, then, prior to occupation, an aboriginal property, which we developed by occupation: this primitive property, beyond which no researches can go, is our person. This person is not our material frame: our body is our own, or it is not our own, according to circumstances. That which constitutes the person is essentially, as I long since established, our voluntary and free activity, for it is in the consciousness of this free energy that the *I* discerns, strengthens, and proclaims itself. The *I*, then, is the primitive and original right, the root and model of all the rest.

It is from that all the rest are derived; they are all merely applications and developments of it. The *I* is of itself holy and sacred: thus clearly arises

at once a property also holy and sacred. To efface the title of other properties, you must abnegate this, which is impossible; and if you recognise it, you must, as a necessary consequence, recognise all the rest, which are merely manifestations and developments of that primitive title. Our body is to us but, as it were, the seat and instrument of our *person*, and is, next after it, our nearest and most especial property. Whatever is not a person, that is to say, whatever is not endowed with an intelligent and free activity—whatever, in other words, is not endowed with conscience, is a thing. Right is in the person, and not in things, whatever these things be. Persons have no right over persons: they may not *occupy* them, and make use of them at their pleasure; strong or weak, they are sacred the one to the other. Things are without right: persons may use them, may even abuse them.

The *person*, then, has the right to occupy things, and, in occupying them, appropriates them: a thing thus becomes the property of the person, belongs to that person alone, and no other person may thereafter set up a right to it. It is thus we must understand the right of first occupation. This right is the foundation of property, externally of ourselves; but it presupposes the right of the person over things, and, in final analysis, that of the person absolutely, as being the source and principle of all right.

The human person, understanding and free, and which, by this very title, belongs to itself, spreads itself in succession over all that surrounds it, appropriates all, and fuses all with itself: first, its immediate instrument the body, then the various things, previously unoccupied, and of which it takes aboriginal

possession, and which serve as the means, the matter, and the theatre of its activity. Such, as we explain it, is the right of first occupier; after that comes the right springing from labour and production.

Labour and production, though they do not constitute, confirm and develope the right of property. Mere occupation precedes labour, but it requires labour to effect its practical realization: so long as the occupation remains undeveloped, there is something about it vague, abstract, unsatisfactory, and the right founded upon it seems obscure in its character; but when labour joins itself to occupation, it emphatically affirms it, determines it, and gives it visible and distinct authority. By labour, in effect, instead of merely putting one's hand upon a thing previously belonging to no person, we stamp upon it our character, we incorporate it with ourselves, we unite it to our person. It is this which renders respectable, sacred in the eyes of all, property over which has passed the free and intelligent labour of man. To usurp the property that a man possesses in quality of first occupant is an act of injustice; but to wrest from a labourer the land he has watered with the sweat of his brow is, in the eyes of all mankind, a manifest crime.

The principle of the right of property is efficacious and enduring will, labour, under the condition of original occupation. Then come the laws: but all these can do is to proclaim the right which existed anterior to them in the conscientious perception of mankind; they do not found the right, they guarantee it.

It results, from what has been here said, that natural law rests upon one sole principle—the sanc-

tity of the liberty of man. Natural law, in its application to the various relations of men among themselves and to the conduct of social life, comprehends within itself, and gives birth to, the civil law. As, in reality, the sole subject of the civil law is the free being, the principle which rules the whole civil law is respect for liberty: the respect for liberty is called justice: justice confers on every man the right to do what he pleases under this reservation, that the exercise of this right do not prejudice the exercise of the same right in another. The man who, in exercising his own liberty, should violate that of another man, would fail in his first duty to the law and liberty, and would justly be held guilty. It is ever to liberty that he is bound in obligation, whether this liberty be his own or that of another. So long as man uses his own liberty without prejudice to the liberty of his fellow-man, he is at peace with himself and with every one else. But the instant he attempts anything against liberties equal to his own, he disturbs and dishonours them, he disturbs and dishonours himself, for he assails the very principle which constitutes his honour, which guarantees his repose. A law of eternal order makes misery the inevitable attendant upon crime, happiness, or at all events, peace, the certain companion of virtue.

Peace is the natural fruit of justice, of the respect which men bear or ought to bear to each other in virtue of this title, that they are all equal, that is to say, that they are all free.

But man may well conceive peace and justice have permanent and indefatigable adversaries in the passions—daughters of the body, and naturally enemies of liberty, the daughter of the soul. Whoever in-

fringes upon liberty is culpable, and, of consequence, reprehensible; for man has not merely the right to defend his liberty, it is his duty to do so. Hence the idea of repression, and the legitimacy of the right to punish.

He who is culpable only towards his own liberty may be responsible only to the tribunal of reason and of conscience; but assuredly the instant he seeks to interfere with liberties equal to his own, he is responsible to his fellow-men, and deserves to be brought before a tribunal empowered to punish the violators of justice and peace, the enemies of the public liberty.

But who are to constitute this tribunal? Who are to seize and punish the guilty? Who are to be the depositaries of the power necessary to enforce respect for liberty, justice, and peace? Here comes in the idea of government.

Society is the regular development, the peaceful interchange and communion of individual liberties, under the protection of their reciprocal rights. Society is not the work of men; it is the work of the nature of things. There is a natural and legitimate society, of which all our societies are merely copies, more or less imperfect. To this society corresponds a government, equally natural and equally legitimate, to which we are bound, which defends us, and which we ought to defend, and in which it is our duty to vest and to sustain the force necessary for the exercise of its functions.

But this force, destined for our good, may be perverted to our harm. Social art is nothing more than the art of organizing government in such a manner that it may constantly and efficiently defend the

institutions which protect liberty, without ever being able to turn against those institutions the force confided to it for their protection.

The principle and object of every human government worthy of the name, is the protection of natural rights: this has been distinctly recognised by the two modern nations that have carried to the highest point the genius of social organization,—England, in her famous Bill of Rights, and still more especially France, in the immortal Declaration of the rights of the man and of the citizen. Thus far comes philosophy on this question; but here she stops, or, at all events, touches with extreme circumspection the question of the best form of government, for this question has relation at once to first principles, and to circumstances which vary with time and place.

Does this theory comprehend our whole task? Are all our duties, public and private, limited to our duties to liberty? I think not: and I hasten to direct your attention to an important distinction, the very soul, as it were, of moral and political philosophy.

Part II.

To respect the liberty of our fellow men: such is the fundamental law, a law precise in its enunciation, formidable in its consequences; for every infraction of the law, while it injures the assailed, injures the assailant, and plunges him into degradation and misery. When man has fulfilled this law, no one has aught to demand at his hands. But has he therein accomplished his whole destiny,—has he attained the final limits of moral beauty?

More than once the world has seen great men,

who, not content with respecting the liberty of others and defending their own, have come forward to vindicate the liberty of their fellow men. Decius would have fulfilled the law had he died tranquilly in his bed, without having injured any of his co-citizens: he did more,—he sacrificed himself for them. I might cite examples of similar devotion, much more recent in date, and exhibited in arenas far less conspicuous, far less glorious, but where the moral instinct frequently gives birth to a heroism all the more grand, in reality, as it is the more obscure. The characteristic of all these examples is that, without being contrary to the law of respect for liberty, they surpass it; at the same time they are proclaimed by the universal voice of mankind to be acts of the sublimest virtue.

It is therefore true, that while on the one hand the obligation never to assail the liberty of our fellow men subsists inviolable and imprescriptible, on the other hand there are certain cases wherein an instinct, superior to the law—an instinct which is in morals what genius is in the Arts; by a bound, springs from disinterestness to devotion,—from Justice to Charity.

Disinterestedness and devotion are virtues of a different order: the definition which limits the one is strict and precise; the other rejects all definition. I will give you a striking illustration of the difference: —When a man has disobeyed the law, which calls upon him to respect the liberty of others, menaced society feels within itself the right to take efficacious measures against him, for the law and respect for liberty, *justice*, involves the law of constraint. Far different from this, the law of devotion admits

no constraint; no human law obliged Decius to devote himself; no human law condemns a man to heroism, but mankind has crowns and altars for its martyrs and its heroes.

You are hungry; I feel it a duty to succour you; but you have no right to exact from me the least portion of my property; if you wrest a single farthing from me, you commit an injustice. There are duties which have no correlative rights.*

We may put it in this way:—That these acts of devotion are the refinements, the superfluities, the luxuries, as it were, of morals, while disinterestedness, probity, *justice*, constitute the moral obligation upon us of essential necessity, and the peculiar object of law, properly so called.

What, then, is this instinct? What is this law, superior to all written laws, to all definitions, to all the rigorous forms of right and of duty. This law manifests itself in a cry of the conscience: that is its

* Those who refuse to recognize this important truth, throw open a door to the most fatal fallacies. For example: it is a duty of the State to come forward and assist, to a certain extent, operatives who are suffering from an involuntary stoppage of labour, by employing them upon public works of general utility; but it is false to say that the operative has no right to demand labour, as is insisted upon just now; for every genuine right involves the idea that it may justly be asserted by force. The labourer has, in point of fact, no more *right* to labour, than the pauper has to support; if the pauper had such a right, he might enforce it; instead of addressing himself to charity, he might invoke justice, and wrest from me that which I refused to give him. To proclaim false rights is to impair true and certain rights. We can perfectly well remind individuals and the State of the sacred duty of charity, without, at the same time, conferring upon pauperism fictitious rights, which it hails with wild excitement, and asserts sword in hand.

promulgation. It is so pure, so etherial, it is scarce felt; often, it is not until after the action is performed, and the actor comes naturally to reflect upon it, that he discerns himself to have been inspired by something greater still even than liberty; by some divine breath, penetrating his soul and raising him above ordinary laws:

Est Deus in nobis, agitante calescimus illo.

This admirable principle, if it be in each among us, must also be in that great individual denominated society, and in the government which represents it. Yes: the government of a human society is also a moral person. It has a heart, alike with the individual: it has generosity, goodness, *charity*. There are facts, not simply legitimate, but the objects of universal admiration, which were wholly inexplicable, were the functions of Government reduced to the mere protection of rights. Government owes it to citizens, up to a certain point, to watch over their well-being, to develop their intelligence, to fortify their morality.

But charity is not independent of the law which places evil beside good, and condemns the best things of this world to the perils that follow upon their abuse. As the proverb says: *nothing is so bad as the best corrupted.* Justice herself, if we remain wholly within her limits, without throwing open the gate to charity, degenerates into something insupportably dry and barren. We see a wretched being prostrate in suffering misery before us: is our conscience satisfied, merely because we can testify that we have not contributed to his suffering? No; something tells us, and emphatically, that it were well, further,

for us to give him food, succour, consolation. It must need be confessed that charity may also have its dangers. It tends to substitute its own action for that of the object it proposes to serve: it in some degree effaces his personal identity, and renders itself, as it were, his providence. In wishing to be useful to others, we intrude upon them—we risk the infringing upon their rights.

Love, in yielding itself, subjugates also. Doubtless we are not forbidden to act upon others: we may always do so by the medium of entreaty, of exhortation; we may do it also by the medium of menace, when we see one of our fellow-men entering upon a criminal or foolish course. We have even a right to employ force when we see in another, passion getting the better of liberty, and of the *person*. In such a case we have not only a right—it is our duty —to prevent, by force, the moral suicide of one of our fellow-men. The legitimate power of charity is regulated by the more or less of liberty and reason in him to whom it is applied. What delicacy is not required in the exercise of this perilous virtue! How are we to appreciate the degree of liberty still possessed by one of our fellow-men with such certainty as to know up to what point we may substitute ourselves for him in the government of his destiny? And when, to save a feeble soul, one has taken possession of it, who is so sure of himself that he can say he will not advance beyond the essential point, —that his career will not be onward, from the love of the *person* dominated, to the love of domination itself? Charity is often the beginning and the excuse, and always the pretext, of great usurpation. Before we may claim the right to yield ourselves up

to the emotions of charity, we must have fortified our souls by a long exercise of justice.

Justice, i. e. the respecting and sustaining liberty, is the great law of society and of the State; but justice is not the only moral law. We have shewn that besides this law there is another, which not only leads us to respect the rights of others, but which proclaims it our duty to relieve and solace their miseries, of whatever description,—to aid our fellow-men even to the detriment of our own fortune, of our own well-being. Investigate the principle of the pettiest alms: you cannot refer it merely to justice; for the coin you have thought it your duty to bestow on the poor wretch before you, insignificant as it is, he has no right to exact from you. We regard justice as the fundamental principle and special mission of the state; but we think we have established, at the same time, that it is absolutely impossible to exclude from the society some portion at least of that duty of charity which addresses itself so energetically to every human soul. In our opinion, the State should, first and foremost, confirm the sway of justice, but it should also have a heart and entrails: it has not fulfilled all its task in merely causing rights to be respected; something further remains for it to do—something great, tremendous: there remains for it to exercise a mission of love and charity, at once sublime and perilous; for, I will repeat, all things have their dangers: justice, while respecting the liberty of a man, may, with a safe conscience, let him die of hunger. Charity, to save him physically, and, still more especially, morally, may arrogate to itself the right of imposing violence upon him. Charity has covered the world with

admirable institutions; but charity, also, misled and corrupted, has instituted, authorized, consecrated, many and many a heavy tyranny. We must subject charity to the rule of justice, but not abolish it, or interdict its exercise to society.

I may here point out some duties of civil charity, at once obvious in themselves, and unattended by danger.

1. The State owes to citizens overwhelmed by misfortune, aid and protection for the preservation and development of their physical life. Hence the utility, the necessity even, of charitable institutions, to the utmost possible extent voluntary and private, but in some instances public, or aided by the State, in proportions which can alone be determined by the circumstances of the particular case. Without excessively or abusively multiplying hospitals for the reception of foundlings, sick persons, and old men and women past work, having no resources of their own, we must take good heed how we listen to the cry of a narrow and pitiless political economy, enjoining us to abolish these establishments.

2. The State further owes, to whomsoever stands in need of it, aid and protection in the development of his intellectual life. God's will is, that all intelligent nature should bring forth its fruits. The State is responsible for all the human faculties that are blasted by brutal oppression. Enlightened charity owes to all that elementary instruction, at least, which shall preserve man from degrading his nature, and falling from the rank of man to that of animal.

3. The State further, and especially, owes to every citizen aid and protection in the development of his moral life. Man is not merely an intelligent, he is

a moral being,—that is to say, a being capable of virtue: virtue is even still more than thought the object of our existence: it is sacred among all sacred things. The State then, should, whenever necessary, initiate and in all cases superintend the education of its children, whether in public or in private schools: it is its duty to come forward and aid those whose poverty would otherwise deprive them of this inestimable blessing. Let the state throw open to all in it, schools applicable to their wants, and keep them there until they know who God is,—what the soul, what duty; for human life, these words, not understood, is but a painful and oppressive enigma.

4. Charity interposes even in the punishment of crime; beside the right to punish, it places the duty to chasten: man, guilty, is still man; he is not a thing to be got rid of the moment it annoys us,—a stone that, falling upon our head, we pick up and throw into the abyss, that it may fall upon no other person. Man is a reasonable being, capable of comprehending good and evil, of repentance, of one day reconciling himself with order. These truths gave rise to works which reflect honour upon the close of the eighteenth and the commencement of the nineteenth century. Beccaria, Filangieri, Bentham, all denounce the excessive rigour of the penal laws. The latter, more especially, in his conception of penitentiaries, recals to us the early days of christianity, when, as we are told, punishment consisted in a course of expiation which permitted the guilty man to regain, through repentance, the rank he had forfeited. To punish is just; to reform is charitable. To what extent should these two principles combine? There is no question of solution more delicate, more

difficult. One thing, however, is certain, that justice should predominate. In undertaking the reformation of a culprit, the government usurps, though in a gracious usurpation, the rights of religion, but it must not go so far herein as to forget its own function, its own strict duty.

To respect the rights of others, and to do good to mankind, to be at once just and charitable; such is social morality in its two constituent elements. This is why the French Revolution, concentrating and enlarging the whole progress of moral and political philosophy, after having inscribed on its banner *Liberty, Equality*, added to these the great name Fraternity, which by turns has given impulse to the sublimest virtues, and served as a pretext for the most grinding tyrannies.

It is from having confounded these two distinct parts of morality that the greatest moralists have lost themselves in exclusive theories, equally false, equally dangerous. We have seen Adam Smith, after discovering and expounding the natural laws of production and of wealth, stop short, as though exhausted by the mighty effort, and feebly recognize in governments scarcely any other functions than those of a police magistrate; we have seen him admitting no other principle than the liberty of labour, that is to say, justice, condemn the most necessary, the most beneficent institutions, and open a door unthinkingly to a political economy, alike without external grandeur and without heart.*

We shall one of these days have occasion to note the chief of modern moralists, Kant, reverting to

* As to the merits and defects of Smith's Political Economy, see my Lectures, 1st series, vol. iv. p. 270-303.

stoicism at the end of the 18th century, rejecting love out of fear of mysticism, and sacrificing charity to justice; as though the human soul, as though society representing that soul, were not large enough to find place for both.

Besides, let me once more lay it down: justice, still more than charity, is the foundation of every society; and this foundation is immortal, immoveable.

The rights and the duties of man, though their declaration be modern, are as old as man himself: let this profession of faith be adopted in honour of humanity. The moment that man knew himself, he knew himself for a free being, and he respected himself accordingly: he assumed a position above things, and he felt that he should degrade himself were he either to violate the liberty of others, or suffer others to trench upon his own. In all time liberty has been known and honoured, but only more or less, and partially. This right already illumined the human race, while that still remained buried in obscurity. Sacred liberty did not all at once disclose her glorious face; she raised her veil gradually, slowly; but every fresh glimpse that blesses man, suffices more and more to ennoble him, and to impress him with the conviction that he is of higher worth than the material world in which he finds himself.

The true world of man is that of liberty, and his true history is no other than the constant progress of liberty, better and better comprehended and appreciated from age to age, and ever expanding itself in the thought of man, until, by epoch and epoch, comes that wherein all rights are known and respected, and wherein, so to speak, the very essence of liberty manifests itself.

The philosophy of history exhibits to us, amid the vicissitudes which, by turns, elevate and hurl down societies, the unintermitting march of humanity towards that ideal society I have sketched out to you, and whose realization would be the complete emancipation of the human person—the reign of liberty on earth. This ideal society, indeed, is never realized in an absolute form; for every thing ideal, when it becomes realized, becomes also modified; but modified as it may be, it still renders beautiful all things with which it mingles; it is a ray of the true society, which, gleaming upon the various individual societies which succeed each other in this world, communicates to them more and more of its grandeur and its power.

Humanity for a long time reposes tranquilly under the form of liberty which suffices it. This form can be established and supported only in so far as it suits humanity. There never was such a thing as entire and absolute oppression, even in the periods which to us appear at the present day the most oppressed; for, after all, a state of society endures only by the consent of those to whom it applies. Men desire no more liberty at the time than what they can conceive; and it is upon ignorance far more than upon servility that all despotisms are founded. Thus, not to speak of the East, where the man-child had scarce the sentiment of its own being, that is to say, of liberty; in Greece, in that youth of the world when humanity began to move and to know itself, rising liberty was but very feeble; yet the democracies of Greece sought not to extend it. But, as it is of the essence of all imperfect things to tend onwards to perfection, so every partial form has but its limited time, and then gives place to a more general form, which, e-

ternally destroying the former, develops the motive spirit in them; for evil alone perishes, the good remains, and advances on its way. The middle ages, in which slavery gradually succumbs to the Gospel—the middle ages possessed far more liberty than the ancient world.* Now they appear to us an epoch of oppression, because the human mind is no longer satisfied with the liberties it then enjoyed; and to seek to enclose it within the limits of those inadequate liberties, were, manifestly, real oppression. But the proof that the human race did not feel itself oppressed in the middle ages, is, that it endured them. It was only some two or three centuries back that the middle ages began to be oppressive to humanity: it was, accordingly, some two or three centuries back that they began to be attacked. The forms of society, when they suit it, are immoveable; the rash man who ventures to touch them, is dashed in pieces against them; but when a form of society has served its time; when people conceive, when people desire more rights than they possess; when that which was a prop becomes an obstacle;—in a word, when the spirit of liberty, and the love of the people, which is its close attendant, have together withdrawn themselves from the form once the most puissant and the most adored, the first man who lays hands on this idol, deserted by the deity that had animated it, overthrows it with ease, and reduces it to dust.

Thus goes on the human race, from form to form, from revolution to revolution, ever advancing over ruins, but still always advancing. The human race, like the universe, owes its continuation of life to

* As to the Progress of Liberty and the Rights of Mankind, see my Lectures, 1st series, vol iii. p. 320.

death; but the death is only apparent, since it contains within it the germ of a new life. Revolutions, thus considered, no longer dismay the friend of humanity, because beyond the momentary destruction he discerns perpetual renovation; because, while a spectator of the most fearful tragedies, he knows their happy close; because, when he sees one form of society decline and fall, he firmly believes that the future form, whatever present appearances may be, will be better than all that have preceded it:—such is the consolation, the hope, the serene deep-seated faith of the philosopher.

The crises of humanity announce themselves by gloomy symptoms and sinister phenomena. The nations which are losing their ancient form, aspire to a new form which is less distinct to their eyes, and which agitates them far more than it consoles them, by the vague hopes it gives them, and the distant perspective it lays open to them. It is more especially the negative side of things that is clear,—the positive is obscure. The past, that we reject, is well known,—the future, that we invoke, is clothed in mists and darkness. Hence those troubles of the soul which lead, in many men, to scepticism. Against internal agitation and scepticism our asylum is philosophy, which reveals to us the moral foundation and certain object of all the movements of history, and presents to us a distinct sure view of the true society in its eternal Ideal.

Yes, there is an eternal society, under forms constantly renewing themselves. On all sides people ask, whither is humanity tending? Let us rather seek to ascertain the sacred aim it ought to pursue. That which is to be may be more or less darkly hidden from us:—thanks be to God, that which we

ought to do is not. There are principles subsisting sufficient to guide us amidst all the trials of life and the perpetual mobility of human affairs. These principles are at once perfectly simple, and of vast range. The man of humblest intellect, if he have a human heart, may understand and practise them; and they contain within themselves all the obligations which individuals or states, in their highest development, can incur. There is first, justice, the inviolable respect which the liberty of one man ought to have for that of another man; then there is charity, whose inspirations vivify without changing rigid precepts of justice. Justice is the bridle of humanity, charity its spur. Remove one or the other, and man either stops short, or is thrown. Led by charity, supported by justice, he proceeds onwards to his destiny with a firm, regular, sustained step. This is the Ideal which it is the grand object to realize in the laws, in morals, and especially in thought and in philosophy. Antiquity, without discarding charity, more particularly inculcated justice, so necessary to democracies. It is the glory of Christianity that it proclaimed and propagated charity—that lamp of the middle ages, that consolation in servitude, that guide to emancipation. It is for modern times to gather in the double legacy of antiquity and of the middle ages, and thus to fill up the treasure-house of humanity. Daughter of the French revolution, the philosophy of the 19th century owes it to herself at length to expound in their distinguishing characters, and to expound in their essential harmony, these two grand parts of the soul, these two different principles, equally true, equally sacred, of eternal morality. VICTOR COUSIN.

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