COMMENTARIES ON THE LAWS OF ENGLAND.

IN FOUR BOOKS.

BY

SIR WILLIAM BLACKSTONE, Knt.

ONE OF THE JUDGES OF HIS MAJESTY'S COURT OF COMMON PLEAS.

WITH

NOTES SELECTED FROM THE EDITIONS OF ARCHBOLD, CHRISTIAN, COLERIDGE, CHITTY, STEWART, HARR, AND OTHERS,

BARRON FIELD'S ANALYSIS,

AND

Additional Notes, and a Life of the Author,

BY

GEORGE SHARSWOOD,

CHIEF JUSTICE OF THE SUPREME COURT OF PENNSYLVANIA.

IN TWO VOLUMES.

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OF THE NATURE OF LAWS IN GENERAL

In its most general and comprehensive sense, signifies a rule of action; and is applied indiscriminately to all kinds of action, whether animate or inanimate, rational or irrational. Thus we say, the laws of motion, of gravitation, of optics, or mechanics, as well as the laws of nature, and it is the rule of action which is prescribed by some superior, and which the inferior is bound to obey.

Thus, when the Supreme Being formed the universe, and created matter out of nothing, he impressed certain principles upon that matter, from which it can never depart, and without which it would cease to be. When he put that matter into motion, he established certain laws of motion, to which all movable bodies must conform. And, to descend from the greatest operations to the smallest, when a workman forms a clock, or other piece of mechanism, he establishes, at his own pleasure, certain arbitrary laws for its direction,—as that the hand shall describe a given space in a given time, to which law as long as the work conforms, so long it remains in perfect order, and answers the end of its formation.

If from inanimate matter to vegetable and animal life, we shall find them still governed by laws, more numerous indeed, but equally fixed and invariable. The whole progress of plants, from the seed to the root, and from thence to the seed again; the method of animal nutrition, digestion, secretion, and all the branches of vital economy, are not left to chance, or the will of the creature itself, but are performed in a wondrous involuntary manner, and guided by unerring rules laid down by the great Creator.
more or less extent and effect, in proportion as the supriority of the one and the dependence of the other is greater or less, absolute or limited. And consequently, it depends absolutely upon his Maker for everything, it is necessarily that he should, in all points, conform to his Maker's will.

This will of his Maker is called the law of nature. God, when he created man, and endued him with a free will, as a principle of his own, and free will is to conduct himself in all parts of life, "He laid down certain immutable laws of human nature, whereby free-will is, in some degree regulated and restrained, and gave him also the faculty of reasoning to discover the purport of those laws."

Considering the Creator only as a being of infinite power, he was able unquestionably to invent and impose whatever laws he pleased to his creature, man, however unjust or severe. But, as he is also a being of infinite wisdom, he has laid down only such laws as were founded in those relations of justice that existed in the nature of things antecedent to any positive precept. This is the external to the Eternal, in all his dispensations, conforming, and in which he has enabled human reason to discover, so far as was necessary for the conduct of human actions. Such, among others, are these principles: that we should live honestly, should not hurt nobody, and should render to every one, to whom three general precepts justinianii has reduced the whole doctrine of law.

*40* The laws of our natural being are necessarily relations sustained by us to our Maker and to other beings. The existence of a Supreme Being—a Spirit infinite, eternal, omnipresent, and omniscient—is a first truth of moral science. It may be assumed as an absolute truth. Having created us such as we are, our relations to one another, and to one another another, are not from his will, but from those eternal principles of rectitude which he has established in the nature of things, and which he has made a part of our nature. (Ex. xi. 28.)—The existence of these relations is a part of our nature. It is only necessary to notice these relations to see that they are not only necessary for the conduct of human actions. Such among others, are these principles: that we should live honestly, should not hurt nobody, and should render to every one, to whom three general precepts justinianii has reduced the whole doctrine of law.

are ruinous to society, and not by immediate but remote consequences, as drunkenness, debauchery, habits of idleness, violence, theft, robbery, murder, &c.—CHRISTIAN.

There is in every moral being a faculty or sense by which he is enabled to distinguish right from wrong. There are a great number of beings among whom we have rejected the doctrine of a moral sense, as relatively to human actions. They are of different species, the one the other, but the latter is of the same. They are of different species, the one the other, but the latter is of the same. They are of different species, the one the other, but the latter is of the same.

Let any one attempt to demonstrate that there is in men a natural faculty for doing right. He will be met by precisely the same argument made against the existence of the moral sense, or, as it may well be termed, the sense for moral beauty. All men have it in the same perfection. In some it is undeveloped, in some it is corrupted. Indeed, the same objections may be urged against the perceptions of the palate or of any other natural sense. That some men love the taste of tobacco by no means proves that the sense of smell is not only in all men which distinguishes the qualities of sweet and bitter.

The commentator appears to have adopted the idea that utility is the standard of right and wrong; in other words, that we are to judge the moral qualities of an action by a consideration of the moral qualities of an action, and not by a consideration of the effects on the happiness of the being moral. It is not, therefore, the case that, in order to create moral beings, our Maker knew what their necessary relations true; and, in a sense, he may be said to have willed the existence of those relations. It is an entirely different thing to have the idea of the rules of right and wrong resulting from those relations. It is the same idea that the rules of right and wrong result from those relations. It is the same idea that the rules of right and wrong result from those relations. It is the same idea that the rules of right and wrong result from those relations.
writers, and denominated the natural law; because one is the law of nature, expressly declared so to be by God himself; the other is only what, by the assistance of human reason, we imagine to be that law. If we could be as certain of the latter as we are of the former, both would have an equal authority; but, till then, they can never be put in any competition together.

Upon these two foundations, the law of nature, and the law of revelation, depend all human laws; that is to say, no human laws should be suffered to contradict these. There are, it is true, a great number of indifferents points in which both the divine law and the natural law and the natural leave a man at his own liberty, but which are found necessary for the benefit of society, to be restrained within certain limits. It is that humane art which has given the laws of humanity its efficacy; for, with regard to such points as are not indifferent, human laws are only declaratory of, and act in subordination to, the former. To instance in the case of murder: this is expressly forbidden by the divine, and demonstrably by the natural law; and, from these prohibitions, arises the true unalienvens of this crime. Those human laws that annul or supercede any fresh obligation, in foro conscientiae, to abstain from its perpetration. Nay, if any human law should allow or enjoin us to commit it, we are bound to transgress that human law, or else we must offend both the natural and the divine. But, with regard to matters that are in themselves indifferent, and are not commanded or forbidden by those superior laws,—such, for instance, as exporting of wool into foreign countries,—here the inferior legislature has scope and opportunity to interpose, and to make that action unlawful which before was not so.

If man were to live in a state of nature, unconnected with other individuals, there would be no occasion for any other laws than the law of nature, and the law of God. Neither could any other law possibly exist; for man could make it; and, in a state of nature, we are all equal, without any other superior but Him who is the author of our being. But man was formed for society; and, as is demonstrated by the writers on this subject, is neither capable of living alone, nor indeed has the courage to do it. However, as it is impossible for the whole race of mankind to be united in one great society, they must necessarily divide into many, and form separate states, commonwealths, and nations, entirely independent of each other, and yet liable to mutual intercourse. Hence arises a third kind of law, to regulate this mutual intercourse, called "the law of nations," which, as none of these states will acknowledge a superiority in the other cannot be dictated by any, but depends entirely upon the rules of natural law, and upon mutual compacts, treaties, leagues, compacts we have no other rule to resort to, but the law of nature; being the only one to which all the communities are equally subject; and therefore the only law which prevails.

The law of nature, or morality, which teaches the duty towards one's neighbour, and agreement to it do not extend to the supposed equality of subjects in a republic. The superior, who would prescribe and enforce the law in a state of nature, would be the collective force of the wise and good, as the superior in a perfect republic is a majority of the wise and good, or the power to reverse which they are subject by their agreement.

Modern writers have agreed that the term International Law is more proper than Law (Nations). Justa genium is rather what Adam Smith has called natural jurisprudence, which he says is "a theory of the principles which ought to run through, and to be the foundation of, the laws of all nations." The two phrases just naturae and just genium are used by the Roman lawyers almost indiscriminately. Just a factum more properly was employed to express among the Romans what we mean by the law of nations. They had...