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**The Works Of the late Right Honorable Henry St. John,
Lord Viscount Bolingbroke**

In Five Volumes, complete.

Bolingbroke, Henry St. John

London, 1754

XVI.

[urn:nbn:de:hbz:466:1-60777](https://nbn-resolving.org/urn:nbn:de:hbz:466:1-60777)

There was not above one city I think with whom they made peace. None escaped the edge of their swords, except such as they could not conquer, and such as found refuge in foreign countries. Some found it among the Phœnicians, for to say that the Phœnicians descended from these refugees, is to affirm what neither has been nor can be proved. Some found it in other countries, in Afric very probably*, since PROCOPIUS speaks of pillars that remained in the Tingitana with this inscription, “we are they who fled from the face of JOSHUA the robber, the son of NANE.” Thus you may see how the prophecy of NOAH was fulfilled, which seems so plain to BOCHART, and other great scholars, and which is so little intelligible in the terms and in the application of them. But whatever becomes of the prophecy, the conquest of CANAAN by this colony from Egypt is the strongest example that can be produced, of the mischiefs brought on mankind in the establishing of civil societies by violence, and therefore much to my present purpose.

XVI.

THOUGH the establishment of civil societies originally, and the maintenance of them since, have caused, in the order of providence, perpetual wars, and much of that misery which injustice and violence bring on the world, “tot bella per orbem, tam multae scelerum facies,” yet the necessity of establishing and maintaining them arises from the constitution of human nature, and is therefore indispensable. The great commonwealth of mankind, cannot be reduced under one government, nor subsist without any. Just so we may observe, that the laws and constitutions of particular societies are every

* In Vandalicis.

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where various, in a multitude of instances opposite, and in many absurd. Laws and constitutions are however necessary to be made, and, when they are made, to be kept; so that we may apply to all these cases a passage in Terence, much more properly than it is applied by GROTIUS in favor of absolute power*, “aut haec cum illis sunt habenda, aut illa cum his amittenda sunt”.

BUT now since the law of nature tends to promote the peace and happiness of mankind, and since this law is immutably the same at all times, and in all places, for which reason ARISTOTLE compared it to fire, that warms or burns alike in Persia and in Greece, how comes it to pass that the means prescribed by it, answer the ends of it so ill? The answer is short, but full. Because these means are employed by men whose imperfection is such, that all they do must be, of course, imperfectly done. Whether they are compounded of two substances, or no, may be doubted, but that they have in one substance or one nature, two principles of determination, cannot be doubted. Affections and passions excited by immediate objects of apparent good, are therefore continually in action, and are excited independently of the will which they determine afterwards. But reason is a sluggard, that cannot be so excited. Reason must be willed into action, and as this can rarely happen when the will is already determined by affections and passions, so, when it does happen, a sort of composition generally follows, between the two principles; and if affections and passions cannot govern absolutely, nor even subject reason to serve as their instrument, they require and obtain more indulgence from her than they deserve, or than she would shew them if she was entirely free from their force, and free from their seduction.

* De jure B. et P. L. i. c. 3. TER. Heaut.

THESE reflections, which have been touched upon already, may account for the unnatural manner in which the law of nature has been executed by civil societies, and for the absurd manner in which it has been copied, and improved too, as they pretend, by civil laws. Had the reverse of all this been done in a closer conformity to the law of nature, the moral state of mankind had been truly paradisiacal, but it would not have been human. We should not have been the creatures we were designed to be, and a gap would have been left in the gradation of created intelligences. The tables of the law of nature are hung up, as it were, in the works of God, and are made obvious to the sight of man, not because he is able to observe them in their whole extent and in every part alike, but that he may keep them constantly in view, and depart as little as possible, in the midst of so many infirmities and so many temptations, from them. God has shewn us wherein our wisdom, our happiness, and the perfection of our nature consist; and he has left us to pursue these ends by the use of our reason. But reason not being given to all alike, and being very imperfectly given to those who possess the greatest share, our wisdom, and our happiness are very imperfect likewise, and the state of mankind is, upon the whole, a very imperfect state. We look up much higher than we are able to rise.

WHATEVER violations of these laws may have been frequently committed, by particular men, and upon particular occasions, none that were deemed to be such, and perhaps few that might be called such strictly, have been enacted into laws, or have grown up into established customs by the plenary, or less plenary permission which civilians speak of, one of which gives a right to do, and the other exempts from punishment for doing. I scarce believe, on the credit of an-

tient and modern authors, many of the stories which are told concerning the manners of people, whom they call savage or barbarous. But if I believed them all, I would still maintain that there were in Greece, and at Rome, as many things repugnant to the law of nature enjoined, or at least permitted, as can be produced from the relations we have of the people of Colchos, of the Massagetæ, or of the Getulians; and further, that if there are not in our civilised and enlightened age as many, there are some that exceed, in injustice and inhumanity, all that we are told of Iroquois, Brasilians, or the wildest inhabitants of african deserts. The great and principal difference lies here. Our legal violations of natural law have a solemn varnish of policy, and even of religion, which the casuists of the law and those of the gospel throw over them, and which always disguise, altho they cannot always hide them. Illiterate savage nations have no such varnish to employ, and their laws and customs appear to every eye but their own, as unnatural and abominable as they really are. To this it may be added, that they who can write have a great advantage over those who cannot, in all such cases. They can extenuate and exaggerate matters of fact, and they seldom fail to do it, with no more regard to truth than is necessary to make the falsehood pass. If we had the history of Canaan writ by a canaanite, that of Carthage by a carthaginian, or that of Mexico and Peru by a mexican and peruvian, figure to yourself how the hospitality, the fidelity, the innocence, and simplicity of manners, of all these people, would be exemplified in various instances, and what further proofs would be brought of the ferocity, the treachery, the injustice and cruelty of the Israelites, the Romans, and the Spaniards, of the first and the last especially.

It has been said that "the tables of natural law are hung up in the works of God, and are obvious to the sight of man." They are so. They are so obvious, that no man who is able to read the plainest character can mistake them, and therefore no political society ever framed a system of law in direct and avowed contradiction to them. No not even the Jews, who might think, and who did think, that they had little concern in the law of nature; since the author of nature had given them a particular law. They might justify their neglect of the former, in much the same manner that OMAR justified the order he gave for burning the alexandrian library; and, by what some of their rabbins have said, they seem to do little else. If the law of nature contains nothing more than the written and oral law of MOSES, it is unnecessary, might they say, and the saying would be worthy of them. If it contains any thing which is not in the law of MOSES, or which differs from that, it ought to be destroyed. But however they acknowledged in some sort a law of nature, since they acknowledged a law antecedent to that of MOSES, and given to all the sons of NOAH.

UPON the whole, the law of nature is too evident, and too important not to have been always the law of laws. Such it has been reputed, and as such it has been respected, not only by the most famous legislators and philosophers, but by those who made the first rude essays towards the establishment of civil government. Inward consciousness, and outward observation, could not fail to make it known to them, and to the fathers of families, or the patriarchs of mankind before them. The errors about it, and the contradictions to it, that abound, and have always abounded, in the laws and customs of societies, proceed from causes of a very different nature, and

very consistent with all that has been said of it. The law is plain, but the precepts it contains are general. Reason collects them easily from the whole system of God's works, from the constitution of human nature, the consequences of human actions, and the invariable course of things. But then to make the greatest part of these general precepts as useful to human kind as the divine lawgiver intended them to be, reason has a further task assigned her. Reason must be employed to make proper, and necessary, deductions from these precepts, and to apply them in every case that concerns our duty to God and man, according to the different relations in which we all stand to both, and the different places we hold in society.

Now human reason being at best as fallible as it is, and having been as little informed by experience as it was in the early ages, when mankind began to gather into political societies, a multitude of false deductions and wrong applications could not fail to be made; for nothing can be more true than this observation, that the difficulty of applying general, and even common notions to particulars, is one great cause of the errors, and misfortunes of mankind. These deductions and applications were made diversly among divers people, and every one accepting those of their own growth, for true dictates of nature and reason, it is easy to conceive what numberless prejudices they produced, and how the laws, customs, opinions, and manners of nations have been rendered as various, and as opposite in the very same respects, as they are and have always been. These prejudices, for so they may be properly named, were at first universally, as they are still in many parts of the world, the prejudices of real ignorance. Those of fantastic knowledge succeeded these, wherever men advanced from simplicity to refinement, "a necessariis ad elegantiora;" and which of these have done most hurt may

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be disputed. Thus much is certain. There were prejudices of superstition to corrupt religion, and prejudices in favor of licentiousness and of tyranny, both to corrupt the first principles of civil government, and to perpetuate error: so that when men of different families and countries, and all fraught with different prejudices, mingled one way or other in the same societies, it is no wonder that their systems of religion and government were such as we find them in all ages.

THE confusion was so great that the laws of nature, and those of positive institution, were but ill distinguished, and that some, or all, of the first kind passed for laws of the second, whilst some of the second passed for laws of the first. Such examples may be found, particularly among the Jews, about whom, of all the antient nations, we are the most concerned to be inquisitive, and of whom it is hard to say whether their traditions, or their reasonings upon them, are most precarious. They acknowledged in some sort, as it has been said, a law of nature, since they acknowledged a law antecedent to that of MOSES, and unwritten precepts of universal and perpetual obligation. The rectitude of these precepts is manifest, and unknown to no man, "*Rectitudo est manifestior, utpote nemini ferè non agnita,*" as Mr. SELDEN says*, speaking after the rabbins. But these precepts were not collected by human reason, from the constitution of nature. They were revealed by God himself to NOAH, the Jews affirm, and were designed for all his posterity, as they were renewed to the Israelites, at the station in Mara, with a precept about keeping the sabbath, and other additional precepts. I enter into these particulars in order to observe only, what an unnatural jumble this people made of seven principal precepts, which composed, according

* De Jure Nat. et Gent. juxta &c. l. i. c. 10.

to them, a code of natural and universal law, and the original source of all law, "primordiale legem et matricem omnium praeceptorum Dei*." There is nothing, perhaps, more absurd nor ridiculous in the whole Jewish system.

No doubt can be entertained whether the law of nature forbids idolatry, blasphemy, murder, theft, and, I think, incest, too, at least in the strictest sense of the word, and in the highest instance of it. But surely none, except rabbins, could have blended up with these a precept that forbids the eating the member of a living animal, which is such a piece of cruelty, that I shall not believe on the word of MAIMONIDES, of ARNOBIUS, or any other author, that the kings of the nations, or the most enthusiastic bacchanals, did it in the celebration of their idolatrous feasts, nor even that the Israelites, who were so prone to spill blood, were as fond of swallowing it in this filthy manner, fresh and reeking. This circumstance alone would be sufficient to prove, that the "praecepta Noachidarum" were an invention of the talmudists, whose practice it was to forge, and who wanted skill and knowledge to make their forgeries probable. A natural law against a practice, to which there is no inducement in human nature, altho men are carnivorous animals, is most rabbinically, that is, impertinently, assumed. He must be a rabbin too, who is able to discover how a precept, to regulate judicial proceedings, can be said to have made another head of natural law. SELDEN † treats of this in the last place, because he thinks it relative to the other six, which would have been given in vain, if judgments had not been established to punish the violation of them. But how could all these judgments be established by one of these seven precepts? By judgments the talmudists understand all

* Ib. † Lib. vii. c. iv.

constitutions, customs, actions, circumstances, decisions, and law cases, which are of moment in criminal causes. It would be too ridiculous to suppose judgments, in this sense, established by a single precept of the law of nature. What did this precept then command? A tribunal to be erected for the trial of all offences against these laws, or a council chamber wherein new laws, for enforcing these, should be made*? Or did God by one precept of natural, and universal law confirm and ratify all future judgments that should be given, and all future laws that should be made by human authority, to secure the observation of six other precepts? I can think so the less, because the judgments of his chosen people were often repugnant to the law of nature, truly so called in particular instances; and because, in general, a spirit of injustice, which established one rule for themselves and another for every other person, ran thro all their judicial proceedings.

ANOTHER instance of that confusion which arose in men's notions concerning laws of nature, and laws of positive institution, might be drawn from the decree of the first christian council, in which the apostles and the elders imposed no other load on the converts from paganism, than abstinence from things offered to idols, from blood, from things suffocated, and from fornication, according to the copy we have of it; all of which, as well as circumcision, and other observances from which these converts were exempted, made parts of the mosaical institution†. But it appears by antient manuscripts, and by the citations of IRENAEUS, and CYPRIAN, as well as by other authorities, that another duty which was not most certainly of mosaical institution, and was plainly a moral obliga-

* --- Domus Judicii nunc pro tribunali aut foro---nunc pro loco aut coetu, quo sancuntur novae leges--- sumitur. Id. ib.

† SELDEN Lib. vii. c. 12.

tion arising from the real law of nature, had been contained in the original decree. The converts were to abstain from doing to others what they would not that others should do to them. This instance, and the former, might be more explained. But enough has been said on these two subjects, and we may proceed to take notice of those instances wherein things are, and have been, forbid by civil or ecclesiastical laws, which are not only permitted in the fullest manner by the law of nature, but seem much more conformable to it than the institutions opposed to them; and of others wherein things directly forbidden by the law of nature are, and have been, permitted, or commanded, by civil or ecclesiastical laws, and by both.

XVII.

THAT the human, like every other species of animals, should multiply by the copulation of the two sexes, and be propagated by their care to nurse and breed up their young, is undoubtedly a law of nature. Self-love, the great spring of human actions, prompts to both. But as it is more immediately determined, and more strongly stimulated by instinct, and by nature, to one than to the other, it became necessary to give this principle, by reason and by art, all the additional strength that could be given by them, or, at least, to let it lose none that it had. For this purpose it was necessary, that parents should know certainly their own respective broods, and that, as a woman cannot doubt whether she is the mother of the child she bears, so a man should have all the assurance law can give him, that he is the father of the child he begets; for a likeness of features, would not amount to a sufficient assurance, tho I have red of a country where
 women