

# **Pannomial Fragments**

Jeremy Bentham



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The MSS. from which the following Chapters are extracted, were written at sundry times, and are in an unfinished state;—the author appears to have designed ultimately to have worked up the sketches he has thus left into An Introduction to a Pannomion, or Complete Code of Laws. Some of the latest sheets are dated June 1831.

## Chapter I. GENERAL OBSERVATIONS.

By a Pannomion, understand on this occasion an all-comprehensive collection of law,—that is to say, of *rules* expressive of the will or wills of some person or persons belonging to the community, or say society in question, with whose will in so far as known, or guessed at, all other members of that same community in question, whether from habit or otherwise, are regarded as disposed to act in compliance.

In the formation of such a work the sole proper all-comprehensive end should be the greatest happiness of the whole community governors and governed together,—the *greatest happiness principle* should be the fundamental principle.

The next specific principle is the *happiness-numeration principle*.

Rule: In case of collision and contest, happiness of each party being equal, prefer the happiness of the greater to that of the lesser number.

Maximizing universal security;—securing the existence of, and sufficiency of, the matter of subsistence for all the members of the community;—maximizing the quantity of the matter of abundance in all its shapes;—securing the nearest approximation to absolute equality in the distribution of the matter of abundance, and the other modifications of the matter of property; that is to say, the nearest approximation consistent with universal security, as above, for subsistence and maximization of the matter of abundance:—by these denominations, or for shortness, by the several words *security*, *subsistence*, *abundance* and *equality*, may be characterized the several specific ends, which in the character of means stand next in subordination to the all embracing end—the greatest happiness of the greatest number of the individuals belonging to the community in question.

The following are the branches of the pannomion, to which the ends immediately subordinate to the greatest-happiness principle respectively correspond:—

To constitutional law, the axioms and principles applying to equality.

To penal law, the axioms and principles applying to security; viz. as to—

1. Person;
2. Reputation;
3. Property;
4. Condition in life.

The principle presiding over that branch of the *penal code*, which is employed in the endeavour to arrest, or apply remedy to offences considered as being and being intended to be productive of suffering to one party, without producing enjoyment, otherwise than from the contemplation of such suffering, to the other, is *the positive-pain-preventing principle*.

Rule: Let not any one produce pain on the part of any other, for no other purpose than the pleasure derived from the contemplation of that same pain.

The persons for the regulation of whose conduct the positive-pain-preventing principle applies are—

1. The subject citizens, taken at large.
2. The sovereign, in respect of the quantity, and thence the quality of the subsequentially preventive, or say punitive, remedy applied by him against any offence.

To civil law, more particularly, apply the axioms relating to security as to property. Sole principle—*the disappointment-preventing principle*.

Rule applying to the aggregate, composed of the several sources of positive good or happiness, elements of prosperity, objects as they thus are of general desire: Among a number of persons, competitors actually or

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eventually possible, for the benefit or source of happiness in question, exceptions excepted, give it to that one in whose breast the greatest quantity of pain or disappointment will have place, in the event of his not having the thing thenceforward in his possession, or say, at his command.

The exception is when, by any different disposition, happiness in greater quantity, probability taken into account, will be produced.

Of any such exception the existence ought not to be assumed: if it exist, the proof of its existence lies upon him by whom its existence is asserted.

To political economy apply the axioms and principles relating to subsistence and abundance. To political economy—that is to say, to those portions of the penal and civil codes in the rationale of which considerations suggested by the art and science of political economy are applicable and have place: considerations over and above and independent of the sensations produced by loss and gain.

By axioms of moral and political pathology, understand so many general propositions, by each of which statement is made of the pleasure or pain (chiefly of the pain) produced by the several sorts of evils, which are the result of human agency on the part of the several individuals respectively affected by them; to wit, by means of the influence exercised by them on the quantity or degree in which the benefits expressed by the fore-mentioned all important words, are by the respective parties, agents and patients, enjoyed, or the opposite burthens constituted by the absence of them endured.

Of these propositions, it will be observed that they divide themselves into *groups*;—one group being relative to security, another to subsistence, a third to abundance, the fourth and last to equality: the first bringing to view the enjoyment derived from the undisturbed possession of security at large—security in the most comprehensive application made of the word, contrasted with the enjoyment producible by the breach of it,—the second group bringing to view the subject of subsistence;—the third group bringing to view the subject of abundance,—and the fourth group bringing to view the subject of equality, and stating the evil consequence of any legislative arrangement by which a defalcation from the maximum of practicable equality is effected.

In each of the axioms, the antagonizing, or say competing, interests of two parties are conjointly brought to view:—in those which relate to security, these parties are, the maleficent agent, or say wrongdoer, and the patient wronged:—in those which relate to subsistence, abundance, and equality, they are the parties whose interests stand in competition, no blame being supposed to have place on either side. By the legislator, preference should be given to that interest by preference to which the happiness of the greatest number will be most augmented.

To the first of the three stages of the progress made in society by the good or evil flowing from a human act, belong the effects of which indication is given in and announced by these same four groups of axioms.

The principles which form the ground work of the here proposed system, correspond to the above-mentioned *specific ends*, immediately *subordinate* to the all-comprehensive *end*, expressed for shortness by the *greatest-happiness principle*, —and have their foundation in *observations* on the pathology of the human mind as expressed in the above-mentioned *propositions*, to which, in consideration of their supposed incontrovertibility and extensive applicability, have been given, for distinction sake, the name of axioms.

As to these principles, the names by which expression is given to them have for their object and purpose *conciseness*—the conveying, by means of these several compound substantives, a conception of the several groups of pathological effects in a manner more concise, and thence more commodious than by a repetition made each time of the several groups of axioms to which they correspond, and which they are employed to recall to mind.

Correspondent to the axioms having reference to security, will be found the principle following:—

I. Principle correspondent to security, the axioms thereto belonging, is the *security-providing principle*.

Of the security-providing principle, the following modifications may be brought to view, corresponding to the several *objects* respecting which security requires to be afforded:—

1. The objects for, or say in respect of which, security is endeavoured, are these—

1. Person: the person of individuals on the occasion of which body and mind require to be distinguished.

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2. Reputation: the reputation of individuals or classes, or say the degree of estimation in which they are respectively held.
3. Property: the masses of the matter of wealth respectively belonging to them, and possessed by them in the shape of capital, or in the shape of income.
4. Power: the portions of power respectively belonging to them, for whose sake soever, or say to whose benefit soever exercisable, whether for the sake and benefit of the individual power-holder himself—or for the sake of other persons, one or more, in any number; in which case the power is styled a *trust*, and the power-holder a *trustee*, and the person or persons for whose benefit it is exercised, or designed to be exercised, entitled *benefitee*, and the person or persons by whom the trust was created a *trustor*.
5. Rank: or say factitious reputation or estimation,—the source of factitious reputation or estimation put into the possession of the individual by a series of delusions operating on the imagination.
6. Condition in life, in so far as beneficial: the aggregate benefits included in it will be found composed of the above objects, two or more of them.

*N.B.* The four last-mentioned objects may, for conciseness sake, be spoken of as so many modifications of the matter of prosperity.

2. Miscellaneous rights: including exemptions from burthensome obligations.

- The maleficent acts, or say offences against which the endeavour is used to apply the appropriate punitive and other remedies.
- The contingently maleficent agents, against whose maleficent acts the endeavour will be used to employ the several remedial applications These may be—
  1. External, or say foreign governments and subjects, considered as liable to become adversaries. Code in which provision is made against evil from that source, the Constitutional. Ch. Defensive Force—sub-departments of the administration department those of the army and the navy ministers.
  2. Internal, viz. fellow-citizens, as distinguished into—
    1. Fellow-citizens at large or say non-functionaries;
    2. Functionaries considered in respect of the evil producible by them in such their several capacities
- The several classes of persons *to whom*, by the several arrangements employed, the security is endeavoured to be afforded. These may be distinguished into—
  1. Citizens of the state in question; distinguished into—
    1. Persons considered in their individual capacities: correspondent offences—private offences.
    2. Persons considered in classes: correspondent offences—semi-public offences.
    3. Functionaries as such considered in the aggregate: correspondent offences—public offences such as are purely public in contradistinction to such as are privato-public; offences affecting their individual capacity, but constituted public offences by the indefinable multitude of the individuals liable to be affected.
  2. Foreigners with reference to the state in question;—governments and subjects as above included.

A modification of the security-providing principle, applying to security in respect of all modifications of the matter of property is the disappointment-preventing principle. The use of it is to convey intimation of the reason for whatever arrangements come to be made for affording security in respect of property and the other modifications of the matter of prosperity, considered with a view to the interest of the individual possessor. In the aggregate of these are contained all the security-requiring objects, as above, with the exception of *person*.

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II. Subsistence–securing principle: correspondent subordinate end in view—subsistence. The use of it is to convey intimation of the reason for whatever arrangements come to be made for the purpose of securing, for the use of the community in question, a sufficient quantity of the matter of subsistence.

III. Abundance–maximizing principle: the use of it is to convey intimation of the reasons for whatever arrangements may come to be made in contemplation of their conduciveness to the accomplishment of that end.

IV. Equality maximizing, or say, more properly, inequality–minimizing principle: the use of it is to convey intimation of the reasons for whatever arrangements come to be made, in contemplation of their conduciveness to this end.

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## Chapter II. Consideranda

Subjects of consideration on the present occasion are the following:—Pleasures and pains—happiness and unhappiness—good and evil—ends and means—rules and principles—axioms of pathology, physical, and mental—or say psychological—observation and experiment. Of these, many are mutually correlative,—all are intimately connected with and give and receive explanation to and from each other.

*Happiness* is a word employed to denote the sum of the pleasures experienced during that quantity of time which is under consideration, deduction made or not made of the quantity of pain experienced during that same quantity of time.

*Unhappiness* is a word employed to denote the sum of pains experienced during the quantity of time which is under consideration, deduction made or not made of the quantity of pleasure experienced during that same quantity of time.

*Good* is a word employed to denote either pleasure, or exemption from pain—and the cause efficient, and more or less effective, of either.

*Evil* is a word employed to denote either pain or loss of pleasure, or a cause efficient, and more or less effective, of either.

In regard to good and evil, consider—

1. Their condition or import as to existence and non-existence.

Their *existential character*, or say character or mode of designation in regard to existence, or say logical character:—this is either *positive* or *negative*.

*Positive good*, is that which assumes not the existence of evil, and which accordingly might have place if there were no such thing as evil.

*Negative good*, is that which is constituted by the non-existence of evil on the occasion in question.

*Positive evil*, is that which assumes not the existence of good, and which accordingly might have place, if there were no such thing as good.

2. In regard to each, their *quality*.

By good, understand either pleasure, or the absence—or say, on the occasion in question, the non-existence—of *pain*. Pleasure is positive good; absence of pain—negative good.

By evil, understand either pain, or the absence—or say, on the occasion in question, the nonexistence—of pleasure. Pain is positive evil; absence of pleasure—if arising from loss—negative evil.

3. Their relation in respect of causality.

Understand by *good*, either actual pleasure or absence of pain, or anything considered as the cause of pleasure or the absence of pain.

Understand by *evil*, either actual pain, or absence of pleasure, or anything considered as the cause of pain or of the absence of pleasure.

4. Their quantity, in respect of—
  1. Intensity;
  2. Duration;
  3. Extent.
5. Their productiveness—or say fecundity—
  1. Direct;

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2. Inverse.
6. Part taken by human action in the production of them.
  1. Wish, or say desire;
  2. Direction to action in consequence—or say, in pursuance of such wish.

*End* is a word employed to denote a good, the prospect of eventually experiencing which, operates as a motive tending to produce at the hands of any sensitive being, some good which is an object of human desire and hope.

*Means* is a word employed to denote any substance, state of things, or matter, considered as contributing to the attainment of the good, which on that same occasion is regarded as an end

Pleasures and exemptions from pains, with their respective correlatives, happiness and exemption from unhappiness, are the ultimate ends of action.

As between *good* and *evil*, good alone is an ultimate end of the action of a sensitive being.

*Good* and *evil*, both are means in their nature capable of being made conducive to the attainment of the ultimate end—the net maximum of happiness and accordingly by men in general, and by men in the situation of legislators in particular, are employed in that view, and for that purpose.

Of good or evil, one and the same portion is capable of acting, on one and the same occasion, in the character of an *end*, and in that of a *means*:—of a means in relation to some antecedent end or state of things—of an end in relation to some eventually subsequent state of things.

*Remedy*, in all its shapes, is an instrument having for its use the exclusion of wrong in all its several shapes—or say the exclusion of maleficence in all its several shapes.

Of remedy in every shape, the application made is attended with and productive of burthen.

The application of remedy, instead of excluding wrong, is productive of wrong, if and in so far as it is productive of burthen outweighing the benefit.

In this way may effects and causes be seen linked together, as it were, in a chain composed of links in indefinite number, and, taken in the aggregate, of correspondent length.

So much for the matter of good, being that the production of which is, or at least ought to be the object, or say end in view, of everything which passes under the denomination of law—or a law:—and so much for good and evil,—both of them employed as means, and the only means employable, for the attainment of that end.

But what is a law, and what are laws themselves? Before this is explained, must be brought to view that species of matter which on each occasion is occupied in passing judgment on the aptitude of the law in question, considered as a *means* employed in and for the attainment of that end. To this purpose comes the need of the ideas, expression to which is given by the two mutually and intimately connected words *rule* and *principle*.

Correspondent to every rule you may have a principle: correspondent to every principle you may have a rule.

Of these two, a rule is the object which requires first to be taken into consideration and presented to view. Why? Because it is only by means of a rule that any moving force can be applied to the active faculty or any guide to the intellectual—any mandate can be issued—any instruction given.

A *rule* is a *proposition*—an entire proposition: a *principle* is but a *term*: True it is, that by a principle instruction may be conveyed. Conveyed? Yes: but how? No otherwise than through the medium of a proposition—the corresponding proposition—the proposition which it has the effect of presenting to the mind. Of presenting? Yes: and we may add, and of bringing back; for only in so far as the rule has been at the time in question, or some anterior time present to the mind, can any instruction, any clear idea be presented to the mind by a principle.

A principle, therefore, is as it were an abridgment of the corresponding rule;—in the compass of a single term, it serves to convey for some particular present use, to a mind already in possession of the rule, the essence of it: it is to the rule, what the essential oil is to the plant from which it is distilled.

So it does but answer this purpose, its uses are great and indisputable.

1. It saves words, and thereby time.
2. By consisting of nothing more than a single term, and that term a noun substantive, it presents an object which, by an apt assortment of other words, is upon occasion capable of being made up into another

proposition.

So, it is true, may a rule—but only in a form comparatively embarrassing and inconvenient. This will appear by taking in hand any sentence in which a principle has place and instead of the principle employing the corresponding rule.

Upon occasion, into any one sentence principles in any number may be inserted: and the greater the number, the stronger will be the impression of the embarrassment saved by the substitution of the principles to the rules.

A principle, as above, is no more than a single term; but that term may as well be composite, a compound of two or more words, as single. Of these words one must be a noun–substantive; the other may be either a noun–adjective or a participle; including under the appellation of a noun–adjective, a noun substantive employed in that character in the mode which is so happily in use in the English language, and which gives it, in comparison with every language in which this mode is not in use, a most eminently and incontestably useful advantage.

By an *axiom* is meant a sort of rule, of which by certain properties, the combination of which is peculiar to it, the usefulness is pre–eminent in comparison with other rules. These properties are—

1. Incontestableness.
2. Comprehensiveness.
3. Clearness.

As to axioms, the axioms that belong to this subject are axioms of mental pathology. The facts they are enunciative of, are facts enunciative of certain sensations, as being produced by certain events or states of things operating as their efficient causes.

By a *reason* for any act, is conveyed the idea of its supposed addition, actual or probable, to the greatest happiness. This effect may be produced either—

1. Immediately;
2. Through an intervening chain of any number of links.

A *law* is a word employed in three different senses, which require to be distinguished: but in each of them it imports that the *will* to which it gives expression either emanates from the supreme authority in the state, or has that same authority for its support.

In one sense it denotes an entire command,—the whole matter of a command. Call this the *integral* sense, and the sort of law a *complete law*.

In the second sense it contains no more than a portion of a command; and the matter of the command may be to an indefinite extent voluminous containing laws of the first mentioned sort in any number: in this sense it has for its synonym the word enactment: call the law in this sense a *fractional* or *incomplete* law.

In the third sense it designates the aggregate body of the enactive paragraphs to which it happens to have received the token of their being expressive of the will of the person or persons invested with the supreme authority in the political state, or of some person who acts in this behalf, under, and by virtue of that same authority.

By *power of classification* a species of legislative power is exercised. Thus when an enactment to any effect has been framed, if by any proposition bearing the form of a command or a rule, enlargement or retrenchment is applied to the genus, or say class of objects which contribute to constitute the subject matter of the command;—by this means, in a sort of indirect way, by and with the help of the other words which enter into the composition of the enactment, is produced the effect of a different enactment: one of the classes of which that same subject matter is composed receives thereby *contraction* or enlargement, and a fresh classification is made thereby.

Note here—in the giving existence to an enactment, three distinguishable parts are capable of being

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taken—or say, functions are capable of being performed; viz. the *institutive*, the *constitutive*, and the *consummative*; and this whether by one and the same authority, or by so many different authorities: by exercise given to the power of classification in any instance, a different consummation as it were is given to the several enactments in the matter of which, the generic words in question are any of them contained.

Of this same function—of this same power exercise is made by any functionary, or set of functionaries, belonging to a department other than, and thence inferior to, the *legislative*; for in no other way can classes be filled up by individuals, and reality given to general ideas. Call this power, power of location, or say *locative* power. But what difference there is between this case and the preceding consists in this: in the former case, by no other authority than the legislative can the power be exercised—the effect produced: in the latter case it is produced in virtue of a general authorization given by the legislative authority, and by that authority is never produced, unless it be in consequence of some extraordinary occurrence.

So much for particular laws, and small masses of particular laws. Now for the divisions of the all-comprehensive aggregate in which they are all of them at all times comprised.

The Pannomion may be considered as composed of two branches—the effective and the constitutive.

In the effective branch may be considered as contained the portion of the matter which is more immediately occupied in giving direction to the conduct of the members of the community of all classes.

The constitutive is occupied in determining who those persons in particular are, by whom the powers belonging to the effective branch shall be exercised.

Considered with relation to its connexion with good and evil employed in the character of punishment and reward for the purpose of giving direction to human conduct, the Pannomion is distinguished and divided into two branches—the directive and the sanctionative.

By the directive part, indication is given of the course which it is the desire of the lawgiver that upon the occasion in question the subject-citizens should pursue.

By the sanctionative part, information is given to them of the inducement which they will find for the pursuing of those same courses.

The matter of which this inducement is composed, is either the matter of good as above, or the matter of evil. Where and in so far as it is of the matter of good, *remunerative* is the name that may be given to the law: where and in so far as it is the matter of *evil*, penal is the name commonly given to the law—*punitive*, a name that may be given to it.

These two branches of a law are addressed to different descriptions of persons;—the *directive* to persons at large—the *sanctionative* to the members of the official establishment.

By the sanctionative, provision is made of the inducement, to which the legislator trust for the compliance he seeks and expects to find on the part of those to whom the directive branch of the law is addressed. This inducement is the eventual expectation of either good or evil in the mind of those to whom the directive branch of the law is addressed:—if it be *good*, the law in that branch of it is styled a *remunerative* law: if *evil* a penal law.

The persons to whom a remunerative law is addressed are those functionaries belonging to the administrative department, by whom disposal is made of the money, or whatever else the matter of good employed consists of, directing them eventually to bestow the article in question on the person in question in the event of his having complied with the directive law in question, and thereby rendered the service desired at his hands.

The persons to whom a penal law is addressed, are the official persons belonging to the judiciary department, presided over and directed by the judges.

Of the matter to which it may be convenient to give insertion in the civil code, and to which accordingly insertion is given in it, there are two different sorts: one of which may be styled the *directive* as above—the other the expositive.

To the directive belongs that sort of matter, of which, under that name, mention has been already made—the directive, without the addition of the sanctionative, and in particular the punitive.

Not that, without the addition of the sanctionative, the directive could in general without absurdity be trusted to. Of a correspondent eventual punishment, including, where applicable, satisfaction, to be administered in case of non compliance, the existence must all along thereby be assumed. But in relation to punishment, this is the whole of that which naturally here finds its place:—in the penal code will be inserted all denunciation of extra punishment, together with what belongs to the mode in which the application made of the matter of punishment is

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brought about—leaving to the civil code, the direction of the mode in which satisfaction, and in particular that branch of it which consists in the allotment of compensation for wrong shall be administered.

The expositive matter belongs in common to, constitutes and forms part and parcel of, the directive part of the matter of the civil code, and the penal code.

Among the words and locutions, of which exposition is given in it, may be seen this or that word, in the exposition of which a prodigious quantity of matter is employed.

Take, for instance, the word *title* or the word *right* when employed as synonymous with and equivalent to it. Exposition of it is alike necessary to the completion of any enactment belonging either to the civil or the penal code.

Take, in the first place, the *civil*. The principal part of it is occupied in the declaration of to what person or persons each subject-matter of property, each object of general desire, shall belong, in such sort as to be styled his or their own—who he is or they are, to whom it belongs—or say, who have title to it. Now, then, be the subject-matter what it may—who is it that has *title* to it? Who but he in whose favour some one in the list of completely collative events or states of things has place; no event or state of things having, with relation to that same title an ablative effect, having at the same time place in the disfavour of that same individual.

So much for the portion in question—the portion of the matter of the civil code.

But not less necessary is reference made in the penal code to that same matter.

Take, for instance, in offences severally considered, offences affecting property,—the offence of *theft*. To the conveying of an accurate conception of the nature of this offence mention of title is indispensable. Why? Answer: Because, when it is under the persuasion of his having a title to the thing in question, where it is under this persuasion that the man took it,—by no one will he be regarded as having committed the offence thus denominated: thence so it is, that in any well-adapted definition of this offence, averment of the non-existence of any such persuasion must be contained.

Not that in the idea of the offence it is necessary that the idea of any portion of that same matter in particular—the idea, for example, of any one collative event more than another—should have place.

Merely expositive and mixed: of the one sort or the other will be found to be every particle of the matter which will with most convenience be aggregated to the matter of the civil code.

Constitutive of the mixed matter will be—

1. Matter of general concernment;
  2. Matter of particular concernment.
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## **Chapter 2 Note 1**

It may also be considered as divided into substantive and adjective. The substantive branch of the law has for its business the giving direction and effect to human conduct;—the adjective has for its business the giving execution and effect to substantive law.

### Chapter III. EXPOSITIONS.

Only with reference to language can the attribute denoted by the word universal be with propriety attributed to the subject of *law* .

In each country, at each point of time, it is matter of accident whether a law to a given effect is in force; though, consideration had of the general effect, and not of the particular tenor, in no inconsiderable quantity, masses of the matter of law might be found, such as are not likely to be wanting in any country that has the use of letters. A mass of the matter of language expressive of law might be found, of which the equivalent cannot be wanting, in any country, among any assemblage of human beings, in the presence of each other, for any considerable length of time. This may be styled the language of universal law.

Follows the exposition of some of these terms, the use of which exposition upon this occasion is not so much to teach as to fix their import:—

1. *Obligation*.—Obligations may exist without rights;—rights cannot exist without obligations.

Obligation—a fictitious entity, is the product of a law—a real entity.

A law, when entire, is a command; but a command supposes eventual punishment; for without eventual punishment or the apprehension of it, obedience would be an effect without a cause.

Reward—eventual reward, is not capable of securing obedience to will signified,—is not capable of giving to will the effect of a command:—apprehension of the abstraction of reward already in possession or expectancy may do it. Yes: but though *reward* alone be the word employed in the description of the case, the operation signified is of the nature of punishment;—the effect of it not enjoyment, but suffering.

Obligation has place, when the desire on the part of the superior, the obliger, being signified to the obligee, he understands at the same time, that in the event of his failing to comply with such desire, evil will befall him, and that to an amount greater than that of any evil which he could sustain in compliance with that desire.

2. *Right*.—Otherwise than from the idea of obligation, no clear idea can be attached to the word *right*.

The efficient causes of right are two—1. Absence of correspondent obligation. You have a *right* to perform whatever you are not under obligation to abstain from the performance of. Such is the right which every human being has in a state of nature.

2. The second efficient cause of right is, presence of correspondent obligation. This obligation is the obligation imposed upon other persons at large, to abstain from disturbing you in the exercise of the first mentioned sort of right. The first mentioned right may be termed a naked kind of right—this second-mentioned right, a vested or established right.

The word *right*, is the name of a fictitious entity: one of those objects, the existence of which is feigned for the purpose of discourse by a fiction so necessary, that without it human discourse could not be carried on.

A man is said to have it, to hold it, to possess it, to acquire it, to lose it. It is thus spoken of as if it were a portion of matter such as a man may take into his hand, keep it for a time and let it go again. According to a phrase more common in law language than in ordinary language, a man is even spoken of as being invested with it. Vestment is clothing: invested with it makes it an article of clothing, and is as much as to say is clothed with it.

To the substantive word are frequently prefixed, as adjuncts and attributives, not only the word political, but the word natural and the word moral: and thus rights are distinguished into natural, moral, and political.

From this mode of speech, much confusion of ideas has been the result.

The only one of the three cases in which the word *right* has any determinate and intelligible meaning is that in which it has the adjunct political attached to it: in this case, when a man is said to have a right (mentioning it), the existence of a certain matter of fact is asserted; namely, of a disposition on the part of those by whom the powers of government are exercised, to cause him, to possess and so far as depends upon them to have the faculty of enjoying, the benefit to which he has a right. If, then, the fact thus asserted be true, the case is, that amongst them they are prepared on occasion to render him this service: and to this service on the part of the subordinate functionaries to whose province the matter belongs, he has, if so it be, a right; the supreme functionaries being always prepared to do what depends upon them to cause this same service to be rendered by those same subordinate functionaries.

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Now, in the case of alleged natural rights, no such matter of fact has place—nor any matter of fact other than what would have place supposing no such natural right to have place. In this case, no functionaries have place—or if they have, no such disposition on their part, as above, has place; for if it have, it is the case of a political right, and not of a merely natural right. A man is never the better for having such natural right: admit that he has it, his condition is not in any respect different from what it would be if he had it not.

If I say a man has a right to this coat or to this piece of land, meaning a right in the political sense of the word,—what I assert is a matter of fact; namely, the existence of the disposition in question as above.

If I say a man has a natural right to the coat or the land—all that it can mean, if it mean any thing and mean true, is that I am of opinion he ought to have a political right to it; that by the appropriate services rendered upon occasion to him by the appropriate functionaries of government, he ought to be protected and secured in the use of it: he ought to be so—that is to say, the idea of his being so is pleasing to me—the idea of the opposite result displeasing.

In the English language, an imperfection perhaps peculiar to that language, contributes to the keeping up of this confusion. In English, in speaking of a certain man and a certain coat, or a certain piece of land, I may say it is right he should have this coat or this piece of land. But in this case, beyond doubt, nothing more do I express than my satisfaction at the idea of his having this same coat or land.

This imperfection does not extend itself to other languages. Take the French, for instance. A Frenchman will not say, *Il est droit, que cet homme ait cet habit*: what he will say is, *Il est juste que cet homme ait cet habit. Cet appartient de droit a cet homme.*

If the coat I have on is mine, I have a *right* by law to knock down, if I can, any man who by force should attempt to take it from me; and this right is what in any case it can scarcely be but that a man looks to when he says, *I have a right* to a constitution, to such or such an effect—or a right to have the powers of government arranged in such manner as to place me in such or such a condition in respect of actual right, actually established rights, political rights.

To engage others to join with him in applying force for the purpose of putting things into a state in which he would actually be in possession of the right, of which he thus pretends to be in possession, is at bottom the real object and purpose of the confusion thus endeavoured to be introduced into men's ideas, by employing a word in a sense different from what it had been wont to be employed, and from thus causing men to accede in words to positions from which they dissent in judgment.

This confusion has for its source the heat of argument. In the case of a political right, when the existence of it is admitted on all sides, all dispute ceases. But when so it is that a man has been contending for a political right which he either never has possessed, or having in his possession, is fearful of losing, he will not quietly be beaten out of his claim; but in default of the political right, or as a support to the political right, he asserts he has a natural right. This imaginary natural right is a sort of thread he clings by:—in the case in question, his having any efficient political right is a supposed matter of fact, the existence of the contrary of which is but too notorious and being so, is but too capable of being proved. Beaten out of this ground, he says he has a natural right—a right given him by that kind goddess and governess Nature whose legitimacy who shall dispute? And if he can manage so as to get you to admit the existence of this natural right, he has, under favour of this confusion, the hope of getting you to acknowledge the existence of the correspondent political right, and your assistance in enabling him to possess it.

It may, however, be said, to deny the existence of these rights which you call imaginary, is to give a *carte blanche* to the most outrageous tyranny. The rights of man anterior to all government, and superior as to their authority to every act of government these are the rampart, and the only rampart against the tyrannical enterprises of government. Not at all—the shadow of a rampart is not a rampart;—a fiction proves nothing—from that which is false you can only go on to that which is false. When the governed have no right, the government has no more. The rights of the governed and the rights of the government spring up together;—the same cause which creates the one creates the other.

It is not the rights of man which causes government to be established:—on the contrary, it is the non-existence of those rights. What is true is, that from the beginning of things it has always been desirable that rights should exist—and *that* because they do not exist; since, so long as there are no rights, there can only be misery upon the earth—no sources of political happiness, no security for person for abundance, for subsistence,

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for equality:—for where is the equality between the famished savage who has caught some game, and the still more famishing savage who is dying because he has not caught any?

Law supposes government: to establish a law, is to exercise an act of government. A law is a declaration of will—of a will conceived and manifested by an individual or individuals to whom the other individuals in the society to which such will has respect are generally disposed to obey.

Now government supposes the disposition to obedience:—the faculty of governing on the one part has for its sole efficient cause and for its sole measure, the disposition to obey on the other part.

This disposition may have had for its cause either *habit* or *convention*: a convention announces the will of one moment, which the will of any other moment may revoke;—habit is the result of a system of conduct of which the commencement is lost in the abyss of time. A convention, whether it have ever yet been realized or not, is at least a conceivable and possible cause of this disposition to obedience, from which government, and what is called political society, and the only real laws result. Habit of obedience is the cause, a little less sure—the foundation, a little less solid, of this useful, social, disposition, and happily the most common.

The true rampart, the only rampart, against a tyrannical government has always been and still is, the faculty of allowing this disposition to obedience—without which there is no government—either to subsist or to cease. The existence of this faculty is as notorious as its power is efficacious.

Shall this habit of obedience be continued unbroken, or shall it be discontinued upon a certain occasion? Is there more to be gained than to be lost in point of happiness, by its discontinuance? Of the two masses of evil,—intensity, duration, certainty, all included—which appears to be the greatest, that to which one believes one's self exposed from continued obedience, or that to which one believes one's self exposed by its discontinuance?

On which side is the greatest probability of success? On the side of the satellites of the tyrant, who will endeavour to punish me in case of disobedience? or on the side of the friends of liberty, who will rally around me to defend me against oppression?

It is an affair of calculation: and this calculation each one must make for himself according to circumstances. It is also a calculation that no one can fail to make, either ill or well, whatever may be the language he employs, or whosoever he may be.

But this calculation is not sufficiently rapid for those who choose for their amusement the destruction and reconstruction of governments. Rights of men strongly asserted, but ill-defined, never proved; rights of men of which every violation is an act of oppression—rights ready to be violated at every moment—rights which the government violates every time it does anything which displeases you—right of insurrection ready to be exercised the first moment that oppression occurs;—this is the only remedy which suits those who would make equality to flourish at any rate, by taking the power of governing for themselves, and leaving obedience for all others.

It is the weakness of the understanding which has given birth to these pretended natural rights; it is the force of the passions which has led to their adoption, when, desirous of leading men to pursue a certain line of conduct which general utility does not furnish sufficient motives to induce them to pursue, or when, having such motives, a man knows not how to produce and develop them, yet wishes that there were laws to constrain men to pursue this conduct, or what comes to the same thing, that they would believe that there were such laws,—it has been found the shortest and easiest method to imagine laws to this effect.

Behold the professors of natural law, of which they have dreamed—the legislating Grotii—the legislators of the human race: that which the Alexanders and the Tamerlanes endeavoured to accomplish by traversing a part of the globe, the Grotii and the Puffendorffs would accomplish, each one sitting in his arm chair: that which the conqueror would effect with violence by his sword, the jurisconsult would effect without effort by his pen. Behold the goddess Nature!—the jurisconsult is her priest; his idlest trash is an oracle, and this oracle is a law.

The jurisconsult in his arm-chair is an individual sufficiently peaceable: he lies,—he fabricates false laws in the simplicity of his heart;—desirous of doing something, ignorant how to do better, hoping to do well, he would not willingly injure any one. From his hands the instruments he employs have passed into hands of a far different temper.

The invention was fortunate: it spared discussion—it saved research and reflection—it did not require even common sense—it spared all forbearance and toleration:—what the oath is on the part of the footpad who

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demands your purse, the rights of man have been in the mouth of the terrorist.

Those who govern allege legal rights—the rights of the citizen—real rights: those who wish to govern allege natural rights—the rights of man—counterfeit rights—rights which are sanctioned by the knife of the assassin, as well as the gibbet and the guillotine.

Those to whom the faculty of making these imaginary laws, instead of real laws, has been transferred, have not much trouble in making them. Constitutions are made as easily as songs: they succeed each other as rapidly and are as speedily forgotten.

For the making of real laws, talent and knowledge are requisite: for making real laws good or bad, labour and patience are requisite: but for the making of forgeries sources of the rights of man, nothing more is required than ignorance, hardihood, and impudence.

Rights of men, when placed by the side of legal rights, resemble assignats, whether false or genuine, placed by the side of guineas or Louis dor.

Two passions have laid claim to the giving birth to the declarations of rights—to the substitution, of the declaration of particular rights to the preparation of real laws—vanity and tyranny: vanity, which believes it can lull the world asleep, by being the first to do what all the world has always had before its eyes—tyranny, glad of finding a pretext for punishing all opposition by directing against it the force of public hatred. Rights, there you have them always before your eyes: to deny their existence, is either to exhibit the most notorious bad faith or the most stupid blindness; the first a vice which renders you deserving of the indignation of all men—the other a weakness which consigns you to their contempt.

It is because without rights there can be no happiness, that it is at any rate determined to have rights: but rights cannot be created without creating obligations: it is that we may have rights, that we submit to obligations; and in respect to obligations, not to those alone which are strictly necessary for the establishment of the rights of which we feel the want, but also obligations such as those which may result from all the acts of authority exercised by government, which the general habit of obedience allows it to exercise.

The end of all these acts of authority should be to produce the greatest possible happiness to the community in question.

This is the true, and the only true end of the laws. Still, of the operations by which it is possible to conduct men towards this end, the effect—the constant, necessary, and most extensive effect, is to produce evil as well as good; to produce evil, that good may be produced, since upon no other conditions can it be produced.

The mystic tree of good and evil, already so interesting, is not the only one of its kind: life, society, the law, resemble it, and yield fruits equally mixed. Upon the same bough are two sorts of fruits, of which the flavour is opposite—the one sweet and the other bitter.

The sweet fruits are *benefits* of all kinds—the bitter and thorny fruits are burthens. The benefits are *rights*, which under certain circumstances are called *powers*—the burthens are *obligations*—*duties*.

These products, so opposed in their nature, are simultaneous in their production, and inseparable in their existence. The law cannot confer a benefit, without at the same time imposing a burthen somewhere;—it cannot create a right, without at the same time creating an obligation—and if that right be of any value, even a numerous train of obligations.

But if among these moral as well as among physical products, the sweet cannot exist without the bitter,—the bitter can exist—it exists too often—without the sweet. Such is the case with those obligations which may be called pure or barren, which are not accompanied by rights, those benefits, those advantages, which sweeten and conceal the bitterness:—obligations which are fulfilled by useless efforts or sufferings, the fruit of every law produced by tyranny, neglecting or despising the counsels of utility, and yield to the suggestions of caprice—unless the gratification of this caprice can be considered as a benefit.

Benefits being in themselves good, the well-instructed legislator (I mean, directed by utility) would create and confer them freely with pleasure. If it depended upon himself, he would produce no other fruits: if he could produce them in infinite quantity—he would accumulate them in the bosom of society, but as the inexorable law of nature is opposed to this course, and he cannot confer benefits without imposing burthens, all that he can do is to take care that the advantage of the benefit exceed the disadvantage of the burthen, and that this advantage be as great, and the disadvantage as small, as possible.

When, in order that a burthen may produce its effect—that the advantage expected from it may be produced,

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it is necessary that its weight be felt, it is called punishment.

It is thus that the non-penal branch of the law and the penal are both of them occupied in the establishing and securing every man in possession of his rights of all sorts. These rights are so many instruments of felicity—they are the instruments of whatsoever felicity a man can derive from government.

A man's political rights are either his private rights, or his constitutional rights. Under every form of government, every man has his private rights;—but there are forms of government, in which no man but one, or some other comparatively small number, have any constitutional rights.

Of private rights these five sorts have been distinguished:—

1. Rights as to person;
2. Rights as to property;
3. Rights as to power;
4. Rights as to reputation;
5. Rights as to condition in life.

All these rights have for their efficient cause certain services, which by a general and standing disposition on the part of the functionaries of government in the supreme grade are understood to have been rendered to every man, and which, in consequence, on each particular occasion the functionaries of judicature, and upon occasion the functionaries belonging to the army, hold themselves in readiness to render to him. These services consist in the giving execution and effect to such ordinances of the government as have been made in favour and for the benefit of every individual situated in the individual situation in which in all respects he is situated.

In virtue and by means of that same standing and all-comprehensive service, the supreme rulers have given the name of wrong, and the name, quality, and consequence of an *offence*, to every act by which any such right is understood to have been broken, infringed, violated, invaded. In giving it the name of an offence, they have made provision of pain under the name of punishment, together with other means of repression, for the purpose of preventing the doing of it, or lessening as far as may be the number of instances in which it shall be done.

Rights are, then, the fruits of the law, and of the law alone. There are no rights without law—no rights contrary to the law—no rights anterior to the law. Before the existence of laws there may be reasons for wishing that there were laws—and doubtless such reasons cannot be wanting, and those of the strongest kind;—but a reason for wishing that we possessed a right, does not constitute a right. To confound the existence of a reason for wishing that we possessed a right, with the existence of the right itself, is to confound the existence of a want with the means of relieving it. It is the same as if one should say, *everybody is subject to hunger, therefore everybody has something to eat*.

There are no other than legal rights,—no natural rights—no rights of man, anterior or superior to those created by the laws. The assertion of such rights, absurd in logic, is pernicious in morals. A right without a law is an effect without a cause. We may feign a law, in order to speak of this fiction—in order to feign a right as having been created; but fiction is not truth.

We may feign laws of nature—rights of nature, in order to show the nullity of real laws, as contrary to these imaginary rights; and it is with this view that recourse is had to this fiction:—but the effect of these nullities can only be null.

3. *Possession*.—“Better,” says a maxim of the old Roman, called civil law—“better (meaning in comparison with that of any other person,) is the condition of the possessor”—better his condition, that is to say, better the ground and reason which a person in his situation is able to make for the enjoyment of the thing, than any that can be made by any one else.

Of the propriety and reasonableness of the notion, scarcely by any one who hears of it how far soever from being learned, can a sort of feeling fail of being entertained—by no one, even of the most learned, has expression it is believed, been ever given to it. This omission the greatest-happiness principle, and that alone, can supply. In the case of loss of the possession, he who has the possession would feel a pain of privation—or say, regret, more acute—than a man of the same turn of mind, whose expectation of obtaining it was no stronger than the possessor's expectation of keeping it, would, in the event of his failing to obtain possession of it.

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Of so many hundred millions of persons, each of whom, in case of his having had possession of the thing and then lost it, would upon the losing of it have felt pain in a certain shape proportioned to the value of the thing, not one feels pain in any shape at the thoughts of not having it: not one of them but might, in the shape in question, feel pain in any quantity more or less considerable, if after having the thing in possession, he were without receiving or expecting any equivalent for it, to cease to have it.

The horse you have bred, and still keep in your stable, is yours. How is it constituted such—constituted by law? Answer: The naked right—the right of making use of it the law has left you in possession of,—to wit, by the negative act of forbearing to inhibit you from using it: the established right the law has conferred upon you by the order given to the judge to punish every person who shall disturb or have disturbed you in the use of it.

The horse which was yours, but by the gift you have made of it is become the horse of a friend of yours,—how has it been constituted such—constituted by law? Answer: By a *blank* left as it were in the command to the judge,—that blank being left to be filled up by you in favour of this friend of yours or any other person to whom it may happen to be your wish to transfer the horse, either gratuitously or for a price.

So long as the law in question has this blank in it, it is an incompleated, an imperfect law—it waits on act an your part to render it a perfect one. The law in its completed state is the result of two functions, into which the legislative function in this case is divided—the initiative to it, and the consumative. By the legislator, the initiative is exercised—by you, the consumative.

In the same way in which, according to this example, rights and powers are given to individual persons, they may be and are given to classes of persons. On classes of persons, the correspondent obligations not only may, but must be imposed: in short, exceptions excepted, they must be imposed on all persons of all classes;—for supposing but a single person excepted from the obligation, your right is not entire,—it is shared by you with the person so excepted. If, for example, in transferring the horse to your friend, you kept yourself from being included in the obligation to abstain from the use of the horse—if, in a word, you kept yourself excepted from the obligation imposed on other persons in general, the horse is not your friend's alone any more than yours; but, in the language of English law, you and he are joint tenants of the horse.

4. *Power*.—In common speech, the word power is used in two senses;—to wit, the above sense, which may be called the proper and legal sense—and another sense more ample, which may be styled the popular sense.

In the strictly legal sense, which is used in the penal and civil branches of law—in the popular sense, which is used in the constitutional branch.

In both cases, the fruit of the exercise of the power is looked to, and that fruit is compliance: on the part of the person subject to power, compliance with the wishes expressed, or presumed to be entertained, by the person by whom the power is possessed. For convenience of discourse, say in one word the *power-holder*.

The force of the remunerative sanction, it has above been observed, is not sufficient to constitute an obligation; it is, however, in a certain sense, sufficient, as everybody knows to constitute power: the effect of power is produced, in so far as, by the will declared or presumed of him who in this sense is the power-holder, compliance is produced.

Power may be defined to be the faculty of giving determination either to the state of the passive faculties, or to that of the active faculties, of the subject in relation to and over which it is exercised;—say the correlative subject.

Power is either coercive or allocative.

Coercive power is either restrictive or compulsive.

Of the correlative subject, the passive faculties are either insensitve or sensitive.

If merely insensitve, it belongs to the class of inanimate beings, and is referred to the still more general denomination of things.

If sensitive, to the class of animals.

If the animals of the class in question are considered as belonging to the class of reasonable beings, the correlative subject is a person—including human beings of both sexes and all ages.

If considered as irrational, it has hitherto by lawyers been confounded with inanimate beings, and comprehended under the denomination of things.

In so far as the power is exercised with effect, the possessor of the power—say the power-holder—may, relation had to the correlative subject, be termed the *director*—the correlative subject the *directee*.

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5. *Command*.—An instrument which as above has been mentioned as necessary to the generation of the fictitious entities, called a right and a power, is, as has been seen, a command. But a command is a discourse, expressive of the wish of a certain person, who, supposing his power independent of that of any other person, and to a certain extent sufficiently ample in respect of the subject matters—to wit, persons, things moveable and immoveable, and acts of persons, and times—is a legislator;—say a legislator in the singular: for simplicity sake, the case of a division of the legislative power among divers persons or classes of persons, may on this occasion be put aside.

6. *Quasi Commands*.—Now then comes a doubt, and with it a question:—in the state of things you have hitherto been supposing, the law in question is of that sort called statute law: and in the case of statute law the print of a command is sufficiently visible. But obligations are created—rights established, not only by statute law, but by another species of law called common law: Where in this case is the command?—where is the person by whom it has been issued?—where, in a word is the legislator? The judge is not a legislator. Far from claiming so to be, he would not so much as admit himself to be so: he puts aside if not the function, at any rate the name.

Hitherto we have been in the region of realities: we are now of necessity transported into the region of fictions. In the domain of common law, everything is fiction but the power exercised by the judge.

On each occasion the judge does, it is true, issue a command:—this command is his decree; but this decree he on every occasion confesses he would not on any occasion have the power of issuing with effect, were it not for a command, general in its extent, and in such sort general as to include and give authority to this individual decree of his.

To be what it is, a command, general or individual, must be the command of some person. Who in this case is this person? Answer: Not any legislator; for if it were the law would be a statute law. A person being necessary, and no real one to be found, hence comes the necessity of a fictitious one. The fictitious one, this fictitious person is called the common law—or more generally that he may be confounded with the real person in whose image he is made, *the law*.

To warrant the individual decree which he is about to pronounce, the judge comes out with some general proposition, saying, in words or in effect, *thus saith* The Law. On the occasion of the issuing of this sham law the pretext always is, that it is but a copy of a proposition, equally general, delivered on some former occasion by some other judge or train of successive judges.

In this proposition there may be or may not be a grain of truth, but whether there be or be not the individual decree has in both cases alike the effect of a law—of a real law—issued by a legislator avowing himself such, and acknowledged as such.

A command being the generic name of the really existing instrument of power called *a law*, let *a quasi command* be the name of that counterfeit instrument feigned to answer the purpose of it, to produce the effects of it, for the purpose of enabling the judge to produce in the way of exacting compliance, the effect of a law.

Of this appellation the use and need will be seen in the procedure code on the occasion of the formula called the demand paper provided for the purpose of giving commencement to a suit in that same code.

Supposing the connexion between a command in the mandatory form, and a proposition in the assertive form, made out and explained: whatsoever proposition would, if emanating from the legislator, have constituted an apposite ground for the *demand*—to wit, the demand made in the *demand paper* elsewhere spoken of—a proposition to that same effect might equally well serve, if stated as being a proposition conformable to the doctrine of the common law. In the one case the proposition would be a reality, in the other case a fiction: in the one case, what were the proper words of it could not be a subject-matter of dispute in in the other case it might, and would frequently be the subject-matter of dispute: still however, in the character of a ground of inference, it would in both cases be equally intelligible.

Be this as it may—not to the plan here proposed would the imperfections of this part of the instrument of demand with propriety be ascribable. The root of the imperfection is in the very nature of the common law, To its supreme inaptitude, by the proposed instrument, such remedy as the nature of the ease admitted is applied, and the use thus made of the common law is the result—not of choice, but of irresistible necessity. How sadly inadequate a portion of this fictitious law is, in the character of a succedaneum, to a correspondent and equivalent portion of real law, would on each occasion be visible to every eye; and as often as it came under the eye, so often

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would the urgency of the demand for the substitution of real to sham law be forced upon the attention. What would be in the power of the legislature to do at any time, and in the compass of a day is to substitute this plain speaking form of demand to the existing absurd and deceptious one: what it is not in his power to do in the compass of a day, nor perhaps till at the end of some years, is the complete substitution of real to sham and impostor's law—substitute, and audacious rival of the only genuine law.

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## Chapter 3 Note 1

Though fictitious, the language cannot be termed *deceptious* in intention at least, whatsoever in some cases may without intention be the result.

## Chapter 3 Note 2

In this form, the exposition is of the sort styled *definition*, in the narrowest sense of the word,—*definitio per genus et differentiam*:—exposition effected by indication given of the next superordinate class of objects in which the object in question is considered as comprehended, together with that of the qualities peculiar to it with reference to the other objects of that same class.

The import of the word faculty being still more extensive than that of the word power, as may be seen by its assuming the adjunct passive, the word power is, in a certain sense, not unsusceptible of the definition *per genus et differentiam*: but to complete the exposition, an exposition by periphrasis may perhaps require to be added.

## Chapter IV. AXIOMS.

### §1. *Axioms of Mental Pathology—a necessary ground for all legislative arrangements.*

By an axiom of mental pathology, considered as a ground for a legislative arrangement, understand a proposition expressive of the consequences in respect of pleasure or pain or both, found by experience to result from certain sorts of occurrences, and in particular from such in which human agency bears a part: in other words, expressive of the connexion between such occurrences as are continually taking place, or liable to take place, and the pleasures and pains which are respectively the results of them.

Practical uses of these observations, two:—1. With regard to pleasures, the learning how to leave them undisturbed, and protected against disturbance—(for as to the giving increase to them by the power of the legislator to anything beyond a very inconsiderable amount, it is neither needful nor possible;) 2. With regard to pains, the learning how on each occasion to minimize the amount of them in respect of magnitude and number—number of the individuals suffering under them—magnitude of the suffering in the case of each individual.

Arithmetic and medicine—these are the branches of art and science to which, in so far as the maximum of happiness is the object of his endeavours, the legislator must look for his means of operation:—the pains or losses of pleasure produced by a maleficent act correspond to the symptoms produced by a disease.

Experience, observation, and experiment—these are the foundations of all well-grounded medical practice: experience, observation and experiment—such are the foundations of all well-grounded legislative practice. In the case of both functionaries, the subject-matter of operation and the plan of operation is accordingly the same—the points of difference these:—In the case of the medical curator, the only individual who is the subject-matter of the operations performed by him, is the individual whose sufferings are in question, to whom relief is to be administered. In the case of the legislator, there are no limits to the description of the persons to whom it may happen to be the subject-matter of the operations performed by him.

By the medical curator no power is possessed other than that which is given either by the patient himself, or in case of his inability, by those to whose management it happens to him to be subject:—by the legislative curator, power is possessed applicable to all persons, without exception, within his field of service; each person being considered in his opposite capacities—namely, that of a person *by whom* pleasure or pain, or both, may be experienced, and that of a person *at whose hands* pleasure or pain, or both, may be experienced.

Axioms of *corporal* pathology may be styled those most extensively applicable positions or say propositions, by which statement is made of the several sorts of occurrences by which pleasure or pain are or have place in the human body:—as also, the results observed to follow from the performance of such operations as have been performed, and the application made of such subject-matters as have been applied for the purpose of giving increase to the aggregate of pleasure, or causing termination, alleviation, or prevention, to have place in regard to pain.

Axioms of *mental* pathology may be styled those most commonly applicable propositions by which statement is made of the several occurrences by which pleasure or pain is made to have place in the human mind:—as also the results observed to follow from the performance of such operations as have been performed, and the application of such subject-matters as have been applied for the purpose of effecting the augmentation of the aggregate of the pleasures, or the diminution of the aggregate of the pains, by the termination, alleviation, or prevention of them respectively, when individually considered.

Security—subsistence—abundance—equality—i. e. minimization of inequality:—by these appellatives, denomination has been given to the particular ends which stand next in order to the universal, and the greatest happiness of the greatest number. This being admitted, these are the objects which will be in view in the formation of the several axioms of pathology which present themselves as suitable to the purpose of serving as guides to the practice of the legislative curator.

Unfortunately, on this occasion, the imperfection of language has produced an embarrassment. which it does not seem to be in the power of language altogether to remove: all that can be done, is to lessen and alleviate it. Subsistence—abundance—equality,—these three immediately subordinate ends are conversant about the

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same matter; to wit, the matter of wealth. But security, besides a matter of its own, is conversant with that same matter, with which, as above, they are conversant; to wit, the matter of wealth: security for the matter of wealth, or say, to each individual, security for that portion of the matter of wealth which at the time in question belongs to him, and is called his. Security is accordingly security against all such maleficent acts by which any portion of the matter of wealth which ought to be at the disposal of the individual in question, is prevented from being at his disposal at the time in question. Now, the not having at his disposal at the time in question a certain portion of the matter of wealth, is indeed one efficient cause of pain to the individual in question, be he who he may, but it is but one out of several. In addition to the matter of wealth, sources of pleasure, and of exemption from pain, are certain others which have been found reducible under the following denominations; to wit, power, reputation, and condition in life:—condition in life, to wit, in so far as, reference had to the individual whose it is, the effect is considered as beneficial—this complex subject-matter including in it the three subject-matters above mentioned—that is to say, the matter of wealth, or in two words, power and reputation.

Correspondent to these several subject-matters of security are so many classes of offences—of maleficent acts, by the performance of which such security is disturbed. Offences affecting property—offences affecting power—offences affecting reputation—offences affecting condition in life.

But all these subject-matters are, with reference to the individual in question, distinct from him, and exterior to him;—and in a more immediate way—and otherwise than through the medium of any of these out works, he stands exposed to be made to suffer pain, as well of mind as of body, by the agency of every other individual, in whose instance a motive adequate to the purpose of producing an act by which it will be inflicted, has place. Thus, then, in addition to offences affecting property—offences affecting power offences affecting reputation—offences affecting condition in life,—we have offences affecting person considered with reference to its two distinguishable parts, body and mind.

So many of these classes of maleficent acts, so many branches of security: in which list, as being the most obviously and highly important, and most simple in the conception presented by it security *against* maleficent acts affecting *person*—more shortly, security for person, presents itself as claiming to occupy the first place; after which, security for property, and so forth, as above.

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## §2. Axioms applicable to Security for Person.

Axioms forming the grounds for such legislative arrangements as have for their object and their justification, the affording security for person against such maleficent acts, to which it stands exposed.

1. The pleasure derivable by any person from the contemplation of pain suffered by another, is in no instance so great as the pain so suffered.
2. Not even when the pain so suffered has been the result of an act done by the person in question, for no other purpose than that of producing it,

Hence, one reason for endeavouring to give security against pain of body or mind, resulting from human agency, whether from design or inattention.

Now, suppose the pain to be the result of purely natural agency,—no human agency having any part in the production of it no human being deriving any satisfaction from the contemplation of it,—the result is still the same.

Hence one reason for endeavouring to give security against pain of body or mind resulting from casualty, or as the word is, when the evil is considered as having place upon a large scale,—*calamity*.

Axiom indicative of the reasons which form the grounds of the enactments prohibitive of maleficent acts, productive of evil, affecting persons—that is to say, either in body or mind—in any mode not comprised in one or other of the modes of maleficence from which the acts constituted offences in and by the penal code receive their denomination, viz. Offences produced by the irascible appetite:—

When by one person, without gratification sought other than that derived from the contemplation of suffering in this or that shape, as about to be produced on the part of that other gratification in a certain shape, is accordingly produced in the breast of such evil doer,—call the gratification the pleasure of *antipathy satisfied*—or of *ill-will satisfied*.

If this antipathy has had its rise in the conception that by the party in question (say the victim), evil in any shape has been done to the evil doer,—the pleasure of antipathy gratified takes the name of the pleasure of *vengeance*—or say *revenge*.

*Axiom.* In no case is there any reason for believing that the pleasure of antipathy gratified is so great as the pain suffered by him at whose expense, as above, the pleasure is reaped.

Offences to which the axiom applies are—

1. Offences affecting body;
2. Offences affecting the mind other than those belonging to the other classes.
- 3.

Offences affecting reputation—the reputation of the sufferer—other than those by which the reputation of the evil doer is increased;

4. Offences affecting the condition in life of the sufferer other than those by which the reputation of the evil doer is increased or expected to be increased.

For justification of the legislative arrangements necessary to afford security against maleficent acts affecting the person, what it is necessary to show is, that by them pain will not be produced in such quantity as will cause it to outweigh the pleasure that would have been produced by the maleficent acts so prevented.

For this purpose, in order to complete the demonstration and render it objection-proof, in certain cases, it will be necessary to take into account not only the evil of the first order, but the evil of the second order likewise.

First, then, considering the matter on the footing of the effects of the first order on both sides,—Axioms bearing reference to the effects of the first order on both sides, are the following:—

Axioms serving as grounds and reasons for the provision made by the legislator for general security; to wit, against the evils respectively produced by the several classes and genera of offences.

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Case 1. An offence affecting person, or say corporal vexation, in any one of its several shapes—offender's motive, ill-will or spite—the enjoyment of the offender will not be so great as the evil of the first order, consisting in the suffering experienced by the party vexed.

Case 2. So if the offence be an offence productive of mental vexation—and the motive the same.

Case 3. So if the offence be an offence affecting reputation.

Case 4. So, exceptions excepted, in the ease of every other class or genus of offences the motive being ill-will or spite, as above.

Case 5. Exceptions are among offences affecting person and reputation jointly, the offences having for their motive sexual desire; to wit—

1. Sexual seduction allurative, or say enticitive;
2. Sexual seduction compulsory;
3. Rape;
4. Vexatious lascivious contrectation.

In any of these cases, what may happen is—that the enjoyment of the offender may be equal or more than equal to the suffering of the party wronged; in either of which eases the evil of the first order has no place. But to all other persons, the suffering of the one part will present itself as being to an indefinite degree greater than the enjoyment of the offender and proportioned to the apparent excess will be the actual alarm on the part and on behalf of persons exposed to the like wrong from the same cause: and thence so far as regards alarm, will be the evil of the second order.

Addendum to security axioms:—

Be the modification of the matter of prosperity what it may, by losing it without an equivalent, a man suffers according to, and in proportion to, the value of it in his estimation—the value by him put upon it.

Value may be distinguished into—1. General, or say value in the way of *exchange* and 2. Special, or say idiosyncratical—value in the way of *use* in his own individual instance.

Note, that the value of a thing in the way of exchange arises out of, and depends altogether upon, and is proportioned to, its value in the way of use:—for no man would give anything that had a value in the way of use in exchange for anything that had no such value.

But value in the way of use may be distinguished into *general*, which has place so far as, and no further than, the thing is of use to persons in general—and *special* or idiosyncratical, which has place in so far as, in the case of this or that person in particular, the thing has a value in the way of use over and above the value which it has in the case of persons in general: of which use, that of the *pretium affectionis*, the *value of affection*, is an example.

Definition: When from any cause—human agency or any other—a mass of the matter of wealth, or of the matter of prosperity in any other shape, is made to go out of an individual's possession or expectancy without his consent, the pain produced in his breast by contemplation of its non-existence, or say by the loss of it, call *the pain of disappointment: he being disappointed at the thought of the good which, it having been in his possession or expectancy, he has thus lost.*

Among the objects of law in every community, is the affording security against this pain in this shape.

Axiom: The pleasure of antipathy or revenge produced in the breast of the evil-doer by the contemplation of a pain of disappointment produced in the breast of the sufferer, is not in any case so great in magnitude as that same pain.

To this axiom corresponds, as being thereon grounded, a fundamental principle entitled the *disappointment-preventing principle.*

Operation necessary for the establishment and continuance of security,—Fixation of the text of the laws.

For leading expectation, the law need only be exhibited, provided that it be clear, and not too vast for comprehension. But that it may be exhibited, it is necessary that it exist. The greatest and most extensive cause of regret respecting English law, is,—that as respects a large portion, it has no existence. Instead of laws, it cannot even be said that we possess shadows of law:—shadows imply substances by which they are formed—all that we possess is a *phantom*, conjured up by each one at his pleasure, to fill the place of the law. It is of these

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phantoms that *common law, unwritten, judge-made* law is composed.

A discussion upon a point of unwritten or common law has been defined *a competition of opposite analogies*. In giving this definition, the most severe and well-deserved censure was passed both upon this species of law, and upon the carelessness of the legislators who have tolerated its pernicious existence—who have allowed the security of their fellow-citizens to remain without foundation, tossed about by the interminable and always shifting competition of opposite analogies,—who have left it upon a quicksand when they might have placed it upon a rock.

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### **§3. *Axioms pathological, applicable to Subsistence.***

Axiom 1. Though to each individual his own subsistence be, by the nature of man rendered the chief object of his care, and during his infancy an object of care to the author of his existence, yet a considerable portion of the aggregate number of the members of the community there will always be in whose instance a subsistence cannot have place (without the legislator's care) without provision made by the legislator to that effect.

2. For the subsistence of all, and accordingly of these, provision will to a certain degree have been made by the provision for security in all its shapes, and for security of property in particular: as also for abundance; for abundance, because of the abundance possessed by some is composed a stock, a fund, out of which matter is capable of being taken applicable to the purpose of affording, whether immediate or through exchange, subsistence to others. But for the subordinate end to the purpose here in question, the utmost of what can be done for these two other subordinate ends, taken together, will not of itself be sufficient.

Of the nonpossession of the matter of subsistence in such quantity as is necessary to the support of life, death is the consequence: and such natural death is preceded by a course of suffering much greater than what is attendant on the most afflictive violent deaths employed for the purpose of punishment.

Rather than continue to labour under this affliction, individuals who are experiencing it will naturally and necessarily, in proportion as they find opportunity, do what depends upon them towards obtaining, at the charge of others, the means of rescuing themselves from it: and in proportion as endeavours to this purpose are employed, or believed to be intended to be employed, security for property is certainly diminished—security for person probably diminished on the part of all.

By the coercive authority of the legislator provision cannot be made for the indigent otherwise than by defalcation from the mass of the matter of abundance possessed by the relatively opulent, nor yet, without a correspondent defalcation more or less considerable, from security for property on their part.

In every habitable part of the earth, people, so soon as they behold themselves and their eventual offspring secured against death for want of the matter of subsistence which security cannot be afforded otherwise than by correspondent defalcation from the matter of abundance in the hands of the relatively opulent, will continue to effect addition to the number of its inhabitants. But this augmentation thus produced will proceed with much greater rapidity than any addition that can be made to the quantity of the matter of subsistence possessed, as above, by the indigent by defalcation made at the expense of security for property, as well as from the matter of abundance, by correspondent defalcation from the matter of abundance in the hands of the relatively opulent.

The consequence is, that sooner or later on every habitable part of the earth is surface the community will be composed of three classes of inhabitants:—

1. Those by whom, with the addition of more or less of the matter of abundance, the matter of subsistence is possessed in a quantity sufficient for the preservation of life and health;—
2. Those who, being in a state in which they are perishing for want of the matter of subsistence are on their way to speedy death;—
3. Those who to save themselves from impending death are occupied in waging war upon the rest, providing the means of subsistence for them selves at the expense of the security of all and the matter of subsistence and abundance in the possession of all.

So long as by arrangements taken for the purpose by government, the thus redundant part of the population can be cleared off by being conveyed from the habitable part of the globe in question to some other part, these two classes of quickly perishing individuals may be prevented from receiving formation, or if formed, from receiving increase. But in no one part of the habitable globe can this be done by government without expense, nor the matter of expense be obtained without defalcation made from security, and suffering from loss, by forced contribution as above; and sooner or later, in proportion as property and security for property establishes itself, the whole surface of the habitable globe cannot but be fully peopled, in such sort, that from no one spot to any other

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could human creatures be transplanted in a living and about to live state.

Human benevolence can, therefore, hardly be better employed than in a quiet solution off these difficulties, and in the reconciliation of a provision for the otherwise perishing indigent, with this continual tendency to an increase in the demand for such provision.

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## §4. Axioms applying to Abundance

1. Included in the mass of the matter of abundance, is the mass of the matter of subsistence. The matter of wealth is at once the matter of subsistence and the matter of abundance: the sole difference is the quantity;—it is less in the case of subsistence—greater in the case of abundance.

2. If of two persons, one has the minimum of subsistence without addition,—and the other, that same minimum with an addition,—the former has the matter of subsistence the latter the matter of abundance:—understand, in comparison with him who has nothing beyond the minimum of the matter of subsistence,—the term abundance being a comparative, a relative term.

3. The matter of subsistence being, in the instance of each individual, necessary to existence, and existence necessary to happiness—suppose a quantity of the matter of wealth sufficient for the subsistence of 10,000 persons, at the disposition of the legislator;—more happiness will be producible by giving to each one of the 10,000 a particle of the matter of subsistence, than by giving to 5000 of them a portion of the matter of abundance composed of two particles of the matter of subsistence, and then giving none to the remaining 5000: since, on that supposition, the 5000 thus left destitute would soon die through a lingering death.

4. But suppose that, after giving existence to the 10,000, and to each of them a particle of the matter of subsistence, the legislator have at his disposal a quantity of the matter of wealth sufficient for the subsistence of other 10,000 persons, and that he have the option—of either giving existence to an additional number of persons to that same amount, with a minimum of the matter of subsistence to each,—or instead, without making any addition to the first 10,000, of giving an addition to the quantity of wealth possessed by them,—a greater addition to the aggregate quantity of happiness would be made by dividing among the first 10,000 the whole additional quantity of wealth, than by making any addition to the number of persons brought into existence. For, supposing the whole 10,000 having each of them the minimum of the matter of subsistence on any given day,—the next day, in consequence of some accident, they might cease to have it, and in consequence cease to have existence: whereas, if of this same 10,000, some had, in addition to his minimum of the matter of subsistence, particles one or more of the matter of abundance, here would be a correspondent mass of the matter of wealth, capable of being by the legislator so disposed of as to be made to constitute the matter of subsistence to those who, otherwise being without subsistence, would soon be without existence.

5. Not that, as between the matter of subsistence, and the matter of abundance, the identity is other than virtual—identity with reference to the purpose here in question, to wit, the effect on happiness;—and this virtuality depends upon the facility of obtaining one of the sorts of matter necessary to subsistence, in exchange for matter neither necessary, nor so much as contributing to subsistence—potatoes, for example, in exchange for coin; but so far as is necessary to the guidance of the legislator's practice, this virtual identity always has had, and is likely always to have place.

6. Thus it is that the matter of abundance as contradistinguished from the matter of subsistence, is contributory to happiness, in three distinguishable ways or capacities:—1. As contributing in a direct way to enjoyment, in a degree over and above what could be contributed by the mere matter of subsistence; 2. As contributing in an indirect way to security, to wit, by its capacity of serving in the way of exchange, for the obtainment of the efficient instruments of security in any of these shapes; 3. As eventually contributing, in the same indirect way, to subsistence.

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## §5. Axioms applying to Equality, in respect of wealth

I. Case or state of things the first.—The quantities of wealth in question, considered as being in a quiescent state, actually in the hands of the two parties in question: neither entering into, nor going out of the hands of either.

1. *Cæteris paribus*,—to every particle of the matter of wealth corresponds a particle of the matter of happiness. Accordingly, thence,

2. So far as depends upon wealth,—of two persons having unequal fortunes, he who has most wealth must by a legislator be regarded as having most happiness.

3. But the quantity of happiness will not go on increasing in anything near the same proportion as the quantity of wealth:—ten thousand times the quantity of wealth will not bring with it ten thousand times the quantity of happiness. It will even be matter of doubt, whether ten thousand times the wealth will in general bring with it twice the happiness. Thus it is that,

4. The effect of wealth in the production of happiness goes on diminishing, as the quantity by which the wealth of one man exceeds that of another goes on increasing: in other words, the quantity of happiness produced by a particle of wealth (each particle being of the same magnitude) will be less and less at every particle; the second will produce less than the first, the third than the second, and so on.

5. Minimum of wealth, say £10 per year—greatest excess of happiness produced by excess in the quantity of wealth, as 2 to 1:—magnitude of a particle of wealth, £1 a year. On these data might be grounded a scale or table, exhibiting the quantities of happiness produced, by as many additions made to the quantity of wealth at the bottom of the scale, as there are pounds between £10 and £10,000.

II. Case, or state of things the second,—the particles of wealth about to enter into the hands of the parties in question.

1. Fortunes unequal:—by a particle of wealth, if added to the wealth of him who has least, more happiness will be produced than if added to the wealth of him who has most.

2. Particles of wealth at the disposition of the legislator, say 10,000;—happiness of the most wealthy to that of the least wealthy say (as per No. 5,) as 2 to 1 :—by giving to each one of 10,000 a particle of wealth, the legislator will produce 5000 times the happiness he would produce by giving the 10,000 particles to one person.

3. On these data might be grounded a scale, exhibiting the quantities of happiness produced, by so many additions made as above to the minimum of wealth, to the respective happiness of any number of persons, whose respective quantities of wealth exceed one another, by the amount of a particle in each instance.

III. Case, or state of things the third,—the particles of wealth about to go out of the hands of the parties.

1. By the subtraction of a particle of the matter of wealth, a less subtraction from happiness will be produced, if made from the wealth of him who has the matter of abundance, than if from the wealth of him who has the matter of subsistence only.

2. So, if from the wealth of him who has a larger portion of the matter of abundance than if from the wealth of him who has not so large a portion of the matter of abundance.

3. Fortunes equal, and the aggregate sum subtracted being given, the greater the number of the persons from whose wealth the subtraction is made, the less will be the subtraction thereby made from the aggregate of happiness.

4. Fortunes unequal, still less will be the subtraction of happiness, if it be in the ratio of their fortunes that the subtraction is made the greatest quantity being subtracted from those whose fortunes are greatest.

5. A quantity of the matter of wealth may be assigned, so small, that if subtracted from the fortune of a person possessed of a certain quantity of the matter of abundance no sensible subtraction of happiness would be the result.

6. The larger the fortune of the individual in question, the greater the probability that, by the subtraction of a given quantity of the matter of wealth, no subtraction at all will be made from the quantity of his happiness.

7. So likewise, if the ratio of the sum to be subtracted, to the aggregate mass from which it is to be subtracted, be so great, that by the subtraction of it, subtraction of a quantity, more or less considerable, cannot but be made

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from the aggregate of happiness.—still the larger, in the case of each individual, the aggregate of wealth is from which the subtraction is made, the less will be the quantity of happiness so subtracted, as above.

IV. Case, or state of things the fourth,—the particles of wealth about to go out of the hands of the one party into the hands of the other.

1. Fortunes equal:—take from the one party a portion of the matter of wealth and give it to the other,—the quantity of happiness gained to the gainer of the wealth will not be so great as the quantity of happiness lost to the loser of the wealth.

2. Fortunes unequal:—the poorer the loser, the richer the gainer: greater in this case is the diminution produced in the mass of happiness by the transfer, than in the last mentioned case.

3. Fortunes again unequal:—the richer the loser, the poorer the gainer: the effect produced on happiness by the transfer may in this case be either loss or gain.

Whether it be the one or the other, will depend partly upon the degree of the inequality, partly upon the magnitude of the portion of wealth transferred. If the inequality be very small, and the wealth transferred also small, the effect produced on the sum of happiness may be loss. But if either be—much more if both be other than, very small, the effect on happiness will be gain.

4. Income of the richer, say £100,000 a year—income of the less rich, say £99,999 a-year: wealth taken from the first, and transferred to the less rich, £1 a-year:—on the sum of happiness the effect will be on the side of loss;—more happiness will be lost by the richer than gained by the less rich. Hence one cause of the preponderance produced on the side of evil by the practice called gaming.

5. Income of the richer loser, £100,000 a-year;—income of the less rich gainer, £10 a-year;—wealth lost to the richer, gained by the less rich, £1 a-year:—on the sum of happiness the effect will be on the side of gain. More happiness will be gained by the less rich gainer, than lost by the more rich loser.

Thus it is, that if the effects of the first order were alone taken into account, the consequence would be, that, on the supposition of a new constitution coming to be established, with the greatest happiness of the greatest number for its end in view, sufficient reason would have place for taking the matter of wealth from the richest and transferring it to the less rich, till the fortunes of all were reduced to an equality, or a system of inequality so little different from perfect equality that the difference would not be worth calculating

But call in now the effects of the second and those of the third order, and the effect is reversed: to maximization of happiness would be substituted universal annihilation in the first place of happiness—in the next place of existence. Evil of the second order,—annihilation of happiness by the universality of the alarm, and the swelling of danger into certainty:—Evil of the third order,—annihilation of existence by the certainty of the non-enjoyment of the fruit of labour and thence the extinction of all inducement to labour.

Independently of the destruction which would thus be produced by carrying, or even by the known intention of carrying to its utmost possible length the equalization or say levelling system, as above, diminution would be effected in the aggregate of happiness, by the extinction of the fund afforded by the matter of abundance for keeping undiminished the stock of the matter of wealth necessary for subsistence.

On consideration of what is stated above it will be found that the plan of distribution applied to the matter of wealth, which is most favourable to universality of subsistence, and thence, in other words, to the maximization of happiness, is that in which, while the fortune of the richest—of him whose situation is at the top of the scale, is greatest, the degrees between the fortune of the least rich and that of the most rich are most numerous,—in other words, the gradation most regular and insensible.

The larger the fortunes of the richest are, the smaller will be the number of those whose fortunes approach near to that high level: the smaller, therefore, the number of those from whose masses of property the largest defalcation could by possibility be made :—and, moreover, the larger those masses, the greater would be the difficulty which the legislator would experience as to the obtaining at their charge such defalcation as the nature of the case would not exclude the possibility of making.

Thus, for example, it would, in case of over population, be easier in England, or even in Ireland, to ward off famine for a time, than it would be in British India.

Equality requires, that though it be at the expense of all the other members of the community, the income of those whose income is composed of the wages of labour be maximized. Reason: Of these are composed the vast majority of the whole number of the members of the community.

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Exceptions excepted, equality requires that the profits of stock be minimized. Reason: Because the net profit of stock is composed of the mass, or say portion remaining to the employer of the stock, after deduction made of the wages of the labour applied to it.

Exception will be—if this supposed case be really exemplified—where the possessors of the wages of labour are so many, and the possessors of the profits of stock so few, that by a small addition to the one, no sensible defalcation will be made from the other.

## §6. Axioms relating to Power, Rank, and Reputation.

By axioms relating to power, understand self-serving power, exempt from the obligation by which it is converted into trust.

As between individual and individual, the pleasure to the superior, to the power-holder, from the possession and exercise of the power, is not so great as the pain experienced by the party subjected.

Therefore, only when converted into extra-benefiting by appropriate obligation, can it be conducive to greatest happiness.

The same observations will equally apply to rank, and factitious estimation produced by rank.

So also to extra reputation, or say estimation, unless when acquired by service rendered to others.

The principle corresponding to these axioms, as to equality, is *the inequality-minimizing principle*.