

Foundational Law

The Legacy of Sir William Blackstone

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Introduction

In 1892, the Supreme Court decides that, “this is a religious nation.”

-*Church of the Holy Trinity v. United States*, 143 U.S. 457, 470 (1892).

“[t]here is an unbroken history of official acknowledgment by all three branches of government of the role of religion in American life from at least 1789.”

-*Lynch v. Donnelly*, 465 U.S. 668, 674 (1984).

“religion has been closely identified with our history and government.”

-*Abington v. Schempp*, 374 U.S. 203, 212 (1963)

“We are a religious people whose institutions presuppose a Supreme Being.”

- *Zorach v. Clauson* (1952)

“...the Commentaries rank second only to the Bible as a literary and intellectual influence on the history of American institutions”

- *Robert Ferguson*

Of critical importance to our understanding of law, and Government, is the work left to us by Sir William Blackstone (1723-1780). An eighteenth century legal scholar, Sir Blackstone’s belief in God and our obedience to His law – as expressed in his Commentaries on the Laws of England - has had an immeasurable impact on not only the United States, but all of Western civilization.

For instance, in 1928, William Searle Holdsworth, author of the 17 volume History of English Law, and one of Blackstone’s successors as Vinerian Professor at Oxford, believed that “if the Commentaries had not been written when they were written, I think it very doubtful that [the United States], and other English speaking countries would have so universally adopted the [common] law”.¹

In the Buffalo Law Review of 1979, Duncan Kennedy states that Blackstone “is the only systematic attempt that has been made to present a theory of the whole common law system” His writing was “the single most important source on English legal thinking in the 18th century and...has had as much (or more) influence on American legal thought as it has had on the British.”²

This significant influence is believed to have resulted from a lack of US legal tradition during the later portion of the 18th century, as well as the scarcity of law books in the new nation. As a result, Blackstone’s accessible and highly regarded “Commentaries” were opportunely available to fill the need. As Robert Ferguson has stated, “all our formative documents — the Declaration of Independence, the Constitution, the Federalist Papers and the seminal decisions of the Supreme Court under John Marshall — were drafted by attorneys steeped in Sir William Blackstone’s Commentaries on the Laws of England. So much was this the case that the Commentaries rank second only to the Bible as a literary and intellectual influence on the history of American institutions”.³

¹ (Holdsworth, W.S. (1928). “Sir William Blackstone”. Oregon Law Review)

² Duncan Kennedy, “The Structure of Blackstone’s Commentaries, Buffalo Law Review, 28, 2 (Spring 1979)

³ William Bader, “Some Thoughts on Blackstone, Precedent and Originalism” Vermont Law Review, 1995

The Right Honorable Sir William Blackstone, L.L.D. Judge of the Court of King's Bench. (pgs 261-275)

Biographical Sketches of Eminent Characters; Compiled from various authors by the Late Rev. John Ewart, M.A. London: 1830



Standing at nine feet tall, a bronze statue of Sir Blackstone was approved by the United States Congress, and placed in 1943 at the E. Barrett Prettyman U.S. Courthouse in Washington D.C. (at Constitution Avenue & 3rd Street).

good sense, which would not listen to flattery, or even just praise, if it tended to mislead his mind from his profession. He had determined early to devote himself to the study of law. To prepare his mind for such grave, serious, and profound labor and mental exertion, he had very seriously reasoned with himself, convinced that the study of the laws of his country would be the surest road to fair fame and honor.

Therefore, whatever regrets he had felt at renouncing the more cheerful and amusing pursuits of poetry, he resolved to write a final *adieu* to rhyme and verses. He wrote *The Lawyer's Farewell to his Muse*, which has been printed in the fourth volume of Dodsley's Collection. It is impossible to read these verses without feeling a lively sense of the struggle which the excellent Author must have had in his own mind, when he bade *Farewell to Poetry*, and all the rural pleasures which are combined with it. The decided proof of his talents for verse, which the following poem exhibits, must strike every reader of good taste. It is a poem which every young lawyer should read, to fortify his resolution, and to impress upon his heart a just sense of the importance of his profession. He sees that the same great man who wrote the valuable *Commentaries on the Laws of England*, full of grave,

This very illustrious lawyer was born in London, on June, 1723, after the death of his respected father. His mother also died soon after, and left four young children. But the goodness of divine Providence never did forsake the orphan, and particularly when parents were virtuous. The care of the education and fortune of young Blackstone fell to his maternal uncle, Thomas Bigge, Esq. of Chilton-Foliot, in Wiltshire, who placed his nephew in the Charter-House School, in 1730, and he was admitted there upon the foundation in 1735. At seven years of age he was a most promising boy.

In November, 1738, he was entered a commoner of Pembroke College, Oxford, and elected by the Governors of the Charter-House to one of their exhibitions, in December that year; on which occasion, young Blackstone spoke with eloquence the Annual Oration of that school; and about that same time he obtained the gold prize medal for his fine verses on the talents of Milton. He had early in life been distinguished by both eloquence, good taste, and talents in poetry. He wrote verses on various subjects, some of which were printed; yet he pursued his graver studies with great ardour, not only in the Greek, and Latin, and French authors, but also in logic and mathematics.

He had also, at twenty-two years of age, written a *Treatise on the Elements of Architecture*, which he only intended for his own private use; but some friend who had perused it, and who were able judges of its merits, praised it highly. All this success and *éclat* did not fill the mind of the young man with vanity or self-conceit.

He was endowed with great

...the same great man who wrote the valuable *Commentaries on the Laws of England*, full of grave, profound, legal knowledge, had loved the more cheerful, light, and gay ideas of poetry.

The Lawyer's Farewell to his Muse

By Sir William Blackstone

It is remarkable that no Biographical Memoir of this great man recorded his early talent for poetry, till Mr. Dodsley had inserted in his excellent volumes of Original Poetry, the following verses, which had been preserved by the family of Sir William Blackstone.

As by some tyrant's stern command,
A wretch forsakes his native land,
In foreign climes condemn'd to roam
An endless exile far from home,
Pensive he treads the destin'd way,
Each step takes pleasure far away,
Till on some mountain's rugged brow
He stops, and turns his eye below;
There melted by the well-known view,
Drops the last tear, and says, "Adieu!"

So I from thee, thus doom'd to part,
Gay queen of fancy, and of art,
Reluctant move, with doubtful mind,
Oft stop, and often look behind.
-Companion of my tender age,
Serenely gay, and sweetly sage;
O, cheerful were we wont to rove
By verdant hill or shady grove;
How blest my days! My thoughts how free!
In sweet society with thee!
Then all was joyous, all was young,
And years unheeded roll'd along,
But now the pleasing dream is o'er,
These scenes must charm me now no more.
Lost woods and fields, Ah! Torn from you!
Farewell! A long and last adieu!

Me wrangling courts and cities draw
To smoke, and crowds, and stubborn law.
Where selfish faction rules the day,

And pride and avarice throng the way;
Diseases taint the foggy air,
And midnight conflagrations glare;
Audacious vice, and riot bold,
In frighted streets their empire hold;
Or where in silence, all are drown'd,
Fell murder walks his nightly round;
No room for poetry and you,
Adieu! Celestial love, adieu!

In now must seek the close retreat,
Where law and justice keep their seat;
O let me pierce the sacred shade,
Where dwells the venerable maid;
O let me see the sacred ground
Where wise Minerva may be found,
Where truth and knowledge I may gain,
And all labor not in vain.
There humbly mark, with reverend awe,
The guardian of Britannia's law,
Explain with joy her sacred page,
The pride and boast of many an age-
Where mix'd, yet uniform, appears
The wisdom of a thousand years.
In that pure stream the bottom view,
Clear, deep, and regularly true.
And other doctrines hence imbibe,
Than lurk within the sordid tribe.
Observe how parts with parts unite
In one harmonious rule of *right*;
See various laws to one great end

By countless wheels distinctly tend,
And make integrity preside,
With law and virtue by her side,
While mighty Alfred's royal soul
Pervades and regulates the whole.

Then welcome business, welcome strife,
Welcome the cares and thorns of life,
The visage wan, the purblind sight,
The toil by day, the lamps by night;
The tedious forms, the solemn prate,
The pert dispute, the dull debate,
The drowsy bench, the babbling hall,
For thee, fair justice, welcome all!

Thus let my noon of life be past:
Yet let my setting sun at last
Find out the quiet, rural cell,
Where sage retirement loves to dwell;
There let me taste the home-felt bliss
Of innocence and inward peace,
Untainted by the guilty bribe,
Uncursed by the harpy tribe;
No orphans' cry to wound my ear,
My honor and my conscious clear; -
Thus would I calmly meet my end,
And to the grave with hope and peace
descend."



In his twenty-second and twenty-third year, did this great and good lawyer write these beautiful verses. Let every young lawyer read these verses before he proceeds to read and study the various works of legal wisdom and profound learning, written by Sir William Blackstone.

profound, legal knowledge, had loved the more cheerful, light, and gay ideas of poetry. But he had wisdom to know that human life was a grave and serious affair. He was determined not to say with the Frenchman *Vive la Bagatelle*. Sire William Blackstone had elevated hopes of gaining high and honorable distinction by the study of the law.

His *Commentaries on the Laws of England*, in four volumes, is a most laborious work, and a treasure of legal knowledge. The Editor has seen a handsome copy of them embellished with fourteen portraits, beautifully engraved, of the most distinguished lawyers of highest rank in England, with a good portrait of Sir William Blackstone, who had been handsome in his youth.

Sir William had not only written poetry in early life, but had also written notes on Shakespeare, which were not printed; they show, however, how well he understood, and how much he relished that author.

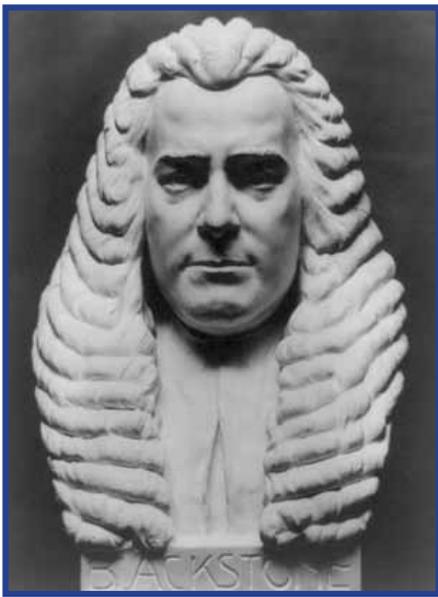
On October of 1758, he was unanimously elected Vinerian Professor of Common Law at Oxford. A Mr. Viner bequeathed a large legacy to form that Professorship there. The lectures given there, eight years, by Mr. Blackstone, (before he was knighted by his Majesty, and made King's Counsel, and Judge) were most important, and highly prized both at Oxford and London. He published "Law Tracts," in two volumes, octavo, in 1762. He was appointed Solicitor-General to the queen, in 1763. He was elected in the new parliament in 1768. He had been returned member of parliament for Hindon, in Wiltshire, in 1761, the same year he married (in his thirty-fifth year), an amiable lady, Sarah, the daughter of James Clitherow, Esq. of Boston House, Middlesex, with whom he lived happily nineteen years, and left seven children by her. He was a Judge in the Court of King's Bench, and also in the Court of Common Pleas. He had been indefatigable in all his public and private life, with unblemished character, and had never forgotten the virtuous resolution of his early life, expressed in his *Farewell to the Muse*. He resided chiefly in London, and was always active to promote whatever might contribute to the public good; and he was exemplarily in all religious and moral virtues.

We shall insert here some extracts from his Lectures. He described "Law as the great guardian of peace, virtue, property, and happiness." He said, "When the Supreme Being had formed the universe, and had created an infinite variety of matter out of *nothing*, he had impressed certain principles on that matter, from which it could not depart, and must be entirely subordinate to the great Creator – without *Him* it must cease to exist. While we advance farther from the mere inactive matter, to the living principles of animal and vegetable life, we are not left to *chance*, or the will of the creature. We have perception to see, and feel, that all is performed in a most wonderful manner by the laws and rules laid down by the Almighty *only*. The moral government of the great Creator has, above all, appeared to *man*."

We have perception to see, and feel, that all is performed in a most wonderful manner by the laws and rules laid down by the Almighty *only*.

Highly distinguished and endowed by God, are mankind, both regarding this life, and also evidently with capacities for very superior existence beyond the present scene of action; yet are absolutely dependent on the laws of the Supreme Being. He evidently expects, and commands, that mankind shall make active progress towards more and more perfection; yet, like *infancy*, which by slow degrees advances to manhood, so was human nature to proceed; also to be exposed to a kind of constant warfare against the evil spirit, permitted to tempt the imagination, and act by influence on the passions and propensities of mankind. To them the Almighty has assigned a task, by the performance of which, happiness or misery will follow; yet mankind has a perception by which they see and understand what is *good*, and what is evil. The soul must be active to perform this great important task.

Mankind is responsible to God; he has given to them an immortal soul, like a *deposit* from *Him*, and they are accountable to *Him* for it. If, by vice and wickedness, they do not correct evil propensities and passions, they cannot escape from *His* authority and punishment. If mankind is placed in a state of trial and mental warfare in this life, they are furnished with ample means of



self-defense by quick discernment in the heart and conscience, to distinguish good from evil. They are also aware of that both by *natural instinct*, and by *revealed religion* of the Omnipresence, as well as the Omnipotence of God; yet the propensities of vice make the animal nature of man evident. He must, therefore, pass through a state of *trial*: as gold is purified, so must the soul be made pure, and prepared by virtue and piety for eternal happiness. By the will of God, (which in various ways has been made manifest to mankind) the felicity of the soul after death depends on the individual who has *resisted the evil spirit*, which, by access to the imagination and passions, tempted the sinner.

“Meantime the Spirit of God *walks to and fro*, on the face of the earth. We read in Scripture, *He is not far from ever one of us*. By infinite goodness the Almighty seems to take paternal care of mankind, provided they observe and obey the rules of self-control suggested by conscience and declared by natural and revealed religion. The rule of obedience is reduced to a brief and plain precept, viz. *Thou shalt love the Lord thy God with all thy heart, and with all thy soul, and with all*

thy mind. This is the first and great commandment. The second is like unto it, Thou shalt love thy neighbor as thyself. On these two commandments hang all the law and the prophets. (Matthew 22: 37-39)

When the Almighty gave this paternal command, not only to the Jews, but to the Christians, with more and more ample knowledge of *Himself*; by the great Redeemer, a Covenant was made with mankind very obvious to the meanest mind, as well as to the most superior, - that by piety, virtue, patience, and humility, mankind might pursue, and obtain eternal happiness. All the laws made by man are only an imitation of the divine laws made by God from the beginning of the world. Without such laws, mankind would be inferior to the animals of the forest. The laws of God and the laws of man are both of the most essential importance to the happiness, the prosperity, the honor, and the life of man *here and hereafter*.”

Again, we find in the *Lectures* of this great lawyer, as follows: “When we see the wonderful power of God, we must be convinced he was able to dictate to mankind whatever laws he pleased, just or unjust. But he has made it evident that he loves virtue and truth, and that vice, falsehood, and all wickedness, are offensive and hateful to him: he has also elevated the soul of man by heavenly perceptions, hopes, and principles, as are evidently to rouse and exalt the mind above this lower world by wisdom and virtue, also by humility and patience of a divine nature, by which practice mankind may be united to angels. St. John says, “This is the promise He has promised, even eternal life.” All the wisdom of Greece and Rome is nothing compared to the divine wisdom found in Scripture. The laws of man will find it (and have already found it) the only sure and perfect model; by its operations the original propensity to sin may be greatly subdued in mankind. The voice of conscience is also powerful, and able to check the first beginnings of pride, avarice, and discontent, if the mind has been early regulated by education, and made aware that punishment is a requisite to prevent the minor small degrees of wickedness, by which the highest description of depravity always commences.”

Such were the excellent principles felt and expressed by this illustrious lawyer, when he lectured for nearly nine years at Oxford. He had mingled his Lectures, not only the various points of law, from the most minute circumstances, to the most elevated points, but he had also blended with them the divine laws of God, in these most important discourses; while, by that union the laws of mankind were to derive their main strength from the laws of God. He certainly united in himself the accomplished scholar, the sincere Christian philosopher, and the great lawyer. He gave, with the other great lawyers, great dignity to law, as being most justly the *guardian of property, fame, honor, happiness, and life*, to mankind in this world, while also enlightening the mind to purify itself as a candidate for immortal happiness beyond the grave.

Sir William Blackstone published two volumes of valuable and very interesting cases of law, which were tried in Westminster Hall, from the year 1746 to 1779. He had attained the very highest of character, and also that independence, that *Orium cum dignitate* so desirable in old age; but, his ardent and active mind did not wish to retire from the world while conscious of being daily engaged in the most important and useful duties. He presided in Courts of Law, with every patriotic principle and every benevolent feeling, distinguished by candour and justice; no object of public utility, or private charity, was ever omitted by him.

Meantime the gout attacked him severely in the winter of 1779: after it had subsided he was seized with a shortness of breath, and afterwards with drowsiness. He seemed to slumber, and felt no acute illness, insomuch that his many friends hoped to see his perfect recovery; but he expired, without pain, on the 14th of February, 1780. The great and good Lord Mansfield and many other eminent lawyers, with men of literature and rank and talents, attended his funeral.

We have omitted to notice the invariable respect expressed and felt by this very distinguished judge, for the due observance of the Sabbath; not that he wished it to be a day of gloomy habits, but void of folly and all the giddy dissipation which prevails on the continent. He wished it to be cheerful, tranquil, and satisfactory to the reasonable mind, which could fully understand that it was specially set apart by God (See Genesis 2), to be a day *sanctified* by the Almighty, by which the heart was to be improved more and more by all domestic peace, harmony, and repose; not forbidding such exercise of the body as is necessary for health.

We read of the Sabbath, not only in Genesis, but also in the twentieth chapter of Exodus, where the Ten Commandments were given by Moses, and where God said, *Remember the Sabbath*; also in Isaiah, “So keep the Sabbath *holy*,” by which we must understand not an indulgence in melancholy, but a sobriety, sedateness in *mind, temper, and heart*. The words also of Sir William Blackstone in his lectures were these: “If only as a civil institution, for *rest and repose* to man and beast, also to improve all mental knowledge, to those who have talents and leisure, it is a most important law given by the divine Lawgiver to mankind.

“To the lower classes it is of high advantage: they would degenerate into a rude, selfish, sordid, savage state, or not checked by the observance of the Sabbath. Man, considered as a creature, must necessarily be subject to the laws of his Creator, for he is entirely a dependent being. When God Almighty created man, he endowed him with a free-will, with respect to his conduct as to virtue and vice in this life of trial; but the Creator of all laid down certain positive laws whereby that *free-will* was to be restrained and regulated, giving mankind also the faculty of reason, by which they could discover the purport and advantage of these divine laws, all of which were full of wisdom and goodness. If the mind of man was always (as in our first ancestor before his transgression) calm, clear, and perfect; unruffled by evil propensities and passions, unclouded by error and prejudice, unimpaired by disease or intemperance, the task of moral and religious instruction would be easy; but every man of experience finds the contrary, that all human reason is prone to be corrupted, and the knowledge of man very often full of error and ignorance. This actual state of human nature with all its best mental intelligence (not unforeseen by divine omniscience, but permitted to exist, that mankind may be enabled to correct themselves) had called forth the merciful and exalted wisdom and goodness of the Supreme Being, who has by various means, and by slow and sure divine communication, suited to the gradual progress of mankind, discovered to them the divine revealed Religion which could only be found in the Scriptures; in these precepts all true happiness of mankind here and hereafter is contained. Of course he who does not respect the Sabbath is already a sinner, though he may suppose (by self-conceit) that he is a good man. But when avarice, pride, or various propensities of wickedness enter his imagination, the progress of sin will proceed rapidly; many criminals who have died by the law of their God and their country, have declared that the first beginnings of guilt were from neglect of the duties of the Sabbath.” ■

the Creator of all laid down certain positive laws whereby that *free-will* was to be restrained and regulated, giving mankind also the faculty of reason, by which they could discover the purport and advantage of these divine laws, all of which were full of wisdom and goodness.

The Ten Commandments: Exodus 20:1-17

God's Law pertaining to Him

1. Do not worship any other gods
2. Do not make any idols
3. Do not misuse the name of God
4. Keep the Sabbath holy

God's law pertaining to Man

5. Honor your father and mother
6. Do not murder
7. Do not commit adultery
8. Do not steal
9. Do not lie
10. Do not covet what your neighbor has.

1 And God spoke all these words:

2 "I am the LORD your God, who brought you out of Egypt, out of the land of slavery.

3 "You shall have no other gods before me.

4 "You shall not make for yourself an image in the form of anything in heaven above or on the earth beneath or in the waters below. 5 You shall not bow down to them or worship them; for I, the LORD your God, am a jealous God, punishing the children for the sin of the parents to the third and fourth generation of those who hate me, 6 but showing love to a thousand generations of those who love me and keep my commandments.

7 "You shall not misuse the name of the LORD your God, for the LORD will not hold anyone guiltless who misuses his name.

8 "Remember the Sabbath day by keeping it holy. 9 Six days you shall labor and do all your work, 10 but the seventh day is a sabbath to the LORD your God. On it you shall not do any work, neither you, nor your son or daughter, nor your male or female servant, nor your animals, nor any foreigner residing in your towns. 11 For in six days the LORD made the heavens and the earth, the sea, and all that is in them, but he rested on the seventh day. Therefore the LORD blessed the Sabbath day and made it holy.

12 "Honor your father and your mother, so that you may live long in the land the LORD your God is giving you.

13 "You shall not murder.

14 "You shall not commit adultery.

15 "You shall not steal.

16 "You shall not give false testimony against your neighbor.

17 "You shall not covet your neighbor's house. You shall not covet your neighbor's wife, or his male or female servant, his ox or donkey, or anything that belongs to your neighbor."

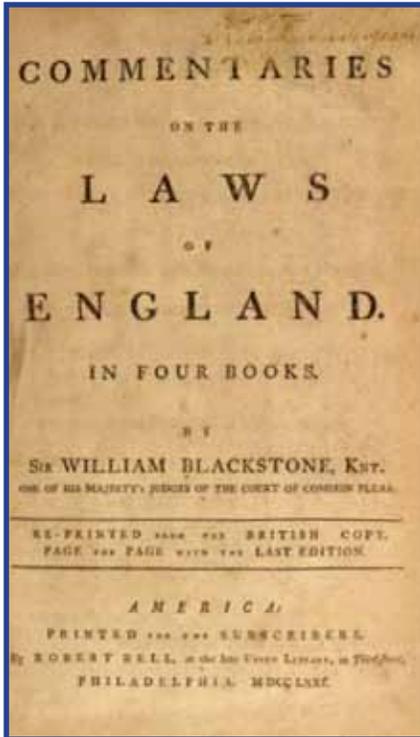
Leaders Recognized at the United States Capitol



Twenty-three marble relief portraits reside over the gallery doors of the House Chamber, and depict various leaders noted for their contributions towards the law in the United States. Installed when the chamber was remodeled in 1949-1950, the plaques measure 28 inches in diameter, and are created out of Vermont marble. Eleven profiles hang on the eastern half of the chamber, and eleven hang on the western. All look towards Moses, who hangs in the center of the north wall. The selection was approved by a committee of five members of the House of Representatives, and the Architect of the Capitol. *For more information: <http://www.aoc.gov>*

An Excerpt: Commentaries on the Laws of England, First Book

By William Blackstone, Esq. Vinerian Professor of Law, and Solicitor General to her Majesty.
Oxford, Printed at the Clarendon Press, MDCCLXV (1765)



During the early formation of the legal system in the United States, it's said that around 1,400 copies of Blackstone's commentaries (as seen above) were ordered for use in Philadelphia alone.

Section Two: Of the Nature of Laws in General (pg 38-43)

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

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

If we farther advance, from mere inactive matter to vegetable and animal life, we shall find them still governed by laws; more numerous indeed, but equally fixed and invariable. The whole progress of plants, from the seed to the root, and from thence to the seed again; - the method of animal nutrition, digestion, secretion, and all other branches of vital economy; - are not left to chance, or the will of the creature itself, but are performed in a wondrous involuntary manner, and guided by unerring rules laid down by the great Creator.

This then is the general signification of law, a rule of action dictated by some Superior Being; and in those creatures that have neither the power to think, nor to will, such laws must be invariable obeyed, so long as the creature itself submits, for it's existence depends on that obedience. But laws, in their more confined sense, and in which it is our present business to consider them, denote the rules, not of action in general, but of human action or conduct: that is, the precepts by which man, the noblest of all sublunary beings, a creature endowed with both reason and freewill, is commanded to make use of those faculties in the general regulation of his behavior.

Man, considered a creature, must necessarily be subject to the laws of his creator, for he is entirely a dependent being. A being, independent of any other, has no rule to pursue, but such as he prescribes to himself; but a state of dependence will inevitably oblige the inferior to take the will of him, on whom he depends, as the rule of his conduct: not indeed in every particular, but in all those points wherein his dependence consists. The principle therefore has more or less extent and effect, in proportion as the superiority of the one and the dependence of the other is greater or less, absolute or limited. And consequently as man depends absolutely upon his maker for everything, it is necessary that he should in all points conform to his maker's will.

This will of his maker is called the law of nature. For as God, when he created matter, and endued it with a principle of mobility, established certain rules for the perpetual direction of that motion; so, when he created man, and endued him with freewill to conduct himself in all parts of life, he laid down certain immutable laws of human nature, whereby that freewill is in some degree regulated and restrained, and gave him also the faculty of reason to discover the purpose of those laws.

Considering the Creator only as a being of infinite power, he was able unquestionably to have prescribed whatever laws he pleased to his creature, man, however unjust or severe. But as he is also a being of infinite wisdom, he has laid down only such laws as were founded in those relations of justice, that existed in the nature of things antecedent to any positive precept. These are the eternal, immutable laws of good and evil, to which the creator himself in all his dispensations conforms; and which he has enabled human reason to discover, so far as they are necessary for the conduct of human actions. Such among others are these principles: that we should honestly, should hurt nobody, and should render to everyone one it's due; to which three general precepts Justinian has reduced the whole doctrine of law.

But if the discovery of these first principles of the law of nature depended only on the due exertion of right reason, and could not otherwise be attained than by a chain of metaphysical disquisitions, mankind would have wanted some inducement to have quickened their inquiries, and the greater part of the world would have rested content in mental indolence, and ignorance it's inseparable

This law of nature, being co-eval with mankind and dictated by God himself, is of course superior in obligation to any other. It is binding all over the globe, in all countries, and at all times: no human laws are of any validity, if contrary to this...

companion. As therefore the creator is a being, not only of infinite power, and wisdom, but also of infinite goodness, he has been pleased so to contrive the constitution and frame of humanity, that we should want no other prompter to enquire after and pursue the rule of right, but only our own self-love, that universal principle of action. For he has so intimately connected, so inseparably interwoven the laws of eternal justice with the happiness of each individual, that the latter cannot be attained but by observing the former; and, if the former be punctually obeyed, it cannot but induce the latter. In consequence of which mutual connection of justice and human felicity, he has not perplexed the law of nature with a multitude of abstracted rules and precepts, referring merely to the fitness or unfitness of things, as some have vainly

surmised; but has graciously reduced the rule of obedience to this one paternal precept, "that man should pursue his own happiness." This is the foundation of what we call ethics, or natural law. For the several articles into which it is branched in our systems, amount to no more than demonstrating, that this or that action tends to man's real happiness, and therefore very justly concluding that the performance of it is a part of the law of nature; or, on the other hand, that this or that action is destructive of man's real happiness, and therefore that the law of nature forbids it.

This law of nature, being co-eval with mankind and dictated by God himself, is of course superior in obligation to any other. It is binding all over the globe, in all countries, and at all times: no human laws are of any validity, if contrary to this; and such of them as are valid derive all their force, and all their authority, mediately or immediately, from this original.

But in order to apply this to the particular exigencies of each individual, it is still necessary to have recourse to reason; whose office it is to discover, as was before observed, what the law of nature directs in every circumstance of life; by considering what method will tend the most effectually to our own substantial happiness. And if our reason were always, as in our first ancestor before his transgression, clear and perfect, unruffled by passions, unclouded by prejudice, unimpaired by disease or intemperance, the task would be pleasant and easy; we should need no other guide than this. But every man now finds the contrary in his own experience; that his reason is corrupt, and his understanding full of ignorance and error.

This has given manifold occasion for the benign interposition of divine providence; which, in compassion to the frailty, the imperfection, and the blindness of human reason, has been pleased, at sundry times and in diverse manners, to discover and



enforce its laws by an immediate and direct revelation. The doctrines thus delivered we call the revealed or divine law, and they are to be found only in the Holy Scriptures. These precepts, when revealed, are found upon comparison to be really a part of the original law of nature, as they tend in all their consequences to man's felicity. But we are not from thence to conclude that the knowledge of these truths was attainable by reason, in its present corrupted state; since we find that, until they were revealed, they were hid from the wisdom of the ages. As then the moral precepts of this law are indeed of the same original with those of the law of nature, so their intrinsic obligation is of equal strength and perpetuity. Yet undoubtedly the revealed law is (humanly speaking) of infinitely more authority than what we generally call the natural law. Because one is the law of nature, expressly declared so to be by God himself; the other is only what, by the assistance of human reason, we imagine to be that law. If we could be as certain of the latter as we are of the former, both would have equal authority; but till then, they can never be put in any competition together.

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

If man were to live in a state of nature, unconnected with other individuals, there would be no occasion for any other laws, than the law of nature, and the law of God. Neither could any other law possibly exist; for a law always supposes some superior who is to make it; and in a state of nature we are all equal, without any other superior but him who is the author of our being. But man was formed for society; and, as is demonstrated by the writers on this subject, is neither capable of living alone, nor indeed has the courage to do it. However, as it is impossible for the whole race of mankind to be united in one great society, they must necessarily divide into many; and form separate states, commonwealths, and nations; entirely independent of each other, and yet liable to mutual intercourse. Hence arises a third kind of law to regulate this mutual intercourse, called "the law of nations"; which, as none of these states will acknowledge a superiority in the other, cannot be dictated by either; but depends entirely upon the rules of natural law, or upon mutual compacts, treaties, leagues, and agreements between these several communities: in the construction also of which compacts we have no other rule to resort to, but the law of nature; being the only one to which both communities are equally subject: and therefore the civil law very justly observes that *quod naturalis ratio inter omnes homines constituit, vocatur jus gentium*. states, commonwealths, and nations; entirely independent of each other, and yet liable to mutual intercourse. Hence arises a third kind of law to regulate this mutual intercourse, called "the law of nations"; which, as none of these states will acknowledge a superiority in the other, cannot be dictated by either; but depends entirely upon the rules of natural law, or upon mutual compacts, treaties, leagues, and agreements between these several communities: in the construction also of which compacts we have no other rule to resort to, but the law of nature; being the only one to which both communities are equally subject: and therefore the civil law very justly observes that *quod naturalis ratio inter omnes homines constituit, vocatur jus gentium*. ■

For more information:

- American Center for Law and Justice
<http://www.aclj.org>
- The Blackstone Institute:
<http://www.blackstoneinstitute.org/>

Note: Every effort has been made to ensure the accuracy of the information presented.