

CHAPTER XIV

OF THE FIRST AND SECOND NATURAL LAWS, AND OF CONTRACTS

THE right of nature, which writers commonly call *jus naturale*, is the liberty each man hath to use his own power as he will himself for the preservation of his own nature; that is to say, of his own life; and consequently, of doing anything which, in his own judgement and reason, he shall conceive to be the aptest means thereunto.

By liberty is understood, according to the proper signification of the word, the absence of external impediments; which impediments may oft take away part of a man's power to do what he would, but cannot hinder him from using the power left him according as his judgement and reason shall dictate to him.

A law of nature, *lex naturalis*, is a precept, or general rule, found out by reason, by which a man is forbidden to do that which is destructive of his life, or taketh away the means of preserving the same, and to omit that by which he thinketh it may be best preserved. For though they that speak of this subject use to confound *jus* and *lex*, right and law, yet they ought to be distinguished, because right consisteth in liberty to do, or to forbear; whereas law determineth and bindeth to one of them: so that law and right differ as much as obligation and liberty, which in one and the same matter are inconsistent.

And because the condition of man (as hath been declared in the precedent chapter) is a condition of war of every one against every one, in which case every one is governed by his

own reason, and there is nothing he can make use of that may not be a help unto him in preserving his life against his enemies; it followeth that in such a condition every man has a right to every thing, even to one another's body. And therefore, as long as this natural right of every man to every thing endureth, there can be no security to any man, how strong or wise soever he be, of living out the time which nature ordinarily alloweth men to live. And consequently it is a precept, or general rule of reason: that every man ought to endeavour peace, as far as he has hope of obtaining it; and when he cannot obtain it, that he may seek and use all helps and advantages of war. The first branch of which rule containeth the first and fundamental law of nature, which is: to seek peace and follow it. The second, the sum of the right of nature, which is: by all means we can to defend ourselves.

From this fundamental law of nature, by which men are commanded to endeavour peace, is derived this second law: that a man be willing, when others are so too, as far forth as for peace and defence of himself he shall think it necessary, to lay down this right to all things; and be contented with so much liberty against other men as he would allow other men against himself. For as long as every man holdeth this right, of doing anything he liketh; so long are all men in the condition of war. But if other men will not lay down their right, as well as he, then there is no reason for anyone to divest himself of his: for that were to expose himself to prey, which no man is bound to, rather than to dispose himself to peace. This is that law of the gospel: Whatsoever you require that others should do to you, that do ye to them. And that law of all men, *quod tibi fieri non vis, alteri ne feceris*.

To lay down a man's right to anything is to divest himself of the liberty of hindering another of the benefit of his own right to the same. For he that renounceth or passeth away his right giveth not to any other man a right which he had not before, because there is nothing to which every man had not right by nature, but only standeth out of his way that he may enjoy his own original right without hindrance from him, not without hindrance from another. So that the effect which redoundeth to one man by another man's defect of right is but so much diminution of impediments to the use of his own right original.

Right is laid aside, either by simply renouncing it, or by transferring it to another. By simply renouncing, when he cares not to whom the benefit thereof redoundeth. By transferring, when he intendeth the benefit thereof to some certain person or persons. And when a man hath in either manner abandoned or granted away his right, then is he said to be obliged, or bound, not to hinder those to whom such right is granted, or abandoned, from the benefit of it: and that he ought, and it is duty, not to make void that voluntary act of his own: and that such hindrance is injustice, and injury, as being sine jure; the right being before renounced or transferred. So that injury or injustice, in the controversies of the world, is somewhat like to that which in the disputations of scholars is called absurdity. For as it is there called an absurdity to contradict what one maintained in the beginning; so in the world it is called injustice, and injury voluntarily to undo that which from the beginning he had voluntarily done. The way by which a man either simply renounceth or transferreth his right is a declaration, or signification, by some voluntary and sufficient sign, or signs, that he doth so renounce or transfer, or hath so renounced or

transferred the same, to him that accepteth it. And these signs are either words only, or actions only; or, as it happeneth most often, both words and actions. And the same are the bonds, by which men are bound and obliged: bonds that have their strength, not from their own nature (for nothing is more easily broken than a man's word), but from fear of some evil consequence upon the rupture.

Whensoever a man transferreth his right, or renounceth it, it is either in consideration of some right reciprocally transferred to himself, or for some other good he hopeth for thereby. For it is a voluntary act: and of the voluntary acts of every man, the object is some good to himself. And therefore there be some rights which no man can be understood by any words, or other signs, to have abandoned or transferred. As first a man cannot lay down the right of resisting them that assault him by force to take away his life, because he cannot be understood to aim thereby at any good to himself. The same may be said of wounds, and chains, and imprisonment, both because there is no benefit consequent to such patience, as there is to the patience of suffering another to be wounded or imprisoned, as also because a man cannot tell when he seeth men proceed against him by violence whether they intend his death or not. And lastly the motive and end for which this renouncing and transferring of right is introduced is nothing else but the security of a man's person, in his life, and in the means of so preserving life as not to be weary of it. And therefore if a man by words, or other signs, seem to despoil himself of the end for which those signs were intended, he is not to be understood as if he meant it, or that it was his will, but that he was ignorant of how such words and actions were to be interpreted.

The mutual transferring of right is that which

men call contract. There is difference between transferring of right to the thing, the thing, and transferring or tradition, that is, delivery of the thing itself. For the thing may be delivered together with the translation of the right, as in buying and selling with ready money, or exchange of goods or lands, and it may be delivered some time after.

Again, one of the contractors may deliver the thing contracted for on his part, and leave the other to perform his part at some determinate time after, and in the meantime be trusted; and then the contract on his part is called pact, or covenant: or both parts may contract now to perform hereafter, in which cases he that is to perform in time to come, being trusted, his performance is called keeping of promise, or faith, and the failing of performance, if it be voluntary, violation of faith.

When the transferring of right is not mutual, but one of the parties transferreth in hope to gain thereby friendship or service from another, or from his friends; or in hope to gain the reputation of charity, or magnanimity; or to deliver his mind from the pain of compassion; or in hope of reward in heaven; this is not contract, but gift, free gift, grace: which words signify one and the same thing.

Signs of contract are either express or by inference. Express are words spoken with understanding of what they signify: and such words are either of the time present or past; as, I give, I grant, I have given, I have granted, I will that this be yours: or of the future; as, I will give, I will grant, which words of the future are called promise.

Signs by inference are sometimes the consequence of words; sometimes the consequence of silence; sometimes the

consequence of actions; sometimes the consequence of forbearing an action: and generally a sign by inference, of any contract, is whatsoever sufficiently argues the will of the contractor.

Words alone, if they be of the time to come, and contain a bare promise, are an insufficient sign of a free gift and therefore not obligatory. For if they be of the time to come, as, tomorrow I will give, they are a sign I have not given yet, and consequently that my right is not transferred, but remaineth till I transfer it by some other act. But if the words be of the time present, or past, as, I have given, or do give to be delivered tomorrow, then is my tomorrow's right given away today; and that by the virtue of the words, though there were no other argument of my will. And there is a great difference in the signification of these words, *volo hoc tuum esse cras*, and *cras dabo*; that is, between I will that this be thine tomorrow, and, I will give it thee tomorrow: for the word I will, in the former manner of speech, signifies an act of the will present; but in the latter, it signifies a promise of an act of the will to come: and therefore the former words, being of the present, transfer a future right; the latter, that be of the future, transfer nothing. But if there be other signs of the will to transfer a right besides words; then, though the gift be free, yet may the right be understood to pass by words of the future: as if a man propound a prize to him that comes first to the end of a race, the gift is free; and though the words be of the future, yet the right passeth: for if he would not have his words so be understood, he should not have let them run. In contracts the right passeth, not only where the words are of the time present or past, but also where they are of the future, because all contract is mutual translation, or change of right; and therefore he that promiseth only, because he hath already received the

benefit for which he promiseth, is to be understood as if he intended the right should pass: for unless he had been content to have his words so understood, the other would not have performed his part first. And for that cause, in buying, and selling, and other acts of contract, a promise is equivalent to a covenant, and therefore obligatory.

He that performeth first in the case of a contract is said to merit that which he is to receive by the performance of the other, and he hath it as due. Also when a prize is propounded to many, which is to be given to him only that winneth, or money is thrown amongst many to be enjoyed by them that catch it; though this be a free gift, yet so to win, or so to catch, is to merit, and to have it as due. For the right is transferred in the propounding of the prize, and in throwing down the money, though it be not determined to whom, but by the event of the contention. But there is between these two sorts of merit this difference, that in contract I merit by virtue of my own power and the contractor's need, but in this case of free gift I am enabled to merit only by the benignity of the giver: in contract I merit at the contractor's hand that he should depart with his right; in this case of gift, I merit not that the giver should part with his right, but that when he has parted with it, it should be mine rather than another's. And this I think to be the meaning of that distinction of the Schools between *meritum congrui* and *meritum condigni*. For God Almighty, having promised paradise to those men, hoodwinked with carnal desires, that can walk through this world according to the precepts and limits prescribed by him, they say he that shall so walk shall merit paradise *ex congruo*. But because no man can demand a right to it by his own righteousness, or any other power in himself, but by the free grace of God only, they say no man can merit paradise *ex condigno*.

This, I say, I think is the meaning of that distinction; but because disputers do not agree upon the signification of their own terms of art longer than it serves their turn, I will not affirm anything of their meaning: only this I say; when a gift is given indefinitely, as a prize to be contended for, he that winneth meriteth, and may claim the prize as due.

If a covenant be made wherein neither of the parties perform presently, but trust one another, in the condition of mere nature (which is a condition of war of every man against every man) upon any reasonable suspicion, it is void: but if there be a common power set over them both, with right and force sufficient to compel performance, it is not void. For he that performeth first has no assurance the other will perform after, because the bonds of words are too weak to bridle men's ambition, avarice, anger, and other passions, without the fear of some coercive power; which in the condition of mere nature, where all men are equal, and judges of the justness of their own fears, cannot possibly be supposed. And therefore he which performeth first does but betray himself to his enemy, contrary to the right he can never abandon of defending his life and means of living.

But in a civil estate, where there a power set up to constrain those that would otherwise violate their faith, that fear is no more reasonable; and for that cause, he which by the covenant is to perform first is obliged so to do.

The cause of fear, which maketh such a covenant invalid, must be always something arising after the covenant made, as some new fact or other sign of the will not to perform, else it cannot make the covenant void. For that which could not hinder a man from promising ought not to be admitted as a hindrance of

performing.

He that transferreth any right transferreth the means of enjoying it, as far as lieth in his power. As he that selleth land is understood to transfer the herbage and whatsoever grows upon it; nor can he that sells a mill turn away the stream that drives it. And they that give to a man the right of government in sovereignty are understood to give him the right of levying money to maintain soldiers, and of appointing magistrates for the administration of justice.

To make covenants with brute beasts is impossible, because not understanding our speech, they understand not, nor accept of any translation of right, nor can translate any right to another: and without mutual acceptance, there is no covenant.

To make covenant with God is impossible but by mediation of such as God speaketh to, either by revelation supernatural or by His lieutenants that govern under Him and in His name: for otherwise we know not whether our covenants be accepted or not. And therefore they that vow anything contrary to any law of nature, vow in vain, as being a thing unjust to pay such vow. And if it be a thing commanded by the law of nature, it is not the vow, but the law that binds them.

The matter or subject of a covenant is always something that falleth under deliberation, for to covenant is an act of the will; that is to say, an act, and the last act, of deliberation; and is therefore always understood to be something to come, and which judged possible for him that covenanteth to perform.

And therefore, to promise that which is known to be impossible is no covenant. But if that

prove impossible afterwards, which before was thought possible, the covenant is valid and bindeth, though not to the thing itself, yet to the value; or, if that also be impossible, to the unfeigned endeavour of performing as much as is possible, for to more no man can be obliged.

Men are freed of their covenants two ways; by performing, or by being forgiven. For performance is the natural end of obligation, and forgiveness the restitution of liberty, as being a retransferring of that right in which the obligation consisted.

Covenants entered into by fear, in the condition of mere nature, are obligatory. For example, if I covenant to pay a ransom, or service for my life, to an enemy, I am bound by it. For it is a contract, wherein one receiveth the benefit of life; the other is to receive money, or service for it, and consequently, where no other law (as in the condition of mere nature) forbiddeth the performance, the covenant is valid. Therefore prisoners of war, if trusted with the payment of their ransom, are obliged to pay it: and if a weaker prince make a disadvantageous peace with a stronger, for fear, he is bound to keep it; unless (as hath been said before) there ariseth some new and just cause of fear to renew the war. And even in Commonwealths, if I be forced to redeem myself from a thief by promising him money, I am bound to pay it, till the civil law discharge me. For whatsoever I may lawfully do without obligation, the same I may lawfully covenant to do through fear: and what I lawfully covenant, I cannot lawfully break.

A former covenant makes void a later. For a man that hath passed away his right to one man today hath it not to pass tomorrow to another: and therefore the later promise passeth no right, but is null.

A covenant not to defend myself from force, by force, is always void. For (as I have shown before) no man can transfer or lay down his right to save himself from death, wounds, and imprisonment, the avoiding whereof is the only end of laying down any right; and therefore the promise of not resisting force, in no covenant transferreth any right, nor is obliging. For though a man may covenant thus, unless I do so, or so, kill me; he cannot covenant thus, unless I do so, or so, I will not resist you when you come to kill me. For man by nature chooseth the lesser evil, which is danger of death in resisting, rather than the greater, which is certain and present death in not resisting. And this is granted to be true by all men, in that they lead criminals to execution, and prison, with armed men, notwithstanding that such criminals have consented to the law by which they are condemned.

A covenant to accuse oneself, without assurance of pardon, is likewise invalid. For in the condition of nature where every man is judge, there is no place for accusation: and in the civil state the accusation is followed with punishment, which, being force, a man is not obliged not to resist. The same is also true of the accusation of those by whose condemnation a man falls into misery; as of a father, wife, or benefactor. For the testimony of such an accuser, if it be not willingly given, is presumed to be corrupted by nature, and therefore not to be received: and where a man's testimony is not to be credited, he is not bound to give it. Also accusations upon torture are not to be reputed as testimonies. For torture is to be used but as means of conjecture, and light, in the further examination and search of truth: and what is in that case confessed tendeth to the ease of him that is tortured, not to the informing of the torturers, and therefore ought

not to have the credit of a sufficient testimony: for whether he deliver himself by true or false accusation, he does it by the right of preserving his own life.

The force of words being (as I have formerly noted) too weak to hold men to the performance of their covenants, there are in man's nature but two imaginable helps to strengthen it. And those are either a fear of the consequence of breaking their word, or a glory or pride in appearing not to need to break it. This latter is a generosity too rarely found to be presumed on, especially in the pursuers of wealth, command, or sensual pleasure, which are the greatest part of mankind. The passion to be reckoned upon is fear; whereof there be two very general objects: one, the power of spirits invisible; the other, the power of those men they shall therein offend. Of these two, though the former be the greater power, yet the fear of the latter is commonly the greater fear. The fear of the former is in every man his own religion, which hath place in the nature of man before civil society. The latter hath not so; at least not place enough to keep men to their promises, because in the condition of mere nature, the inequality of power is not discerned, but by the event of battle. So that before the time of civil society, or in the interruption thereof by war, there is nothing can strengthen a covenant of peace agreed on against the temptations of avarice, ambition, lust, or other strong desire, but the fear of that invisible power which they every one worship as God, and fear as a revenger of their perfidy. All therefore that can be done between two men not subject to civil power is to put one another to swear by the God he feareth: which swearing, or oath, is a form of speech, added to a promise, by which he that promiseth signifieth that unless he perform he renounceth the mercy of his God, or calleth to him for vengeance on himself. Such

was the heathen form, Let Jupiter kill me else, as I kill this beast. So is our form, I shall do thus, and thus, so help me God. And this, with the rites and ceremonies which every one useth in his own religion, that the fear of breaking faith might be the greater.

By this it appears that an oath taken according to any other form, or rite, than his that sweareth is in vain and no oath, and that there is no swearing by anything which the swearer thinks not God. For though men have sometimes used to swear by their kings, for fear, or flattery; yet they would have it thereby understood they attributed to them divine honour. And that swearing unnecessarily by God is but profaning of his name: and swearing by other things, as men do in common discourse, is not swearing, but an impious custom, gotten by too much vehemence of talking.

It appears also that the oath adds nothing to the obligation. For a covenant, if lawful, binds in the sight of God, without the oath, as much as with it; if unlawful, bindeth not at all, though it be confirmed with an oath.