

Blackstone 101

Commentaries on the Laws of England

by Sir William Blackstone, KT.,

(1753-1766)

Edited by: William Casey Jones
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Page 39, Section 38; 2.

“This then, is the general signification of law, a rule of action dictated by some superior being... laws ... denote the rules ... 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 free will, is commanded to make use of those faculties in the general regulation of his behavior.

Man, considered as a creature, must necessarily be subject to the laws of his Creator, for he is entirely a dependant being. ... 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."

ss39: 3. Law of Nature.-

This will of his Maker is called the law of Nature.

Pages 39(57) - 42(65):

“When He (God) created man, and endued him with free will ... He laid down certain immutable laws of human nature whereby that free will is in some degree regulated and restrained, and gave him also the faculty of reason to discover the purport of those laws.

“Considering the Creator” ... “is also a being of infinite *wisdom*, He has laid down only such laws as were founded in those relations of justice, that existed 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 live honestly, should hurt nobody, and should render to everyone his due; to which three precepts Justinian has reduced the whole doctrine of law. ...

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 inquire 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 obtained 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 (happiness), He has not perplexed the law of nature with a multitude of abstract rules and precepts, ... but has graciously reduced the rule of obedience to this one paternal precept, “that man should pursue his own true and substantial 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 mans 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 mans real happiness, and therefore that the law of nature forbids it.

The law of nature, being ... dictated by God Himself, is ... superior in obligation to any other. It is binding over all 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 their force, and all authority ... 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 ... what the law of nature directs in every circumstance of life; by considering what method will tend the most effectively to our own substantial happiness.

“But every man now finds ... that his reason is corrupt, & that his understanding full of ignorance & error.” ...

“This has given manifold occasion for the benign interposition of divine providence; which ... hath been pleased ... to discover & enforce its laws by an immediate & direct revelation. The doctrines thus delivered we call the revealed or divine law, & 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 (happiness).

“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.”

Pages 121 (199)

Now, as municipal law is a rule of civil conduct, commanding what is right, and prohibiting what is wrong; ...; it follows, that the primary and principal objects of the law are RIGHTS and WRONGS. (1)

(Jones’s Footnote 1)

Meaning of “a right.” – Jurisprudence is specifically concerned only with such rights as are recognized by law and enforced by the power of the state. We may therefore define a “legal right,” in what we shall hereafter see is the strictest sense of the term, as a capacity residing in one man of controlling, with the assent and assistance of the state, the actions of others.

(There is another page or two of good quoting available here.)

SS 43: Early Judicial Systems. –

The policy of our ancient constitution, as regulated and established by the great Alfred, was to bring justice home to every man's door, by constituting as many courts of judicature as there are manors and townships in the kingdom; wherein injuries were redressed in an easy and expeditious manner, by the suffrage of neighbors and friends. These little courts, however, communicated with others of a larger jurisdiction, and those with others of still greater power; ascending gradually from the lowest to the supreme courts, which were respectively constituted to correct the errors of the inferior ones, and to determine such causes as by reason of their weight and difficulty demanded a more solemn discussion.

The course of justice flowing in large streams from the king as the fountain, to his superior courts of record, and being then subdivided into smaller channels, till the whole and every part of the kingdom were plentifully watered and refreshed. An institution that seems highly agreeable to natural reason, as well as of more enlightened policy; being equally similar to that which prevailed in Mexico & Peru before they were discovered by the Spaniards; and that which was established in the Jewish republic by Moses. . . .

In like manner we read of Moses, that finding the sole administration of justice too heavy for him, he “chose able men out of Israel, such as feared God, men of truth, hating covetousness; and made them heads over the people, rulers of thousands, rulers of hundreds, rulers of fifties, and rulers of tens : and they judged the people at all seasons ; and the hard causes they brought unto Moses, but every small matter they judged themselves.”

These inferior courts, at least the name and form of them, still continue in our legal constitution : but ... these petty tribunals have fallen into decay, and almost into oblivion ...