

## PUBLIC LAW<sup>1</sup>

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Among the many motives to improve public safety that are developing in our century, great results can be expected only by the restoration of public law. One could hardly hide the fact that this body of knowledge, such as it has been taught in most schools, has contributed significantly to deceive minds. Today, all enlightened men feel the need to have it be reformed and reset on its genuine foundations. Accordingly, a powerful interest moves us to say a word about its origins, its progress, and its actual state.

During the glorious days of pagan civilization, there were philosophers who sought to investigate the depths of our nature and explain the mysteries of the social order. Their efforts were fruitless; antiquity had its Plato, Aristotle, Cicero, and other illustrious geniuses without having had a course on public law. Roman laws presented us with the final state of that body of knowledge, at a level that the wise men of Asia, of Egypt, and of Greece were unable to achieve, yet whose traditions and writings enriched and enlightened Rome, the heir of glory, of wisdom, and of the misery of all the ages that preceded it. The *Institutes* and the *Digest* identified natural law, which they defined as “what all animals have learned from nature,” *quod natura omnia animalia docuit*,<sup>2</sup> the right of peoples that the nations have set up among themselves, because matters required it, *usu exigente et humanis necessitatibus gentes humanæ jura quædam sibi constituerunt*,<sup>3</sup> and, finally, civil law which contained the laws proper to every nation.

It is useless for us to seek in this partition some idea of eternal and specific laws that were given to man; one stumbles again in dread on that legal definition which confuses man with brute animals for everything that is essential to his nature. The commentary that the

law itself was careful to add to its definition, as justification, warrants no less sadness and profound reflection. "This law," it declares, "is not proper to human beings alone, but to all animals that are born on the earth and in the seas, even birds. It is from this law that the male and the female are brought together, in what we call marriage; from this law also comes the conception of children and their physical education. We can see, in fact, that all animals, even wild ones, are capable of using these laws." *Nam jus istud non humani generis proprium sed omnium animalium quæ in terra, quæ in mari nascuntur, avium quoque commune est. Hinc descendit maris atque feminæ conjunctio, quam nos matrimonium appellamus; hinc liberorum procreatio, hinc educatio. Videmus etenim cætera quoque animalia feras etiam, istius juris peritia censerit.*<sup>4</sup> Here, then, are all the duties that the nature of man has really imposed on him; the rest is classified as human invention.

Yet, Christianity had come to spread light on the world and to reveal to men the sources of justice and of society. For many centuries, its task was to lead people to faith, to mitigate the morals of barbarians who destroyed by force what the Roman Empire had already built up by force, and to preserve some remnants of human knowledge that no longer had asylum in any nation. Despite its efforts, the sciences and literature fell into oblivion; brilliant Athens became a widow of even the sophists; Rome was mute as if pursued by the remembrance of those spears of the North that had drained the blood of its sons. Public law, like knowledge, remained at its point of departure during this entire period up to the twelfth century with distinctions showing little improvement. And then, the establishment of universities began the era of works of glory and of error, to which we belong. Roman law, whose authority had been introduced in courts, replacing the Lombard laws, by Lothaire II, Emperor of Germany, made itself master of the schools. The University of Bologna acquired a renown that gave a bit of splendor to Italy; but it did not long retain its illustrious monopoly of Roman laws, soon envied by the different academies of Europe. This study became widespread; scholars on every side devoted themselves to it with the good faith of total admiration and with the energy of work that investigated

every word and every idea to sound their depths. It is to this sphere of reflection which absorbed the activities of minds — and whose influence is easy to imagine — that we must attribute the first ideas that were spread concerning the state of nature before the social state that modern-day journalists have so extraordinarily abused. The false notions that Roman Law expressed about the natural law were commented on as to their principles and extended as to their consequences without anyone questioning the lethal outcomes these teachings would one day produce and without anyone believing that he offended the positive laws of religion by theories whose repercussions were not yet perceived. Imperceptibly the separation of the physical man from the moral man became habitual: of seeing in the first, the natural man, and in the second, the social being or artificial man. Then came the notion of proving the first hypothesis by the hypothesis of a primitive state that had preceded the creation of the state of society. The question was then asked about what were the rights and duties of man in that order of things — which had left no traces, but which was easy to imagine by the example of a few primitives deprived of communication with their fellows. All the treatises of natural law were then linked to that base. The task of public law was to explain the passage from the state of nature to the state of society.

In the 16<sup>th</sup> century, the Reformation came to place in individual reason the authority that belonged to the Church; moreover, it found minds prepared to accept the same principle of individual dominion in the political order. Indeed, this was the consequence necessary for the system that made of civil life an exception to the natural mode of existence of the human race, and that, thereby, placed the organization of society in the will of individuals. And so, the people became recognized as sovereign, in principle; the Protestants hoped even to attempt a large-scale republic, but it was not yet the time for that. Treatises on natural law and on public law multiplied in Holland, Germany, France, England, under different titles and in different formats. The teaching was that, at first, all men were free and equal, living off the fruits of the earth that, at the time, belonged to no individual. This was called the *community of primitive goods*. Some journalists, such as

Puffendorf, nonetheless recognized the principle of good fellowship,<sup>5</sup> but without knowing how to extract the consequences therein contained. The idea of a state of nature had penetrated so much everywhere, by means of the study of law, that even those who did not place complete faith in it nonetheless spoke of it only with a kind of respectful doubt. The illustrious Bossuet himself said: “According to the positive law of nature, no one has a particular right to anything at all; every good is open to everyone; the right to property<sup>6</sup> could arise only from the civil establishment.”

Finally, it was clear that man knew how to push the consequences of a false teacher to their utmost limits, and when he arrived at the edge of the abyss, he did not reverse his steps, out of fear, but faced error with brow serene and eye satisfied, as if meeting by prearrangement. Jean-Jacques Rousseau in his *Discours sur l'inégalité des conditions* [Discourse on the inequality of conditions] and in *Traité du contrat social* [Treatise on the social contract], asserted the state of nature as a demonstrated fact. Once he had given himself this support, he had no difficulty in shaking up the world with the lever of his logic; a child could have done the same. The Gospel had spoken to men this admirable sentence that contains the entire social order: “Man does not live on bread alone.” Eighteen centuries later, a human voice rose up to allow these frightening words to be heard: “The man who thinks is a depraved animal,” which is to say: Man has to live by bread alone. Since these two sayings are the strict consequences of the two opposed systems, and since they are the precise formulation of the social man and the man of nature, it is on the choice between them that everything is reflected.

The damage had been done; the philosophers and the journalists had only to sit back and wait. Revolution came and the natural rights of man were solemnly recognized by a declaration of the legislative power so that there would be nothing lacking that men could use to make false teachings permanent. The world knows the rest.

The nineteenth century opened with great destinies and with noble geniuses who

approved its refreshing inclination. Men began to understand and to say that life is not the exercise of a right but the fulfillment of a duty; that the individual does not depend on his reason nor the nation on its power. Profound writings brought to light all the philosophical incompetence of the preceding century, and taught that no longer should the human race be considered as a union of beings independent by nature who placed in a primitive contract the causes and the conditions of their voluntary association. By that agreement, which they were free to break, they created religion, morality, and society. It was taught, with all the influence of truth and of talent, that men have, with the eternal reason that made them participate in life, relationships of dependence and of love that constitute religion, and that they are united to their fellows by bonds whose necessity forms the indestructible base of the social body.

Nonetheless, however grand and attractive these initial efforts of the nineteenth century, the task has not been completed. The ancient language of public law continues to be authorized in the courts, the schools, in conferences on the law; there are few books by legal specialists wherein this erroneous and lethal division of the state of nature and the state of society has not slipped in. Besides, a part of the new generation is still imbued with the sayings of the *Contrat social*; it vacillates between indifference and disdain of what has been, boredom and hatred of what is, and yearning for the order of ideal things. A complete work on public law had become necessary, and we have the satisfaction of knowing that our hope has been answered half way by the publication in Germany of a comprehensive work entitled *Restauration de la science politique* [Restoration of political science]. It is enough to say that the author is Mr. de Haller. Perhaps we will not have to wait very long to enjoy this benefit to its full extent.

And so, on this as well as on other accounts, the nineteenth century carries in its bosom the seeds of a restoration whose developments manifest themselves on all sides, and whose corruption is likened to the withered vegetation that besets abundant harvests. When pagan society fell into dissolution, a new nation appeared on earth to receive its last breath

and, over its tomb, to proclaim words of life. Today, it is Christian society that has arrived at the edge of the precipice and finds enough strength in itself to stop short. It looks around, though; it measures the depth of the chasm which could swallow it. A frightful and solemn moment! What powerful hand will impart to this Christian society the backward movement that alone can save it, since this movement will bring it back to faith, which is at once the point of departure and the point of rest, the initial and the final limit of the human spirit.

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**ENDNOTES**

1. In France, Public Law comprises: (a) Administrative Law, and (b) Constitutional Law. - *Trans.*
2. *Institutes*, livre I, titre II. — *Digeste*, liv. I, titre I,
3. *Ibid.*
4. *Ibid.*
5. *Traité des devoirs de l'homme et du citoyen*, liv. II, chap. II §7.
6. *Disc. sur l'hist. Univ.*, liv. I, art. 3, propos. 4.

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