A Theologico-Political Treatise, Part IV

by

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Chapter 16

Of The Foundations Of A State; Of The Natural And Civil Rights Of Individuals; And Of The Rights Of The Sovereign Power.

(1) Hitherto our care has been to separate philosophy from theology, and to show the freedom of thought which such separation insures to both. (2) It is now time to determine the limits to which such freedom of thought and discussion may extend itself in the ideal state. (3) For the due consideration of this question we must examine the foundations of a State, first turning our attention to the natural rights of individuals, and afterwards to religion and the state as a whole.

(16:4) By the right and ordinance of nature, I merely mean those natural laws wherewith we conceive every individual to be conditioned by nature, so as to live and act in a given way. (5) For instance, fishes are naturally conditioned for swimming, and the greater for devouring the less; therefore fishes enjoy the water, and the greater devour the less by sovereign natural right. [16:1] (6) For it is certain that nature, taken in the abstract, has sovereign right to do anything, she can; in other words, her right is co- extensive with her power. (7) The power of nature is the power of God, which has sovereign right over all things; and, inasmuch as the power of nature is simply the aggregate of the powers of all her individual components, it follows that every, individual has sovereign right to do all that he can; in other words, the rights of an individual extend to the utmost limits of his power as it has been conditioned. (8) Now it is the sovereign law and right of nature that each individual should endeavour to preserve itself as it is, without regard to anything but itself ; therefore this sovereign law and right belongs to every individual, namely, to exist and act according to its natural conditions. (9) We do not here acknowledge any difference between mankind and other individual natural entities, nor between men endowed with reason and those to whom reason is unknown; nor between fools, madmen, and sane men. (10) Whatsoever an individual does by the laws of its nature it has a sovereign right to do, inasmuch as it acts as it was conditioned by nature, and cannot act otherwise. [16:2] (11) Wherefore among men, so long as they are considered as living under the sway of nature, he who does not yet know reason, or who has not yet acquired the habit of virtue, acts solely according to the laws of his desire with as sovereign a right as he who orders his life entirely by the laws of reason.

(16:12) That is, as the wise man has sovereign right to do all that reason dictates, or to live according to the laws of reason, so also the ignorant and foolish man has sovereign right to do all that desire dictates, or to live according to the laws of desire. (13) This is identical with the teaching of Paul, who acknowledges that previous to the law - that is, so long as men are considered of as living under the sway of nature, there is no sin.

(16:14) The natural right of the individual man is thus determined, not by sound reason, but by desire and power. (15) All are not naturally conditioned so as to act according to the laws and rules of reason; nay, on the contrary, all men are born ignorant, and before

they can learn the right way of life and acquire the habit of virtue, the greater part of their life, even if they have been well brought up, has passed away. (16) Nevertheless, they are in the meanwhile bound to live and preserve themselves as far as they can by the unaided impulses of desire. (17) Nature has given them no other guide, and has denied them the present power of living according to sound reason; so that they are no more bound to live by the dictates of an enlightened mind, than a cat is bound to live by the laws of the nature of a lion.

(16:18) Whatsoever, therefore, an individual (considered as under the sway of nature) thinks useful for himself, whether led by sound reason or impelled by the passions, that he has a sovereign right to seek and to take for himself as he best can, whether by force, cunning, entreaty, or any other means; consequently he may regard as an enemy anyone who hinders the accomplishment of his purpose.

(16:19) It follows from what we have said that the right and ordinance of nature, under which all men are born, and under which they mostly live, only prohibits such things as no one desires, and no one can attain: it does not forbid strife, nor hatred, nor anger, nor deceit, nor, indeed, any of the means suggested by desire.

(16:20) This we need not wonder at, for nature is not bounded by the laws of human reason, which aims only at man's true benefit and preservation; her limits are infinitely wider, and have reference to the eternal order of nature, wherein man is but a speck; it is by the necessity of this alone that all individuals are conditioned for living and acting in a particular way. (21) If anything, therefore, in nature seems to us ridiculous, absurd, or evil, it is because we only know in part, and are almost entirely ignorant of the order and interdependence of nature as a whole, and also because we want everything to be arranged according to the dictates of our human reason; in reality that which reason considers evil, is not evil in respect to the order and laws of nature as a whole, but only in respect to the laws of our reason.

(16:22) Nevertheless, no one can doubt that it is much better for us to live according to the laws and assured dictates of reason, for, as we said, they have men's true good for their object. (23) Moreover, everyone wishes to live as far as possible securely beyond the reach of fear, and this would be quite impossible so long as everyone did everything he liked, and reason's claim was lowered to a par with those of hatred and anger; there is no one who is not ill at ease in the midst of enmity, hatred, anger, and deceit, and who does not seek to avoid them as much as he can. [16:3] (24) When we reflect that men without mutual help, or the aid of reason, must needs live most miserably, as we clearly proved in Chap. V., we shall plainly see that men must necessarily come to an agreement to live together as securely and well as possible if they are to enjoy as a whole the rights which naturally belong to them as individuals, and their life should be no more conditioned by the force and desire of individuals, but by the power and will of the whole body. (25) This end they will be unable to attain if desire be their only guide (for by the laws of desire each man is drawn in a different direction); they must, therefore, most firmly decree and establish that they will be guided in everything by reason (which nobody will dare openly to repudiate lest he should be taken for a madman), and will

restrain any desire which is injurious to a man's fellows, that they will do to all as they would be done by, and that they will defend their neighbour's rights as their own.

(16:26) How such a compact as this should be entered into, how ratified and established, we will now inquire.

(27) Now it is a universal law of human nature that no one ever neglects anything which he judges to be good, except with the hope of gaining a greater good, or from the fear of a greater evil; nor does anyone endure an evil except for the sake of avoiding a greater evil, or gaining a greater good. (28) That is, everyone will, of two goods, choose that which he thinks the greatest; and, of two evils, that which he thinks the least. (29) I say advisedly that which he thinks the greatest or the least, for it does not necessarily follow that he judges right. (30) This law is so deeply implanted in the human mind that it ought to be counted among eternal truths and axioms.

(16:31) As a necessary consequence of the principle just enunciated, no one can honestly promise to forego the right which he has over all things [Endnote 26], and in general no one will abide by his promises, unless under the fear of a greater evil, or the hope of a greater good. (32) An example will make the matter clearer. (33) Suppose that a robber forces me to promise that I will give him my goods at his will and pleasure. (34) It is plain (inasmuch as my natural right is, as I have shown, co-extensive with my power) that if I can free myself from this robber by stratagem, by assenting to his demands, I have the natural right to do so, and to pretend to accept his conditions. (35) Or again, suppose I have genuinely promised someone that for the space of twenty days I will not taste food or any nourishment; and suppose I afterwards find that was foolish, and cannot be kept without very great injury to myself; as I am bound by natural law and right to choose the least of two evils, I have complete right to break my compact, and act as if my promise had never been uttered. (36) I say that I should have perfect natural right to do so, whether I was actuated by true and evident reason, or whether I was actuated by mere opinion in thinking I had promised rashly; whether my reasons were true or false, I should be in fear of a greater evil, which, by the ordinance of nature, I should strive to avoid by every means in my power.

(16:37) We may, therefore, conclude that a compact is only made valid by its utility, without which it becomes null and void. (38) It is, therefore, foolish to ask a man to keep his faith with us for ever, unless we also endeavour that the violation of the compact we enter into shall involve for the violator more harm than good. (39) This consideration should have very great weight in forming a state. (40) However, if all men could be easily led by reason alone, and could recognize what is best and most useful for a state, there would be no one who would not forswear deceit, for everyone would keep most religiously to their compact in their desire for the chief good, namely, the shield and buckler of the commonwealth. (41) However, it is far from being the case that all men can always be easily led by reason alone; everyone is drawn away by his pleasure, while avarice, ambition, envy, hatred, and the like so engross the mind that, reason has no place therein. (42) Hence, though men make - promises with all the appearances of good faith, and agree that they will keep to their engagement, no one can absolutely rely on another

man's promise unless there is something behind it. (43) Everyone has by nature a right to act deceitfully. and to break his compacts, unless he be restrained by the hope of some greater good, or the fear of some greater evil.

(16:44) However, as we have shown that the natural right of the individual is only limited by his power, it is clear that by transferring, either willingly or under compulsion, this power into the hands of another, he in so doing necessarily cedes also a part of his right; and further, that the Sovereign right over all men belongs to him who has sovereign power, wherewith he can compel men by force, or restrain them by threats of the universally feared punishment of death; such sovereign right he will retain only so long as he can maintain his power of enforcing his will; otherwise he will totter on his throne, and no one who is stronger than he will be bound unwillingly to obey him.

(16:45) In this manner a society can be formed without any violation of natural right, and the covenant can always be strictly kept - that is, if each individual hands over the whole of his power to the body politic, the latter will then possess sovereign natural right over all things; that is, it will have sole and unquestioned dominion, and everyone will be bound to obey, under pain of the severest punishment. (46) A body politic of this kind is called a Democracy, which may be defined as a society which wields all its power as a whole. (47) The sovereign power is not restrained by any laws, but everyone is bound to obey it in all things; such is the state of things implied when men either tacitly or expressly handed over to it all their power of self-defence, or in other words, all their right. (48) For if they had wished to retain any right for themselves, they ought to have taken precautions for its defence and preservation; as they have not done so, and indeed could not have done so without dividing and consequently ruining the state, they placed themselves absolutely at the mercy of the sovereign power; and, therefore, having acted (as we have shown) as reason and necessity demanded, they are obliged to fulfil the commands of the sovereign power, however absurd these may be, else they will be public enemies, and will act against reason, which urges the preservation of the state as a primary duty. (49) For reason bids us choose the least of two evils.

(16:50) Furthermore, this danger of submitting absolutely to the dominion and will of another, is one which may be incurred with a light heart: for we have shown that sovereigns only possess this right of imposing their will, so long as they have the full power to enforce it: if such power be lost their right to command is lost also, or lapses to those who have assumed it and can keep it. (51) Thus it is very rare for sovereigns to impose thoroughly irrational commands, for they are bound to consult their own interests, and retain their power by consulting the public good and acting according to the dictates of reason, as Seneca says, "violenta imperia nemo continuit diu." (52) No one can long retain a tyrant's sway.

(16:53) In a democracy, irrational commands are still less to be feared: for it is almost impossible that the majority of a people, especially if it be a large one, should agree in an irrational design: and, moreover, the basis and aim of a democracy is to avoid the desires as irrational, and to bring men as far as possible under the control of reason, so that they may live in peace and harmony: if this basis be removed the whole fabric falls to ruin.

(16:54) Such being the ends in view for the sovereign power, the duty of subjects is, as I have said, to obey its commands, and to recognize no right save that which it sanctions.

[16:4] (55) It will, perhaps, be thought that we are turning subjects into slaves: for slaves obey commands and free men live as they like; but this idea is based on a misconception, for the true slave is he who is led away by his pleasures and can neither see what is good for him nor act accordingly: he alone is free who lives with free consent under the entire guidance of reason.

(16:56) Action in obedience to orders does take away freedom in a certain sense, but it does not, therefore, make a man a slave, all depends on the object of the action. (57) If the object of the action be the good of the state, and not the good of the agent, the latter is a slave and does himself no good: but in a state or kingdom where the weal of the whole people, and not that of the ruler, is the supreme law, obedience to the sovereign power does not make a man a slave, of no use to himself, but a subject. (58) Therefore, that state is the freest whose laws are founded on sound reason, so that every member of it may, if he will, be free [Endnote 27]; that is, live with full consent under the entire guidance of reason.

(16:59) Children, though they are bound to obey all the commands of their parents, are yet not slaves: for the commands of parents look generally to the children's benefit.

(60) We must, therefore, acknowledge a great difference between a slave, a son, and a subject; their positions may be thus defined. (61) A slave is one who is bound to obey his master's orders, though they are given solely in the master's interest: a son is one who obeys his father's orders, given in his own interest; a subject obeys the orders of the sovereign power, given for the common interest, wherein he is included.

(16:62) I think I have now shown sufficiently clearly the basis of a democracy: I have especially desired to do so, for I believe it to be of all forms of government the most natural, and the most consonant with individual liberty. (63) In it no one transfers his natural right so absolutely that he has no further voice in affairs, he only hands it over to the majority of a society, whereof he is a unit. Thus all men remain as they were in the state of nature, equals.

(16:64) This is the only form of government which I have treated of at length, for it is the one most akin to my purpose of showing the benefits of freedom in a state.

(65) I may pass over the fundamental principles of other forms of government, for we may gather from what has been said whence their right arises without going into its origin. (66) The possessor of sovereign power, whether he be one, or many, or the whole body politic, has the sovereign right of imposing any commands he pleases: and he who has either voluntarily, or under compulsion, transferred the right to defend him to another, has, in so doing, renounced his natural right and is therefore bound to obey, in all things, the commands of the sovereign power; and will be bound so to do so long as the

king, or nobles, or the people preserve the sovereign power which formed the basis of the original transfer. (67) I need add no more.

[16:5] (68) The bases and rights of dominion being thus displayed, we shall readily be able to define private civil right, wrong, justice, and injustice, with their relations to the state; and also to determine what constitutes an ally, or an enemy, or the crime of treason.

(16:69) By private civil right we can only mean the liberty every man possesses to preserve his existence, a liberty limited by the edicts of the sovereign power, and preserved only by its authority: for when a man has transferred to another his right of living as he likes, which was only limited by his power, that is, has transferred his liberty and power of self-defence, he is bound to live as that other dictates, and to trust to him entirely for his defence. (70) Wrong takes place when a citizen, or subject, is forced by another to undergo some loss or pain in contradiction to the authority of the law, or the edict of the sovereign power.

(16:71) Wrong is conceivable only in an organized community: nor can it ever accrue to subjects from any act of the sovereign, who has the right to do what he likes. (72) It can only arise, therefore, between private persons, who are bound by law and right not to injure one another. (73) Justice consists in the habitual rendering to every man his lawful due: injustice consists in depriving a man, under the pretence of legality, of what the laws, rightly interpreted, would allow him. (74) These last are also called equity and iniquity, because those who administer the laws are bound to show no respect of persons, but to account all men equal, and to defend every man's right equally, neither envying the rich nor despising the poor.

[16:6](75) The men of two states become allies, when for the sake of avoiding war, or for some other advantage, they covenant to do each other no hurt, but on the contrary, to assist each other if necessity arises, each retaining his independence. (76) Such a covenant is valid so long as its basis of danger or advantage is in force: no one enters into an engagement, or is bound to stand by his compacts unless there be a hope of some accruing good, or the fear of some evil: if this basis be removed the compact thereby becomes void: this has been abundantly shown by experience. (77) For although different states make treaties not to harm one another, they always take every possible precaution against such treaties being broken by the stronger party, and do not rely on the compact, unless there is a sufficiently obvious object and advantage to both parties in observing it. (78) Otherwise they would fear a breach of faith, nor would there be any wrong done thereby: for who in his proper senses, and aware of the right of the sovereign power, would trust in the promises of one who has the will and the power to do what he likes, and who aims solely at the safety and advantage of his dominion? (79) Moreover, if we consult loyalty and religion, we shall see that no one in possession of power ought to abide by his promises to the injury of his dominion; for he cannot keep such promises without breaking the engagement he made with his subjects, by which both he and they are most solemnly bound. (80) An enemy is one who lives apart from the state, and does not recognize its authority either as a subject or as an ally. It is not hatred which makes a man an enemy, but the rights of the state. (81) The rights of the state are the same in

regard to him who does not recognize by any compact the state authority, as they are against him who has done the state an injury: it has the right to force him as best it can, either to submit, or to contract an alliance.

[16:7] (82) Lastly, treason can only be committed by subjects, who by compact, either tacit or expressed, have transferred all their rights to the state: a subject is said to have committed this crime when he has attempted, for whatever reason, to seize the sovereign power, or to place it in different hands. (83) I say, has attempted, for if punishment were not to overtake him till he had succeeded, it would often come too late, the sovereign rights would have been acquired or transferred already.

(16:84) I also say, has attempted, for whatever reason, to seize the sovereign power, and I recognize no difference whether such an attempt should be followed by public loss or public gain. (85) Whatever be his reason for acting, the crime is treason, and he is rightly condemned: in war, everyone would admit the justice of his sentence. (86) If a man does not keep to his post, but approaches the enemy without the knowledge of his commander, whatever may be his motive, so long as he acts on his own motion, even if he advances with the design of defeating the enemy, he is rightly put to death, because he has violated his oath, and infringed the rights of his commander. (87) That all citizens are equally bound by these rights in time of peace, is not so generally recognized, but the reasons for obedience are in both cases identical. (88) The state must be preserved and directed by the sole authority of the sovereign, and such authority and right have been accorded by universal consent to him alone: if, therefore, anyone else attempts, without his consent, to execute any public enterprise, even though the state might (as we said) reap benefit therefrom, such person has none the less infringed the sovereigns right, and would be rightly punished for treason.

(16:89) In order that every scruple may be removed, we may now answer the inquiry, whether our former assertion that everyone who has not the practice of reason, may, in the state of nature, live by sovereign natural right, according to the laws of his desires, is not in direct opposition to the law and right of God as revealed. (90) For as all men absolutely (whether they be less endowed with reason or more) are equally bound by the Divine command to love their neighbour as themselves, it may be said that they cannot, without wrong, do injury to anyone, or live according to their desires.

(16:91) This objection, so far as the state of nature is concerned, can be easily answered, for the state of nature is, both in nature and in time, prior to religion. (92) No one knows by nature that he owes any obedience to God [Endnote 28], nor can he attain thereto by any exercise of his reason, but solely by revelation confirmed by signs. (93) Therefore, previous to revelation, no one is bound by a Divine law and right of which he is necessarily in ignorance. (94) The state of nature must by no means be confounded with a state of religion, but must be conceived as without either religion or law, and consequently without sin or wrong: this is how we have described it, and we are confirmed by the authority of Paul. (95) It is not only in respect of ignorance that we conceive the state of nature as prior to, and lacking the Divine revealed law and right; but in respect of freedom also, wherewith all men are born endowed.

(16:96) If men were naturally bound by the Divine law and right, or if the Divine law and right were a natural necessity, there would have been no need for God to make a covenant with mankind, and to bind them thereto with an oath and agreement.

(16:97) We must, then, fully grant that the Divine law and right originated at the time when men by express covenant agreed to obey God in all things, and ceded, as it were, their natural freedom, transferring their rights to God in the manner described in speaking of the formation of a state.

(98) However, I will treat of these matters more at length presently.

[16:8] (99) It may be insisted that sovereigns are as much bound by the Divine law as subjects: whereas we have asserted that they retain their natural rights, and may do whatever they like.

(16:100) In order to clear up the whole difficulty, which arises rather concerning the natural right than the natural state, I maintain that everyone is bound, in the state of nature, to live according to Divine law, in the same way as he is bound to live according to the dictates of sound reason; namely, inasmuch as it is to his advantage, and necessary for his salvation; but, if he will not so live, he may do otherwise at his own risk. (101) He is thus bound to live according to his own laws, not according to anyone else's, and to recognize no man as a judge, or as a superior in religion. (102) Such, in my opinion, is the position of a sovereign, for he may take advice from his fellow-men, but he is not bound to recognize any as a judge, nor anyone besides himself as an arbitrator on any question of right, unless it be a prophet sent expressly by God and attesting his mission by indisputable signs. (103) Even then he does not recognize a man, but God Himself as His judge.

[16:9] (104) If a sovereign refuses to obey God as revealed in His law, he does so at his own risk and loss, but without violating any civil or natural right. (105) For the civil right is dependent on his own decree; and natural right is dependent on the laws of nature, which latter are not adapted to religion, whose sole aim is the good of humanity, but to the order of nature - that is, to God's eternal decree unknown to us.

(16:106) This truth seems to be adumbrated in a somewhat obscurer form by those who maintain that men can sin against God's revelation, but not against the eternal decree by which He has ordained all things.

(107) We may be asked, what should we do if the sovereign commands anything contrary to religion, and the obedience which we have expressly vowed to God? should we obey the Divine law or the human law? (108) I shall treat of this question at length hereafter, and will therefore merely say now, that God should be obeyed before all else, when we have a certain and indisputable revelation of His will: but men are very prone to error on religious subjects, and, according to the diversity of their dispositions, are wont with considerable stir to put forward their own inventions, as experience more than sufficiently attests, so that if no one were bound to obey the state in matters which, in his